

1 **H. B. 4237**

2  
3 (By Delegates Lawrence, Barrett, Guthrie, Skinner,  
4 Perdue, Campbell, Marshall, Poore, Fleischauer,  
5 Stagers and A. Evans)

6 [Introduced January 21, 2014; referred to the  
7 Committee on Health and Human Resources then the  
8 Judiciary.]

9  
10 A BILL to amend and reenact §16-9A-2, §16-9A-3, §16-9A-7 and  
11 §16-9A-8 of the Code of West Virginia, 1931, as amended, all  
12 relating to the usage restrictions for tobacco and tobacco  
13 products; defining tobacco products; defining vapor products;  
14 including vapor products within the definition of tobacco  
15 products; exclusions; prohibiting the sale of vapor products  
16 to individuals under eighteen years of age; prohibiting the  
17 use and possession of vapor products by an individual under  
18 eighteen years of age; including vapor products within the  
19 tobacco products for which unannounced inspections may be  
20 conducted to ensure compliance with sales restrictions; and  
21 restricting the sale of vapor products in vending machines;  
22 establishing associated misdemeanor offenses and penalties for  
23 prohibited use, sale and possession and related violations.

24 *Be it enacted by the Legislature of West Virginia:*

25 That §16-9A-2, §16-9A-3, §16-9A-7 and §16-9A-8 of the Code of

1 West Virginia, 1931, as amended, be amended and reenacted, all to  
2 read as follows:

3 **ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.**

4 **§16-9A-2. Definitions; sale or gift of cigarette, cigarette**  
5 **paper, pipe, cigar, snuff, chewing tobacco, pipe**  
6 **tobacco, roll-your-own tobacco, vapor products and**  
7 **other tobacco products to persons under eighteen;**  
8 **penalties for first and subsequent offense;**  
9 **consideration of prohibited act as grounds for**  
10 **dismissal; impact on eligibility for unemployment**  
11 **benefits.**

12 (a) In this article:

13 (1) "Chewing tobacco" means any leaf tobacco that is not  
14 intended to be smoked.

15 (2) "Cigar" means any roll of tobacco wrapped in leaf tobacco  
16 or in any substance containing tobacco, other than any roll of  
17 tobacco which is a "cigarette".

18 (3) "Cigarette" means any product that contains nicotine, is  
19 intended to be burned or heated under ordinary conditions of use,  
20 and consists of or contains:

21 (A) Any roll of tobacco wrapped in paper or in any substance  
22 not containing tobacco; or

23 (B) Tobacco, in any form, that is functional in the product,

1 which, because of its appearance, the type of tobacco used in the  
2 filler, or its packaging and labeling, is likely to be offered to,  
3 or purchased by, consumers as a cigarette; or

4 (C) Any roll of tobacco wrapped in any substance containing  
5 tobacco which, because of its appearance, the type of tobacco used  
6 in the filler, or its packaging and labeling, is likely to be  
7 offered to, or purchased by, consumers as a cigarette as that term  
8 is described in this subsection.

9 (D) Includes cigarettes made with "roll-your-own" tobacco.

10 (4) "Pipe tobacco" means any tobacco which, because of its  
11 appearance, type, packaging or labeling, is suitable for use and  
12 likely to be offered to, or purchased by, consumers as tobacco to  
13 be smoked in a pipe.

14 (5) "Roll-your-own tobacco" means any tobacco which, because  
15 of its appearance, type, packaging or labeling, is suitable for use  
16 and likely to be offered to, or purchased by, consumers as tobacco  
17 for making cigarettes or cigars, or for use as wrappers thereof.

18 (6) "Smokeless tobacco" means any tobacco product that  
19 consists of cut, ground, powdered, or leaf tobacco and that is not  
20 intended to be smoked and is intended to be placed in the oral or  
21 nasal cavity, and includes both chewing tobacco and snuff.

22 (7) "Snuff" means any finely cut, ground or powdered tobacco  
23 that is not intended to be smoked.

24 (8) "Tobacco product" means any product made or derived from

1 tobacco that is intended for human consumption, including  
2 cigarettes, cigars, snuff, chewing tobacco, pipe tobacco,  
3 roll-your-own tobacco and vapor products. "Tobacco product" does  
4 not include any product that is regulated by the United States Food  
5 and Drug Administration under Chapter V of the Federal Food, Drug  
6 and Cosmetic Act.

