

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 348

BY SENATORS TAKUBO, MARONEY, PREZIOSO,
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AND CLINE

[Introduced January 18, 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-1, §16-9A-2, §16-9A-3, §16-9A-7, and §16-9A-8 of the Code
2 of West Virginia, 1931, as amended, all relating to tobacco usage restrictions; legislative
3 findings and intent; and raising the legal age for the purchase of tobacco, tobacco
4 products, tobacco-derived products, alternative nicotine products, and vapor products to
5 21.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-1. Legislative findings and intent.

1 (a) Findings --Tobacco is the leading cause of preventable death in America: It causes
2 over 480,000 deaths annually and has been responsible for 20.8 million premature deaths in the
3 U.S. over the past 50 years since the first Surgeon General's report on smoking in 1964. The
4 Legislature recognizes that young people are particularly susceptible to the addictive properties
5 of tobacco products, and are particularly likely to become lifelong users. An estimated 5.6 million
6 youth are projected to die prematurely from a tobacco-related disease if smoking prevalence rates
7 do not change. National data shows that about 95 percent of adult smokers begin smoking before
8 they turn 21. The ages of 18 to 21 are a critical period when many smokers move from
9 experimenting with smoking to regular, daily use. Young minds are particularly susceptible to the
10 addictive properties of nicotine. Tobacco industry documents show that an 18 year old that has
11 never smoked has a three-to-one chance that he or she never will. However, a 21 year old who
12 has never smoked has a 20-to-one chance that she or he never will. Electronic nicotine delivery
13 system (ENDS) use among teens has surged in recent years, and now stands at 16 percent
14 among high school students, ENDS are the most commonly used tobacco product among high
15 school students. In 2015, 8.6 percent of high school students were current cigar smokers; 11.5
16 percent of boys and 5.6 percent of girls. High school boys smoke cigars at a higher rate than
17 cigarettes. In 2015, the National Academy of Medicine concluded that raising the minimum legal
18 sales age for tobacco products nationwide will reduce tobacco initiation, particularly among

19 adolescents aged 15 to 17, improve health across the lifespan, and save lives. The National
 20 Academy of Medicine also predicts that raising the minimum legal sales age for tobacco products
 21 nationwide to 21 would result in 223,000 fewer premature deaths; 50,000 fewer deaths from lung
 22 cancer, and 4.3 million fewer years of life lost for those born between 2000 and 2019. Three-
 23 quarters of adults favor raising the minimum legal sales age for tobacco products to 21, including
 24 seven in 10 adult smokers. Raising the minimum age to purchase tobacco products is consistent
 25 with raising the legal drinking age to 21, which led to reduced alcohol use and dependence among
 26 youth, and contributed to a decline in drunk driving fatalities. A growing number of communities,
 27 including the state of Hawaii and California, have enacted minimum legal sales age of 21 laws to
 28 further restrict access to tobacco.

29 (b) Intent--The Legislature hereby declares it to be the policy and intent of this state to
 30 discourage and ban the use of tobacco products by minors. As basis for this policy, the Legislature
 31 hereby finds and accepts the medical evidence that smoking tobacco may cause lung cancer,
 32 heart disease, emphysema and other serious health problems while the use of smokeless tobacco
 33 may cause gum disease and oral cancer. It is the further intent of the Legislature to reduce
 34 tobacco use by keeping tobacco products out of the hands of youth and young adults in banning
 35 ~~the use of tobacco products by minors~~ the sale of tobacco products to persons under the age of
 36 21 to ease the personal tragedy and eradicate the severe economic loss associated with the use
 37 of tobacco and to provide the state with a citizenry free from the use of tobacco.

§16-9A-2. Definitions; gift of cigarette paper, pipe, snuff, chewing tobacco, pipe tobacco,
roll-your-own tobacco, tobacco products, tobacco derived and alternative nicotine
products or vapor products to persons under 18; 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; 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 ~~eighteen~~ 21; 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 cigarettes,
6 cigars, cigarillos, little cigars, pipe tobacco, snuff, snus, chewing tobacco or other common
7 tobacco-containing products. A "tobacco-derived product" includes electronic cigarettes or similar
8 devices, alternative nicotine products and vapor products. "Tobacco product" or "tobacco-derived
9 product" does not include any product that is regulated by the United States Food and Drug
10 Administration under Chapter V of the Food, Drug and Cosmetic Act.

