

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

Introduced

### House Bill 4661

FISCAL  
NOTE

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[Introduced February 22, 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; and to amend said code by adding thereto a new section, designated §49-2-  
 3 914, all relating to child welfare; children eighteen years of age or older who have been in  
 4 the foster care system; creating an Aging Out of Foster Unit within the Department of  
 5 Health and Human Resources to assist these children, track and collect statistics related  
 6 to these children, provide assistance to the children, report annually to the Joint  
 7 Committee on Government and Finance and the Legislative Oversight Committee on  
 8 Health and Human Resources; vapor product definition; and placing a tax on “Vapor  
 9 products”, equal to the tax on tobacco products other than cigarettes to finance the Aging  
 10 Out of Foster Unit.

*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; and that said code be amended by adding thereto a new section, designated §49-  
 3 2-914, all to read as follows:

**CHAPTER 11. TAXATION.**

**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 (C) Any "Vapor product" as defined in section two, article nine-a, chapter sixteen of this  
14 code meaning any noncombustible product containing nicotine that employs a heating element,  
15 power source, electronic circuit or other electronic, chemical or mechanical means, regardless of  
16 shape and size that can be used to produce vapor from nicotine in a solution or other form. "Vapor  
17 product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe or  
18 similar product or device, and any vapor cartridge or other container of nicotine in a solution or  
19 other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic  
20 cigarillo, electronic pipe or similar product or device. "Vapor product" does not include any product  
21 that is regulated by the United States Food and Drug Administration under Chapter V of the Food,  
22 Drug and Cosmetic Act.

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

25 (3) "Consumer" means a person who receives or in any way comes into possession of  
26 tobacco products for the purpose of consuming or giving them away or disposing of them in any  
27 way other than by sale, barter or exchange.

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

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

33 (6) "Other tobacco product" or "tobacco products other than cigarettes", means snuff and  
34 chewing tobacco and any other tobacco product that is intended by the seller to be consumed by

35 means other than smoking and any cigar, pipe tobacco or other tobacco product other than  
36 cigarettes.

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

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

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

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

51 (11) "Sale" means selling, exchange, transfer of title, barter, gift, offer for sale or  
52 distribution or disposition of cigarettes or other tobacco products.

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

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

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

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

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

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

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

71 (19) "Tobacco product" includes cigarettes and any other tobacco product.

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

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

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

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

84 Whenever any tobacco products vending machine operator purchases tax-not-paid  
85 tobacco products directly from the manufacturer or any other person, the vending machine  
86 operator shall be considered to be a wholesaler and is liable for payment of the excise tax imposed

87 by this article and the affixing of the required stamps.

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

94 (25) "Wholesaler" or "wholesale dealer" includes any person in this state who purchases  
95 tax-not-paid tobacco products directly from the manufacturer, or such other seller as may be  
96 approved by the Tax Commissioner. Any distributor, dealer, subjobber, subjobber dealer, retailer  
97 or any other person that imports or transports tax-not-paid tobacco products into this state, or that  
98 causes tax-not-paid tobacco products to be imported or transported into this state is a wholesaler  
99 liable for the tax imposed under this article and, in the case of cigarettes purchased, is liable for  
100 affixing tax indicia in accordance with the requirements of this article. No wholesaler or other  
101 person may purchase tax-not-paid tobacco products from any seller not approved by the Tax  
102 Commissioner.

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

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.

5 (b) *Tax on tobacco products other than cigarettes.* - Effective January 1, 2002, an excise  
6 tax is hereby levied and imposed on the sale or use of, other than cigarettes, tobacco products at  
7 a rate equal to seven percent of the wholesale price of each article or item of tobacco product  
8 other than cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale,

9 or if not sold, then at the same rate upon the use by the wholesaler or dealer. Only one sale of  
 10 the same article shall be used in computing the amount of tax due under this subsection.  
 11 Revenues received from this tax shall be deposited into the General Revenue Fund.

12 (d) Tax on vapor products. Effective January 1, 2017, for the purpose of providing revenue  
 13 for the operation of the Aging Out of Foster Unit created within the Department of Health and  
 14 Human Resources, an excise tax is hereby levied and imposed on the sale or use of vapor  
 15 products, at a rate equal to seven percent of the wholesale price of each article or item of vapor  
 16 product sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if not  
 17 sold, then at the same rate upon the use by the wholesaler or dealer. Only one sale of the same  
 18 article shall be used in computing the amount of tax due under this subsection. Revenues received  
 19 from this tax shall be deposited into the General Revenue Fund and dedicated exclusively for the  
 20 operation of the Aging Out of Foster Unit created within the Department of Health and Human  
 21 Resources by section nine hundred fourteen, article four, chapter forty-nine of this code.

22 (c) *Effective date.* - The changes set forth herein to this section and section four of this  
 23 article shall become effective May 1, 2003.

## **CHAPTER 49. CHILD WELFARE.**

### **ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.**

#### **§49-2-914. Aging out of foster care unit.**

1 The Aging Out of Foster Unit is hereby created within the Department of Health and  
 2 Human Resources to assist children aging out of foster care. This unit shall track and collect  
 3 statistics on the welfare of children who are eighteen years of age or older who have been in the  
 4 foster care system, including identifying the numbers of these children who graduate from high  
 5 school, who are employed, who are caught up in the criminal justice system and all other aspects  
 6 of their interaction in society. This unit may also apply for, receive and accept gifts, payments  
 7 and other funds and advances from the United States, the state or any other governmental body,

8 agency or agencies or from any other private or public corporation or person or any other type of  
9 assistance that may be available to these young citizens. The unit shall continually research how  
10 other states are caring for children who have been in the care of their state and develop plans  
11 that are updated yearly regarding best practices to ensure the safety, security and overall well-  
12 being of children who have been in the custody of the state.

13 The Secretary of the Department of Health and Human Resources shall submit on or  
14 before January 1, of each year a report to the Governor and the Joint Committee on Government  
15 and Finance and the Legislative Oversight Committee on Health and Human Resources,  
16 containing a summary of the unit's efforts in fulfilling its duties as set forth in this section, including,  
17 results of its responsibilities in assisting children aging out of foster care, including well-being  
18 statistics, high school graduation rates, employment rates, criminal justice system involvement,  
19 financial assistance and summary of all other aspects of their interaction in society.

20 The costs for this new unit shall be financed by a tax equal to the tax imposed on tobacco  
21 products other than cigarettes in section three, article seventeen, chapter eleven of this code and  
22 designated as "Vapor products" as that term is defined in section two, article nine-a, chapter  
23 sixteen of this code.

NOTE: The purpose of this bill is to create an Aging Out of Foster Unit within the Department of Health and Human Resources to assist children eighteen years of age or older who have been in the foster care system. The bill authorizes the Unit to track and collect statistics related to these children, provide assistance to them and to report annually to the Governor and Joint Committee on Government and Finance and the Legislative Oversight Committee on Health and Human Resources. The bill uses the "vapor product" definition from §16-9A-2 of this code and places a tax on "vapor products", equal to the tax on tobacco products other than cigarettes to finance the Aging Out of Foster Unit.

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