

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

**Introduced**

### **House Bill 4564**

**FISCAL  
NOTE**

BY DELEGATES MILEY, GUTHRIE, BATES, ROWE, MOYE,  
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AND SKINNER

[Introduced February 16, 2016; Referred  
to the Committee on Health and Human Resources  
then Finance.]

1 A BILL to amend and reenact §11-17-2 and §11-17-3 of the Code of West Virginia, 1931, as  
 2 amended, all relating to the taxing certain tobacco products; taxing certain tobacco  
 3 products to fund public employees insurance and substance abuse programs; establishing  
 4 new taxes and providing incremental increases in those taxes; creating a special revenue  
 5 account; and authorizing the Secretary of the Department of Health and Human  
 6 Resources to establish and administer programs to address drug addiction in this state.

*Be it enacted by the Legislature of West Virginia:*

1 That §11-17-2 and §11-17-3 of the Code of West Virginia, 1931, as amended, be amended  
 2 and reenacted, all to read as follows:

**ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.**

**§11-17-2. Definitions.**

1 (a) When used in this article, words, terms and phrases defined in subsection (b) of this  
 2 section, and any variations thereof required by the context, have the meaning ascribed to them  
 3 in this section, except where the context indicates a different meaning is intended.

4 (b) *Definitions.* --

5 (1) "Cigarette" means:

6 (A) Any roll for smoking made, wholly or in part, of tobacco, irrespective of size or shape  
 7 and whether or not the tobacco is flavored, adulterated or mixed with any ingredient, the wrapping  
 8 or cover of which is made of paper or any substance or material, except tobacco.

9 (B) Any roll of tobacco wrapped in any substance containing tobacco which, because of  
 10 its appearance, the type of tobacco used in the filler, or its packing and labeling, is likely to be  
 11 offered to, or purchased by, consumers as a cigarette described in paragraph (A) of this  
 12 subdivision.

13 (2) "Commissioner" means the State Tax Commissioner and, where the meaning of the  
 14 context requires, all deputies or agents and employees duly authorized by him or her.

15 (3) "Consumer" means a person who receives or in any way comes into possession of

16 tobacco products for the purpose of consuming or giving them away or disposing of them in any  
17 way other than by sale, barter or exchange.

18 (4) "Counterfeit stamp" means any stamp, label or print, indicium or character, that  
19 evidences, or purports to evidence, the payment of any tax levied under this article and that has  
20 not been printed, manufactured or made by authority of the commissioner, as provided in this  
21 article, and has not been issued, sold or circulated by the commissioner.

22 (5) "Manufacturer" means a person who manufactures or produces a tobacco product.

23 (6) "Other tobacco product" or "tobacco products other than cigarettes" means snuff and  
24 chewing tobacco and any other tobacco product that is intended by the seller to be consumed by  
25 means other than smoking and any cigar, pipe tobacco or other tobacco product other than  
26 cigarettes.

27 (7) "Package" means the individual package, box or other container in or from which retail  
28 sales of tobacco products are normally made or intended to be made.

29 (8) "Person" means and includes any individual, firm, association, company, partnership,  
30 corporation, joint-stock company, club, agency, syndicate, limited liability company, other legal  
31 entity, municipal corporation or other political subdivision of this state, trust, receiver, trustee,  
32 fiduciary or conservator, and when used in connection with any penalties imposed by this article,  
33 means and includes officers, directors, trustees or members of any firm, copartnership,  
34 association, corporation, trust or any other unit acting as a group.

35 (9) "Place of business" means a place where a tobacco product is sold or where a tobacco  
36 product is brought or kept for the purpose of sale or consumption, including a vessel, airplane,  
37 train or vending machine.

38 (10) "Retail dealer" includes every person in this state, other than a wholesaler or  
39 subjobber, engaged in the selling of tobacco products at retail to a consumer or to any person for  
40 any purpose other than resale.

41 (11) "Sale" means selling, exchange, transfer of title, barter, gift, offer for sale or

42 distribution or disposition of cigarettes or other tobacco products.