11 (2) "Alternative nicotine product" means any non-combustible 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, electronic cigar, electronic
20 cigarillo, electronic pipe or similar product or device, and any vapor cartridge or other container
21 of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette,
22 electronic cigar, electronic cigarillo, electronic pipe or similar product or device. "Vapor product"

23 does not include any product that is regulated by the United States Food and Drug Administration
24 under Chapter V of the Food, Drug and Cosmetic Act.

25 (b) No person, firm, corporation or business entity may sell, give or furnish, or cause to be
26 sold, given or furnished, to any person under the age of ~~18~~ 21 years:

27 (1) Any pipe, cigarette paper or any other paper prepared, manufactured or made for the
28 purpose of smoking any tobacco or tobacco product;

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

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

31 (c) Any individual, firm or corporation that violates ~~any of the provisions of~~ subsection (b)
32 ~~or (c) of this section and any individual who violates any of the provisions of subsection (b) of this~~
33 ~~section~~ is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$50 for the first
34 offense. Upon any subsequent violation at the same location or operating unit, the firm,
35 corporation or individual shall be fined as follows: At least \$250 but not more than \$500 for the
36 second offense, if it occurs within two years of the first conviction; at least \$500 but not more than
37 \$750 for the third offense, if it occurs within two years of the first conviction; and at least \$1,000
38 but not more than \$5,000 for any subsequent offenses, if the subsequent offense occurs within
39 five years of the first conviction.

40 ~~(d) Any individual who knowingly and intentionally sells, gives or furnishes or causes to be~~
41 ~~sold, given or furnished to any person under the age of eighteen years any cigar, cigarette, snuff,~~
42 ~~chewing tobacco, tobacco product or tobacco-derived product, in any form, is guilty of a~~
43 ~~misdemeanor and, upon conviction thereof, for the first offense shall be fined not more than \$100;~~
44 ~~upon conviction thereof for a second or subsequent offense, is guilty of a misdemeanor and shall~~
45 ~~be fined not less than \$100 nor more than \$500~~

46 ~~(e)~~ (d) Any employer who discovers that his or her employee has ~~sold or furnished~~ tobacco
47 products or tobacco-derived products to minors or sold tobacco products or tobacco derived
48 products to persons under the age of 21 may dismiss ~~such that~~ that employee for cause. Any such

49 discharge shall be considered as “gross misconduct” for the purposes of determining the
 50 discharged employee's eligibility for unemployment benefits in accordance with ~~the provisions of~~
 51 §21A-6-3 of this code, if the employer has provided the employee with prior written notice in the
 52 workplace that such act or acts may result in their termination from employment.

**§16-9A-3. Use or possession of tobacco or tobacco products, alternative nicotine products
 or vapor products by persons under the age of 18 years; penalties.**

1 A person under the age of 18 years shall may not have on or about his or her person or
 2 premises or use any cigarette, or cigarette paper, or any other paper prepared, manufactured or
 3 made for the purpose of smoking any tobacco products, in any form; any pipe, snuff, chewing
 4 tobacco, tobacco product, or tobacco-derived product: *Provided*, That ~~minors~~ persons under the
 5 age of 21 participating in the inspection of locations where tobacco products or tobacco-derived
 6 products are sold or distributed pursuant to §16-9A-7 of this code is not considered to violate the
 7 provisions of this section. Any person violating the provisions of this section shall for the first
 8 violation be fined \$50 and be required to serve eight hours of community service; for a second
 9 violation, the person shall be fined \$100 and be required to serve 16 hours of community service;
 10 and for a third and each subsequent violation, the person shall be fined \$200 and be required to
 11 serve 24 hours of community service. Notwithstanding the provisions of §49-4-701 of this code,
 12 the magistrate court has concurrent jurisdiction.

