

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 136

BY SENATORS PALUMBO AND BALDWIN

[Introduced January 9, 2019; Referred
to the Committee on Health and Human Resources;
and then to the Committee on the Judiciary]

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

NOTE: The purpose of this bill is to increase the penalty for using tobacco and tobacco-derived products on school property. It defines e-cigarette and prohibits e-cigarettes on certain public school property by persons under the age of 18 at certain times; and provides a penalty for e-cigarette offenses on public school property.

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