

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2323**

BY DELEGATES ROWE, ROHRBACH AND LAVENDER-BOWE

[Introduced January 11, 2019; 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 and  
 4 vapor products 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 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 20; 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 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) No person, firm, corporation or business entity may sell or cause to be sold to any  
32 person under the age of 21 years:

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

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

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

37 (e) (d) Any individual, firm or corporation that violates ~~any of the provisions of subsection~~  
38 ~~(b) or (c) of this section and any individual who violates any of the provisions of subsection (b) of~~  
39 ~~this section~~ is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$50 for the first  
40 offense. Upon any subsequent violation at the same location or operating unit, the firm,  
41 corporation or individual shall be fined as follows: At least \$250 but not more than \$500 for the  
42 second offense, if it occurs within two years of the first conviction; at least \$500 but not more than  
43 \$750 for the third offense, if it occurs within two years of the first conviction; and at least \$1,000  
44 but not more than \$5,000 for any subsequent offenses, if the subsequent offense occurs within  
45 five years of the first conviction.

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

52 (e) Any employer who discovers that his or her employee has ~~sold or~~ furnished tobacco

53 products or tobacco-derived products to minors or sold tobacco products or tobacco derived  
54 products to persons under the age of 21 may dismiss ~~such~~ that employee for cause. Any such  
55 discharge shall be considered as "gross misconduct" for the purposes of determining the  
56 discharged employee's eligibility for unemployment benefits in accordance with the provisions of  
57 section three, §21A-6-3 of this code, if the employer has provided the employee with prior written  
58 notice in the 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 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 sections two and three of this article 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  
12 person is first obtained and ~~such minors~~ those persons under the age of 21 ~~shall~~ are not be in  
13 violation of section three of this 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 section two of this article.

19 (b) A person charged with a violation of section two or three of this article as the result of  
20 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 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 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 section three  
37 of this article shall be recorded by the clerk of the court in which the conviction was obtained:  
38 *Provided further*, That the clerk of the court upon being advised that community service  
39 obligations have been fulfilled shall promptly notify the Commissioner of the West Virginia Alcohol  
40 Beverage Control Administration of the conviction and the satisfaction of imposed community  
41 service 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 article three, chapter twenty-nine-a of  
8 this code to establish standards for the location and control of the vending machines in Class A  
9 licensed establishments for the purpose of restricting access by ~~minors~~ persons under the age of  
10 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 twenty-one.

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