43 (12) "Sale at retail" or "retail sale" means a sale to a consumer or to any person for any  
44 purpose other than resale.

45 (13) "Sale by wholesaler" means and includes any bona fide transfer of title to tobacco  
46 products by a wholesaler for a valuable consideration, made in the ordinary course of trade or in  
47 the usual conduct of the wholesaler's business.

48 (14) "Stamp" or "meter impression" means any cigarette stamp or any meter or ink  
49 impression or other indicia authorized by the Tax Commissioner to serve as a stamp and shall be  
50 of the design and color as prescribed by the Tax Commissioner.

51 (15) "Stamped cigarettes" means that the stamp or meter impression, as required by this  
52 article, has been affixed to the bottom of the package of cigarettes.

53 (16) "Subjobber" or "subjobber dealer" includes any person who purchases stamped  
54 cigarettes or tax-paid tobacco products from a wholesaler or from any other person who  
55 purchases from the manufacturer or importer and who purchases the tax-paid tobacco products  
56 solely for the purpose of bona fide resale to retail dealers.

57 (17) "Tax-not-paid tobacco product" means a tobacco product upon which the tax imposed  
58 by this article has not been paid.

59 (18) "Tax-paid tobacco products" means a tobacco product upon which the tax imposed  
60 by this article has been paid.

61 (19) "Tobacco product" ~~includes~~ means cigarettes and any other ~~tobacco~~ product  
62 containing, made, or derived from tobacco that is intended for human consumption, whether  
63 chewed, smoked, absorbed, dissolved, inhaled, or ingested by any other means. Tobacco  
64 products excludes any tobacco product that has been approved by the United States Food and  
65 Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product,  
66 or for other medical purposes, and is being marketed and sold solely for such an approved  
67 purpose.

68 (20) "Transportation company" means a person operating or supplying to common  
69 carriers, cars, boats or other vehicles for the transportation or accommodation of passengers and  
70 engaged in the sale of a tobacco product at retail.

71 (21) "Transporter" means a person importing or transporting into this state a tobacco  
72 product obtained from a source located outside this state or transporting within this state tobacco  
73 products belonging to another person.

74 (22) "Unstamped cigarettes" means that the stamp or impression as required by this article  
75 has not been affixed to the bottom of the package of cigarettes.

76 (23) "Vending machine operator" means any person operating one or more vending  
77 machines for the sale of tobacco products. The sale of tobacco products through a vending  
78 machine will be construed as sales at retail and subjects the vending machine operator to this  
79 article and rules pertaining to retail dealers.

80 Whenever any tobacco products vending machine operator purchases tax-not-paid  
81 tobacco products directly from the manufacturer or any other person, the vending machine  
82 operator shall be considered to be a wholesaler and is liable for payment of the excise tax imposed  
83 by this article and the affixing of the required stamps.

84 (24) "Wholesale price" means the gross invoice price, including all federal excise taxes,  
85 at which the manufacturer of the tobacco product sells the tobacco product to unaffiliated  
86 distributors, excluding all trade discounts and other reductions in the manufacturer's price. If the  
87 taxpayer buys from other than a manufacturer, "wholesale price" means the gross invoice price,  
88 including all federal excise taxes and excluding all trade discounts and other similar reductions in  
89 price.

90 (25) "Wholesaler" or "wholesale dealer" includes any person in this state who purchases  
91 tax-not-paid tobacco products directly from the manufacturer, or such other seller as may be  
92 approved by the Tax Commissioner. Any distributor, dealer, subjobber, subjobber dealer, retailer  
93 or any other person that imports or transports tax-not-paid tobacco products into this state, or that

94 causes tax-not-paid tobacco products to be imported or transported into this state is a wholesaler  
95 liable for the tax imposed under this article and, in the case of cigarettes purchased, is liable for  
96 affixing tax indicia in accordance with the requirements of this article. No wholesaler or other  
97 person may purchase tax-not-paid tobacco products from any seller not approved by the Tax  
98 Commissioner.

