

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5394

By Delegates Campbell, Shamblin, Rohrbach,
Jeffries, Toney, Ellington, Foggin, E. Pritt, Dean,
Ross, and Stephens

[Introduced January 31, 2024; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §16-9A-2 of the Code of West Virginia, 1931, as amended, relating
 2 to increasing penalties for the sale of e-cigarettes, vapes, or cartridges to anyone under 18
 3 years of age, making it a misdemeanor and increasing the fines and penalties for the
 4 employee and business that sells these items to minors.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. TOBACCO USE 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 eighteen; 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 any
 13 other means. "Alternative nicotine product" does not include any tobacco product, vapor product
 14 or product regulated as a drug or device by the United States Food and Drug Administration under
 15 Chapter V of the Food, Drug and Cosmetic Act.

16 (3) "Vapor product" means any non-combustible 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 of
21 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, or alternative nicotine product. ~~or vapor product~~

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

39 (d) Any individual who knowingly and intentionally sells, gives or furnishes or causes to be
40 sold, given or furnished to any person under the age of eighteen years any cigar, cigarette, snuff,

41 chewing tobacco, tobacco product or tobacco-derived product, in any form, is guilty of a
42 misdemeanor and, upon conviction thereof, for the first offense shall be fined not more than \$100;
43 upon conviction thereof for a second or subsequent offense, is guilty of a misdemeanor and shall
44 be fined not less than \$100 nor more than \$500.

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

52 (f) No person, firm, corporation, or business entity may sell, give or furnish, or cause to be
53 sold, given or furnished, to any person under the age of 18 years any vapor product.

54 (g) Any firm or corporation that violates any of the provisions of subsection (f) of this
55 section shall be fined \$10,000 and the business must close for 60 days. No other e-cigarette
56 business my open in that location, using that storefront, for the entire 60 days.

57 (h) Any individual who violates any of the provisions of subsection (f) of this section is guilty
58 of a misdemeanor and, upon conviction thereof, shall be fined \$2,500.

NOTE: The purpose of this bill is to increase penalties for the sale of e-cigarettes, vapes, or cartridges to anyone under 18 years of age, making it a misdemeanor and increasing the fines and penalties for the employee and business that sells these items to minors.

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