

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 534**

BY SENATORS PALUMBO, TAKUBO, STOLLINGS, WOELFEL,

CLINE, AND JEFFRIES

[Originating in the Committee on the Judiciary;

reported on February 23, 2018]

1 A BILL to amend and reenact §16-9A-2 and §16-9A-4 of the Code of West Virginia, 1931, as  
2 amended, all relating generally to tobacco usage and e-cigarette restrictions; defining  
3 terms; prohibiting e-cigarettes on certain public school property by persons under the age  
4 of 18 at certain times; and increasing the penalty for certain tobacco-related and e-  
5 cigarette offenses on public school property.

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

**ARTICLE 9A. TOBACCO USAGE AND E-CIGARETTE RESTRICTIONS.**

**§16-9A-2. Definitions; sale or gift of cigarette, cigarette paper, pipe, cigar, snuff, chewing tobacco, pipe tobacco, roll-your-own tobacco, tobacco products, tobacco-derived and alternative nicotine product or vapor products to persons under 18; penalties for first and subsequent offense; consideration of prohibited act as grounds for dismissal; impact on eligibility for unemployment benefits.**

1 (a) For purposes of this article, the term:

2 (1) "Tobacco product" and "tobacco-derived product" means any product containing,  
3 made or derived from tobacco, or containing nicotine derived from tobacco, that is intended for  
4 human consumption, whether smoked, breathed, chewed, absorbed, dissolved, inhaled,  
5 vaporized, snorted, sniffed, or ingested by any other means, including, but not limited to,  
6 cigarettes, cigars, cigarillos, little cigars, pipe tobacco, snuff, snus, chewing tobacco, or other  
7 common tobacco-containing products. A "tobacco-derived product" includes ~~electronic cigarettes~~  
8 e-cigarettes or similar devices, alternative nicotine products and vapor products. "Tobacco  
9 product" or "tobacco-derived product" does not include any product that is regulated by the United  
10 States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act.

11 (2) "Alternative nicotine product" means any noncombustible product containing nicotine  
12 that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by  
13 any other means. "Alternative nicotine product" does not include any tobacco product, vapor  
14 product, or product regulated as a drug or device by the United States Food and Drug

15 Administration under Chapter V of the Food, Drug and Cosmetic Act.

16 (3) "Vapor product" means any noncombustible product containing nicotine that employs  
17 a heating element, power source, electronic circuit or other electronic, chemical, or mechanical  
18 means, regardless of shape and size, that can be used to produce vapor from nicotine in a solution  
19 or other form. "Vapor product" includes any ~~electronic cigarette~~ e-cigarette, electronic cigar,  
20 electronic cigarillo, electronic pipe, or similar product or device, and any vapor cartridge or other  
21 container of nicotine in a solution or other form that is intended to be used with or in an electronic  
22 cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. "Vapor  
23 product" does not include any product that is regulated by the United States Food and Drug  
24 Administration under Chapter V of the Food, Drug and Cosmetic Act.

25 (4) "E-cigarette" means an electrical or electronic device that provides a smoke, vapor,  
26 fog, mist, gas, or aerosol suspension of nicotine or another substance that, when used or inhaled,  
27 simulates the activity of smoking. The term e-cigarette includes, but is not limited to, a device that  
28 is composed of a heating element, battery or electrical or electronic circuit, or a combination of  
29 heating element, battery, and electrical or electronic circuit, which works in combination with e-  
30 liquid to produce an inhalable product. The term e-cigarette includes, but is not limited to, any so  
31 designed, or similarly designed, product that is manufactured, distributed, marketed, or sold as  
32 an e-cigarette, e-cigar, e-pipe, or under any other name or descriptor. The term "simulates the  
33 activity of smoking", in the context of this definition, means replicating, mimicking, or reproducing  
34 an experience similar to inhaling, or otherwise drawing into the mouth or nose, or exhaling the  
35 smoke or combustion product of burning tobacco or any other product or material that can be  
36 used in a similar fashion.

