

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4066

BY DELEGATE ROWE

[Introduced January 08, 2020; Referred to the Committee
on Health and Human Resources then 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 raising the legal age for the purchase
 3 of tobacco, tobacco products, tobacco derived products, alternative nicotine products,
 4 vapor products, and smokable hemp to 21.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-1. Legislative intent.

1 The Legislature hereby declares it to be the policy and intent of this state to discourage
 2 and ban the use of tobacco products by minors. As basis for this policy, the Legislature hereby
 3 finds and accepts the medical evidence that smoking tobacco may cause lung cancer, heart
 4 disease, emphysema and other serious health problems while the use of smokeless tobacco may
 5 cause gum disease and oral cancer. It is the further intent of the Legislature in banning ~~the use~~
 6 ~~of tobacco products by minors~~ the sale of tobacco products to persons under the age of 21 to
 7 ease the personal tragedy and eradicate the severe economic loss associated with the use of
 8 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, vapor products, or smokable hemp 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, vapor products, or smokable hemp 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, or smokable hemp 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 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, 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 (4) (A) Except as provided in paragraph (B) of this subdivision, "smokable hemp" means
26 a product containing not more than three-tenths percent delta-9-tetrahydrocannabinol (THC),

27 including precursors and derivatives of THC, in a form that allows THC to be introduced into the
28 human body by inhalation of smoke. The term includes:

29 (i) Hemp bud; and

30 (ii) Hemp flower.

31 (B) The term does not include:

32 (i) A hemp plant that is; or

33 (ii) Parts of a hemp plant that are grown or handled by a licensee for processing or
34 manufacturing into a legal hemp product.

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

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

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

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

41 (c) No person, firm, corporation or business entity may sell or cause to be sold to any
42 person under the age of 21 years:

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

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

46 (3) Any tobacco derived product, alternative nicotine product, vapor product, or smokable
47 hemp.

48 ~~(e) (d)~~ Any individual, firm or corporation that violates any of the provisions of subsection
49 (b) or (c) of this section and ~~any individual who violates any of the provisions of subsection (b) of~~
50 ~~this section~~ is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$50 for the first
51 offense. Upon any subsequent violation at the same location or operating unit, the firm,
52 corporation or individual shall be fined as follows: At least \$250 but not more than \$500 for the

53 second offense, if it occurs within two years of the first conviction; at least \$500 but not more than
 54 \$750 for the third offense, if it occurs within two years of the first conviction; and at least \$1,000
 55 but not more than \$5,000 for any subsequent offenses, if the subsequent offense occurs within
 56 five years of the first conviction.

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

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

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

1 A person under the age of 18 years shall 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, or smokable hemp: *Provided*, That ~~minors~~
 5 persons under the age of 21 participating in the inspection of locations where tobacco products

6 or tobacco-derived products are sold or distributed pursuant to §16-9A-7 of this code is not
7 considered to violate the provisions of this section. Any person violating the provisions of this
8 section shall for the first violation be fined \$50 and be required to serve eight hours of community
9 service; for a second violation, the person shall be fined \$100 and be required to serve 16 hours
10 of community service; and for a third and each subsequent violation, the person shall be fined
11 \$200 and be required to serve 24 hours of community service. Notwithstanding the provisions of
12 §49-4-701 of this code, 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, smokable hemp
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 smokable hemp, tobacco products or tobacco-derived products, are sold or
5 distributed to ensure compliance with the provisions of §16-9A-2 and §16-9A-3 of this code and
6 in such manner as to conform with applicable federal and state laws, rules and regulations.
7 Persons under the age of ~~eighteen~~ 21 years may be enlisted by such commissioner,
8 superintendent, sheriffs or chiefs of police or employees or agents thereof to test compliance with
9 these sections: *Provided*, That the ~~minors~~ persons under the age of 21 may be used to test
10 compliance only if the testing is conducted under the direct supervision of the commissioner,
11 superintendent, sheriffs or chiefs of police or employees or agents thereof and written consent of
12 the parent or guardian of such person is first obtained and ~~such minors shall~~ those persons under
13 the age of 21 are not be in violation of §16-9A-3 of this code and this chapter when acting under
14 the direct supervision of the commissioner, superintendent, sheriffs or chiefs of police or
15 employees or agents thereof and with the written consent of the parent or guardian. It is unlawful

16 for any person to use persons under the age of ~~eighteen~~ 21 years to test compliance in any
17 manner not set forth herein and the person so using a minor is guilty of a misdemeanor and, upon
18 conviction thereof, shall be fined 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 or §16-9A-3 of this code as the result of
20 an inspection under subsection (a) of this section has a complete defense if, at the time the
21 cigarette, smokable hemp other tobacco product or tobacco-derived product, or cigarette wrapper,
22 was sold, 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 person carefully checked a driver's license or an identification card issued by this
28 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 §16-9A-2 of this code shall be paid to
33 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, or smokable hemp in a vending machine. Any person or business entity which
3 violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof,
4 shall be fined \$250: *Provided*, That an establishment is exempt from this prohibition if individuals
5 under the age of ~~eighteen~~ 21 years are not permitted to be in the establishment or if the
6 establishment is licensed by the Alcohol Beverage Control Commissioner as a Class A licensee.
7 The Alcohol Beverage Control Commissioner shall promulgate rules pursuant to §29A-3-1 *et seq.*
8 of this code to establish standards for the location and control of the vending machines in Class
9 A licensed establishments for the purpose of restricting access by ~~minors~~ persons under the age
10 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, vapor products, and smokable hemp 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.