**§16-9A-7. Enforcement of youth smoking laws and youth nicotine restrictions; inspection
 of retail outlets where tobacco, tobacco products, vapor products or alternative
 nicotine products are sold; use of minors in inspections; annual reports; penalties;
 defenses.**

1 (a) The Commissioner of the West Virginia Alcohol Beverage Control Administration, the
 2 Superintendent of the West Virginia State Police, the sheriffs of the counties of this state and the
 3 chiefs of police of municipalities of this state, may periodically conduct unannounced inspections
 4 at locations where tobacco products or tobacco-derived products, are sold or distributed to ensure

5 compliance with the provisions of §16-9A-2 and §16-9A-3 of this code and in such manner as to
6 conform with applicable federal and state laws, rules and regulations. Persons under the age of
7 ~~eighteen~~ 21 years may be enlisted by such commissioner, superintendent, sheriffs or chiefs of
8 police or employees or agents thereof to test compliance with these sections: *Provided*, That the
9 ~~minors~~ persons under the age of 21 may be used to test compliance only if the testing is
10 conducted under the direct supervision of the commissioner, superintendent, sheriffs or chiefs of
11 police or employees or agents thereof and written consent of the parent or guardian of ~~such~~ that
12 person is first obtained and ~~such minors~~ those persons under the age of 21 ~~shall~~ are not be in
13 violation of §16-9A-3 of this code ~~article and chapter~~ when acting under the direct supervision of
14 the commissioner, superintendent, sheriffs or chiefs of police or employees or agents thereof and
15 with the written consent of the parent or guardian. It is unlawful for any person to use persons
16 under the age of ~~eighteen~~ 21 years to test compliance in any manner not set forth herein and the
17 person so using a minor is guilty of a misdemeanor and, upon conviction thereof, shall be fined
18 the same amounts as set forth in §16-9A-2 of this code.

19 (b) A person charged with a violation of §16-9A-2 and §16-9A-3 of this code as the result
20 of an inspection under subsection (a) of this section has a complete defense if, at the time the
21 cigarette, other tobacco product or tobacco-derived product, or cigarette wrapper, was sold,
22 delivered, bartered, furnished or given:

23 (1) The buyer or recipient falsely evidenced that he or she was ~~eighteen~~ 21 years of age
24 or older;

25 (2) The appearance of the buyer or recipient was such that a prudent person would believe
26 the buyer or recipient to be ~~eighteen~~ 21 years of age or older; and

27 (3) ~~Such~~ The person carefully checked a driver's license or an identification card issued
28 by this state or another state of the United States, a passport or a United States armed services
29 identification card presented by the buyer or recipient and acted in good faith and in reliance upon
30 the representation and appearance of the buyer or recipient in the belief that the buyer or recipient

31 was ~~eighteen~~ 21 years of age or older.

32 (c) Any fine collected after a conviction of violating section two of this article shall be paid
33 to the clerk of the court in which the conviction was obtained: *Provided*, That the clerk of the court
34 upon receiving the fine shall promptly notify the Commissioner of the West Virginia Alcohol
35 Beverage Control Administration of the conviction and the collection of the fine: *Provided*,
36 *however*, That any community service penalty imposed after a conviction of violating §16-9A-3 of
37 this code shall be recorded by the clerk of the court in which the conviction was obtained: *Provided*
38 *further*, That the clerk of the court upon being advised that community service obligations have
39 been fulfilled shall promptly notify the Commissioner of the West Virginia Alcohol Beverage
40 Control Administration of the conviction and the satisfaction of imposed community service
41 penalty.

42 (d) The Commissioner of the West Virginia Alcohol Beverage Control Administration or his
43 or her designee shall prepare and submit to the Governor on the last day of September of each
44 year a report of the enforcement and compliance activities undertaken pursuant to this section
45 and the results of the same, with a copy to the Secretary of the West Virginia Department of
46 Health and Human Resources. The report shall be in the form and substance that the Governor
47 shall submit to the applicable state and federal programs.

**§16-9A-8. Selling of tobacco products, tobacco-derived products, alternative nicotine
products or vapor products in vending machines prohibited except in certain
places.**

1 No person or business entity may offer for sale any cigarette, tobacco product or tobacco-
2 derived product, in a vending machine. Any person or business entity which violates the
3 provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined
4 \$250: *Provided*, That an establishment is exempt from this prohibition if individuals under the age
5 of ~~eighteen~~ 21 years are not permitted to be in the establishment or if the establishment is licensed
6 by the alcohol beverage control commissioner as a Class A licensee. The alcohol beverage

- 7 control commissioner shall promulgate rules pursuant to §29A-3-1 *et seq.* of this code to establish
8 standards for the location and control of the vending machines in Class A licensed establishments
9 for the purpose of restricting access by ~~minors~~ persons under the age of 21.

NOTE: The purpose of this bill is to raise the legal age for the purchase of tobacco, tobacco products, tobacco derived products, alternative nicotine products and vapor products to 21.

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