7 (9) "Vapor product" means any noncombustible tobacco-derived  
8 product containing nicotine that employs a mechanical heating  
9 element, battery or circuit, regardless of shape or size, that can  
10 be used to heat a liquid nicotine solution contained in cartridges,  
11 and includes an electronic cigarette, electronic cigar, electronic  
12 cigarillo or electronic pipe and cartridge or other container of  
13 nicotine solution. "Vapor product" does not include any product  
14 that is regulated by the United States Food and Drug Administration  
15 under Chapter V of the Federal Food, Drug and Cosmetic Act.

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

19 (1) Any pipe, cigarette paper or any other paper prepared,  
20 manufactured or made for the purpose of smoking any tobacco or  
21 tobacco product; ~~or~~

22 (2) Any electronic cigarette, electronic cigar, electronic  
23 cigarillo, electronic pipe or any other vapor product or component  
24 or cartridge of a vapor product; or

1       ~~(2)~~ (3) Any cigar, cigarette, snuff, chewing tobacco, pipe  
2 tobacco, roll-your-own tobacco or any other tobacco product, in any  
3 form;

4       ~~(b)~~ (c) Any firm or corporation that violates any of the  
5 provisions of subdivision (1), ~~or~~ (2) or (3), subsection ~~(a)~~ (b) of  
6 this section and any individual who violates any of the provisions  
7 of subdivision (1), subsection ~~(a)~~ (b) of this section is guilty of  
8 a misdemeanor and, upon conviction thereof, shall be fined \$50 for  
9 the first offense. Upon any subsequent violation at the same  
10 location or operating unit, the firm, corporation or individual  
11 shall be fined as follows: At least \$250 but not more than \$500  
12 for the second offense, if it occurs within two years of the first  
13 conviction; at least \$500 but not more than \$750 for the third  
14 offense, if it occurs within two years of the first conviction; and  
15 at least \$1,000 but not more than \$5,000 for any subsequent  
16 offenses, if the subsequent offense occurs within five years of the  
17 first conviction.

18       ~~(c)~~ (d) Any individual who knowingly and intentionally sells,  
19 gives or furnishes or causes to be sold, given or furnished to any  
20 person under the age of eighteen years any cigar, cigarette, snuff,  
21 chewing tobacco, pipe tobacco, roll-your-own tobacco, vapor  
22 product, or any other tobacco product, in any form, is guilty of a  
23 misdemeanor and, upon conviction thereof, for the first offense  
24 shall be fined not more than \$100; upon conviction thereof for a

1 second or subsequent offense, is guilty of a misdemeanor and shall  
2 be fined not less than \$100 nor more than \$500.

3 ~~(d)~~ (e) Any employer who discovers that his or her employee  
4 has sold or furnished tobacco products to minors may dismiss such  
5 employee for cause. Any such discharge shall be considered as  
6 "gross misconduct" for the purposes of determining the discharged  
7 employee's eligibility for unemployment benefits in accordance with  
8 the provisions of section three, article six, chapter twenty-one-a  
9 of this code, if the employer has provided the employee with prior  
10 written notice in the workplace that such act or acts may result in  
11 their termination from employment.

12 **§16-9A-3. Use or possession of tobacco or tobacco products by**  
13 **persons under the age of eighteen years; penalties.**

14 No person under the age of eighteen years shall have on or  
15 about his or her person or premises or use any cigarette, or  
16 cigarette paper or any other paper prepared, manufactured or made  
17 for the purpose of smoking any tobacco products, in any form; ~~or,~~  
18 any pipe, snuff, chewing tobacco, ~~or~~ pipe tobacco or roll-your-own  
19 tobacco; any vapor product or component or cartridge of a vapor  
20 product; or any other tobacco product: Provided, That minors  
21 participating in the inspection of locations where tobacco products  
22 are sold or distributed pursuant to section seven of this article  
23 is not considered to violate the provisions of this section. Any  
24 person violating the provisions of this section shall for the first

1 violation be fined \$50 and be required to serve eight hours of  
2 community service; for a second violation, the person shall be  
3 fined \$100 and be required to serve sixteen hours of community  
4 service; and for a third and each subsequent violation, the person  
5 shall be fined \$200 and be required to serve twenty-four hours of  
6 community service. Notwithstanding the provisions of section two,  
7 article five, chapter forty-nine, the magistrate court has  
8 concurrent jurisdiction.