37 (b) ~~No~~ A person, firm, corporation, or business entity may not sell, give, or furnish, or cause  
38 to be sold, given, or furnished, to any person under the age of 18 years:

39 (1) Any pipe, cigarette paper, or any other paper prepared, manufactured, or made for the

40 purpose of smoking any tobacco or tobacco product;

41 (2) Any cigar, cigarette, snuff, chewing tobacco, or tobacco product, in any form; or

42 (3) Any tobacco-derived product, alternative nicotine product, or vapor product.

43 (c) Any firm or corporation that violates any of the provisions of §16-9A-2(b) of this code  
44 and any individual who violates any of the provisions of §16-9A-2(b) of this code is guilty of a  
45 misdemeanor and, upon conviction thereof, shall be fined \$50 for the first offense. Upon any  
46 subsequent violation at the same location or operating unit, the firm, corporation, or individual  
47 shall be fined as follows: At least \$250 but not more than \$500 for the second offense, if it occurs  
48 within two years of the first conviction; at least \$500 but not more than \$750 for the third offense,  
49 if it occurs within two years of the first conviction; and at least \$1,000 but not more than \$5,000  
50 for any subsequent offenses, if the subsequent offense occurs within five years of the first  
51 conviction.

52 (d) Any individual who knowingly and intentionally sells, gives, or furnishes or causes to  
53 be sold, given, or furnished to any person under the age of 18 years any cigar, cigarette, snuff,  
54 chewing tobacco, tobacco product, or tobacco-derived product, in any form, is guilty of a  
55 misdemeanor and, upon conviction thereof, for the first offense shall be fined not more than \$100;  
56 upon conviction thereof for a second or subsequent offense, is guilty of a misdemeanor and shall  
57 be fined not less than \$100 nor more than \$500.

58 (e) Any employer who discovers that his or her employee has sold or furnished tobacco  
59 products or tobacco-derived products to minors may dismiss such employee for cause. ~~Any such~~  
60 The discharge shall be considered as "gross misconduct" for the purposes of determining the  
61 discharged employee's eligibility for unemployment benefits in accordance with the provisions of  
62 §21A-6-3 of this code, if the employer has provided the employee with prior written notice in the  
63 workplace that ~~such that~~ act or acts may result in ~~their~~ his or her termination from employment.

**§16-9A-4. Use of tobacco, tobacco products, alternative nicotine products, or vapor**

**products, or e-cigarettes in certain areas of certain public schools prohibited; penalty.**

1 Every person who ~~shall smoke~~ smokes a cigarette or cigarettes, pipe, cigar, or other  
2 implement, of any type or nature, designed, used, or employed for smoking any tobacco or  
3 tobacco product; or who ~~shall use~~ uses any tobacco product, or tobacco-derived product, or e-  
4 cigarette in any building or part ~~thereof~~ of a building used for instructional purposes, in any school  
5 of this state, as defined in §18-1-1 of this code, or on any lot or grounds actually used for  
6 instructional purposes of any ~~such~~ school of this state while ~~such~~ the school is used or occupied  
7 for school purposes, ~~shall be~~ is guilty of a misdemeanor and, upon conviction thereof, shall be  
8 punished for each offense by a fine of not less than \$1 nor more than ~~five dollars~~ \$25; *Provided,*  
9 That this prohibition ~~shall not be construed to~~ does not prevent the use of any tobacco, or tobacco  
10 product, or tobacco-derived product, or e-cigarette in any faculty lounge, or staff lounge, or faculty  
11 office or other area of ~~said~~ a public school not used for instructional ~~perposes~~ purposes *Provided,*  
12 ~~however, That if~~ if students do not have access ~~thereto~~ to the faculty lounge, staff lounge, or faculty  
13 office. ~~Provided further, That nothing herein contained shall be construed to~~ This section does not  
14 prevent any county board of education from promulgating rules ~~and regulations~~ that further restrict  
15 the use of tobacco products, or tobacco-derived products, or e-cigarettes, in any form, from any  
16 other part or section of any public school building under its jurisdiction.