**§11-17-3. Levy of tax; ratio; dedication of proceeds; special revenue account.**

1 (a) *Tax on cigarettes.* -- For the purpose of providing revenue for the General Revenue  
2 Fund of the state, an excise tax is hereby levied and imposed on sales of cigarettes at the rate of  
3 55¢ on each twenty cigarettes or in like ratio on any part thereof. Only one sale of the same article  
4 shall be used in computing the amount of tax due under this subsection: Provided, That beginning  
5 July 1, 2016, an additional excise tax is hereby levied and imposed on sales at the rate of \$1 on  
6 each twenty cigarettes or in like ratio on any part thereof: *Provided, however* That the additional  
7 excise tax shall increase an additional 10¢ per annum beginning on July 1, 2017; the tax will  
8 increase an additional 10¢ per annum beginning each fiscal year until July 1, 2021, at which point  
9 the total additional tax for each twenty cigarettes or in like ratio on any part thereof shall be \$1.50.

10 (b) *Tax on tobacco products other than cigarettes.* -- Effective January 1, 2002, an excise  
11 tax is hereby levied and imposed on the sale or use of, other than cigarettes, tobacco products at  
12 a rate equal to seven percent of the wholesale price of each article or item of tobacco product  
13 other than cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale,  
14 or if not sold, then at the same rate upon the use by the wholesaler or dealer. Only one sale of  
15 the same article shall be used in computing the amount of tax due under this subsection.  
16 Revenues received from this tax shall be deposited into the General Revenue Fund: Provided,  
17 That beginning July 1, 2016, an additional excise tax is hereby levied and imposed on sales of  
18 tobacco products other than cigarettes at the rate of an additional seventeen percent of the  
19 wholesale price: *Provided, however,* That the additional excise tax shall increase an additional

20 three percent per annum beginning on July 1, 2017; and that tax will increase an additional three  
21 percent per annum beginning each fiscal year until Jul 1, 2021, at which point the total additional  
22 tax for tobacco products other than tobacco shall be twenty-nine percent.

23 (c) The percent of taxes collected above 55¢ pursuant to subsection (a) of this section and  
24 seven percent of wholesale price pursuant to subsection (b) of this section shall be deposited as  
25 follows: For the fiscal year beginning on July 1, 2016, the first \$120 million for the fiscal year  
26 collected, and the first \$60 million each fiscal year thereafter collected, shall be deposited into the  
27 special fund established by the Public Employees Insurance Agency created pursuant to section  
28 eighteen, article sixteen, chapter five of this code; and the excess above this amount each year  
29 shall be deposited in the special revenue account created pursuant to subsection (d) of this  
30 section.

31 (d) *Establishment of special revenue account.* - There is hereby created a special revenue  
32 account within the State Treasury known as the Department of Health and Human Resources  
33 Drug Addiction Interdiction and Treatment Fund. The account shall be administered by the  
34 Secretary of the Department of Health and Human Resources for the purpose of administering a  
35 comprehensive interdiction and treatment program herein established. The Department of Health  
36 and Human Resources, Division of Alcoholism and Drug Abuse shall administer a comprehensive  
37 interdiction and treatment program for persons who have been identified through a criminal  
38 conviction of any law of this state when the person has a substance abuse problem that either  
39 was the identified because of or was the basis for their criminal act. The secretary shall direct  
40 funding to establishment of treatment facilities, mental health facilities, day report centers,  
41 community correction centers or other public agencies or private entities providing services to  
42 persons addicted to any illegal or prescription drugs, or alcohol. The account may be invested,  
43 and all earnings and interest accruing shall be retained in the account. The Auditor shall conduct  
44 an audit of the fund at least every three fiscal years thereafter.

45 (e) *Effective date.* -- The changes set forth herein to this section and section four of this

46 ~~article shall become effective May 1, 2003.~~

NOTE: The purpose of this bill is to increase the tax on cigarettes and tobacco products to be used for funding public employees insurance and substance abuse programs.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.