9 **§16-9A-7. Enforcement of youth smoking laws; retail tobacco outlet**  
10 **inspections; use of minors in inspections; annual**  
11 **reports; penalties; defenses.**

12 (a) The commissioner of the West Virginia alcohol beverage  
13 control administration, the Superintendent of the West Virginia  
14 State Police, the sheriffs of the counties of this state and the  
15 chiefs of police of municipalities of this state, may periodically  
16 conduct unannounced inspections at locations where tobacco products  
17 are sold or distributed to ensure compliance with the provisions of  
18 sections two and three of this article and in such manner as to  
19 conform with applicable federal and state laws, rules and  
20 regulations. Persons under the age of eighteen years may be  
21 enlisted by such commissioner, superintendent, sheriffs or chiefs  
22 of police or employees or agents thereof to test compliance with  
23 these sections: *Provided*, That the minors may be used to test

1 compliance only if the testing is conducted under the direct  
2 supervision of the commissioner, superintendent, sheriffs or chiefs  
3 of police or employees or agents thereof and written consent of the  
4 parent or guardian of such person is first obtained and such minors  
5 shall not be in violation of section three of this article and  
6 chapter when acting under the direct supervision of the  
7 commissioner, superintendent, sheriffs or chiefs of police or  
8 employees or agents thereof and with the written consent of the  
9 parent or guardian. It is unlawful for any person to use persons  
10 under the age of eighteen years to test compliance in any manner not  
11 set forth herein and the person so using a minor is guilty of a  
12 misdemeanor and, upon conviction thereof, shall be fined the same  
13 amounts as set forth in section two of this article.

14 (b) A person charged with a violation of section two or three  
15 of this article as the result of an inspection under subsection (a)  
16 of this section has a complete defense if, at the time the cigarette  
17 or other tobacco product or cigarette wrapper was sold, delivered,  
18 bartered, furnished or given:

19 (1) The buyer or recipient falsely evidenced that he or she was  
20 eighteen years of age or older;

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

24 (3) Such person carefully checked a driver's license or an



1 identification card issued by this state or another state of the  
2 United States, a passport or a United States armed services  
3 identification card presented by the buyer or recipient and acted  
4 in good faith and in reliance upon the representation and appearance  
5 of the buyer or recipient in the belief that the buyer or recipient  
6 was eighteen years of age or older.

7       (c) Any fine collected after a conviction of violating section  
8 two of this article shall be paid to the clerk of the court in which  
9 the conviction was obtained: *Provided*, That the clerk of the court  
10 upon receiving the fine shall promptly notify the Commissioner of  
11 the West Virginia Alcohol Beverage Control Administration of the  
12 conviction and the collection of the fine: *Provided, however*, That  
13 any community service penalty imposed after a conviction of  
14 violating section three of this article shall be recorded by the  
15 clerk of the court in which the conviction was obtained: *Provided*  
16 *further*, That the clerk of the court upon being advised that  
17 community service obligations have been fulfilled shall promptly  
18 notify the Commissioner of the West Virginia Alcohol Beverage  
19 Control Administration of the conviction and the satisfaction of  
20 imposed community service penalty.

21       (d) The Commissioner of the West Virginia Alcohol Beverage  
22 Control Administration or his or her designee shall prepare and  
23 submit to the Governor on the last day of September of each year a  
24 report of the enforcement and compliance activities undertaken

1 pursuant to this section and the results of the same, with a copy  
2 to the Secretary of the West Virginia Department of Health and Human  
3 Resources. The report shall be in the form and substance that the  
4 Governor shall submit to the applicable state and federal programs.

5 **§16-9A-8. Selling of tobacco products in vending machines**  
6 **prohibited except in certain places.**

7 No person or business entity may offer for sale any cigarette;  
8 any vapor product, component or cartridge of a vapor product; or  
9 other tobacco product in a vending machine. Any person or business  
10 entity which violates the provisions of this section is guilty of  
11 a misdemeanor and, upon conviction thereof, shall be fined \$250:  
12 *Provided,* That an establishment is exempt from this prohibition if  
13 individuals under the age of eighteen years are not permitted to be  
14 in the establishment or if the establishment is licensed by the  
15 alcohol beverage control commissioner as a Class A licensee. The  
16 alcohol beverage control commissioner shall promulgate rules  
17 pursuant to article three, chapter twenty-nine-a of this code prior  
18 to the July 1,2000, which rules shall establish standards for the  
19 location and control of the vending machines in Class A licensed  
20 establishments for the purpose of restricting access by minors.

NOTE: The purpose of this bill is to define alternative nicotine products and electronic cigarettes; prohibit the sale of alternative nicotine products to individuals under eighteen years of age; prohibit the use and possession of alternative nicotine products by an individual under eighteen years of age; add

alternative nicotine products to the list of products for which unannounced inspections may be conducted to ensure compliance with sales restrictions; and restrict the sale of alternative nicotine products in vending machines.

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