

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 5084

BY DELEGATES TULLY, SUMMERS, MALLOW, HECKERT,
MARPLE, WESTFALL, BROOKS, BARNHART, WILLIS,
BURKHAMMER, AND W. CLARK

[Passed March 9, 2024; in effect ninety days from
passage.]

1 AN ACT to amend and reenact §16-9A-1, §16-9A-2, §16-9A-3, §16-9A-4, §16-9A-7, and §16-9A-
2 8 of the Code of West Virginia, 1931, as amended, all relating to tobacco products;
3 amending legislative intent; defining terms; prohibiting sale or gift of tobacco products to
4 persons younger than 21 years of age; requiring that a valid driver's license, state
5 identification card, or any valid and unexpired federally issued identification card be
6 presented to verify the minimum age of 21 for the purchase or acceptance of tobacco
7 products; setting forth fines and criminal penalties; increasing fines for selling tobacco
8 products to persons younger than 21 years of age; removing penalties for possession of
9 a tobacco product by a person younger than the age of 18; providing that an employee
10 who sells a tobacco product to a person younger than 21 years of age is subject to
11 noncriminal, nonmonetary penalties; allowing an employee who sells a tobacco product
12 to a person younger than 21 years of age to be fired under certain circumstances;
13 permitting persons younger than 21 years of age to be used in inspections of retail outlets
14 where tobacco products are sold; providing a defense for a person charged with selling
15 tobacco products to a person younger than 21 years of age; replacing the West Virginia
16 Alcohol Beverage Control Administration with the Bureau for Behavioral Health as an
17 agency with authority to conduct inspections; removing the requirement for the West
18 Virginia Alcohol Beverage Control Administration to submit a report and instead requiring
19 the Commissioner of the Bureau for Behavioral Health to submit the report; and amending
20 language regarding vending machines to conform to the increased age requirement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

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

1 *Intent.* - The Legislature hereby declares it to be the policy and intent of this state to
2 discourage and ban the use of tobacco products by minors. As basis for this policy, the Legislature
3 hereby finds and accepts the medical evidence that tobacco products may cause lung cancer,

4 lung or heart disease, emphysema, and other serious health problems while the use of smokeless
5 tobacco may cause gum disease and oral cancer. It is the further intent of the Legislature to
6 reduce tobacco use by keeping tobacco products out of the hands of youth and young adults by
7 banning the sale of tobacco products to persons younger than 21 years of age to ease the
8 personal tragedy and eradicate the severe economic loss associated with the use of tobacco and
9 to provide the state with a citizenry free from the use of tobacco.

§16-9A-2. Definitions.

1 For purposes of this article, the term:

2 "Electronic smoking device" means any device that can be used to deliver any heated,
3 aerosolized or vaporized substance to the person inhaling from the device, including, but not
4 limited to, any e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device
5 includes any component part, or accessory of the device, whether or not sold separately, and
6 includes any substance intended to be heated, aerosolized, or vaporized during the use of the
7 device, whether or not the substance contains nicotine. Electronic smoking device does not
8 include drugs, devices, or combination products approved by the United States Food, Drug, and
9 Cosmetic Act.

10 "Tobacco product" means any product containing, made, or derived from tobacco, or
11 nicotine, that is intended for human consumption, whether absorbed, inhaled or ingested by any
12 other means, including but not limited, to cigarettes, cigars, cigarillos, little cigars, pipe tobacco,
13 snuff, snus, chewing tobacco, or other common tobacco-containing products. A tobacco product
14 also includes electronic smoking devices and any accessory of a tobacco product or electronic
15 smoking device, whether or not any of these contain tobacco or nicotine, including but not limited
16 to, filters, rolling papers, blunt or hemp wraps, and pipes. Tobacco product does not include drugs,
17 devices, or combination products that are regulated by the United States Food and Drug
18 Administration under Chapter V of the Food, Drug and Cosmetic Act.

§16-9A-3. Sale or gift of tobacco products to persons younger than 21 years of age; penalties for first and subsequent offenses; provision of non-criminal, non-monetary penalties; consideration of prohibited act as grounds for dismissal.

1 (a) A person, firm, corporation, or business entity may not sell, give, or furnish, or cause
2 to be sold, given, or furnished, any tobacco product, in any form, to any person younger than 21
3 years of age, which shall be verified by a valid driver's license, state identification card, or any
4 valid and unexpired federally issued identification card such as a passport or military identification
5 card:

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

15 (c) Any person who violates subsection (a) of this section while acting as a non-
16 management agent or employee of a retail outlet where tobacco products are sold is subject to
17 non-criminal, non-monetary penalties, including, but not limited to, education classes, diversion
18 programs, and community service. The alcohol beverage control commissioner shall promulgate
19 rules for legislative approval pursuant to §29A-3-1 *et seq.* of this code, to establish standards for
20 education classes, diversion programs, and community service.

21 (d) Any employer who discovers that his or her employee has sold or furnished tobacco
22 products to any person younger than 21 years of age may dismiss the employee for cause, if the

23 employer has provided the employee with prior written notice in the workplace that such act or
24 acts may result in his or her termination from employment.

**§16-9A-4. Use of tobacco products, in certain areas of certain public schools prohibited;
penalty.**

1 Any person who uses any tobacco product in any building or part thereof used for
2 instructional purposes, in any public school of this state, as defined in this code, or on any lot or
3 grounds actually used for instructional purposes of any public school of this state while the public
4 school is used or occupied for school purposes, is guilty of a misdemeanor, and, upon conviction
5 thereof, shall be punished for each offense by a fine of not less than one nor more than \$5:
6 *Provided*, That this prohibition shall not be construed to prevent the use of any tobacco product,
7 in any faculty lounge, staff lounge, faculty office or other area of the public school not used for
8 instructional purposes: *Provided, however*, That students do not have access to the area:
9 *Provided further*, That nothing contained in this section shall be construed to prevent any county
10 board of education from promulgating rules and regulations that further restrict the use of tobacco
11 products, in any form, from any other part or section of any public school building under its
12 jurisdiction.

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

1 (a) The Bureau for Behavioral Health of the Department of Human Services, 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 are sold or distributed to ensure compliance with the
5 provisions of §16-9A-3 of this code and in such manner as to conform with applicable federal and
6 state laws, rules, and regulations. Persons younger than 21 years of age may be enlisted by the
7 commissioner, superintendent, sheriffs or chiefs of police or employees or agents thereof, to test

8 compliance with these sections: *Provided*, That a person younger than 18 years of age may be
9 used to test compliance only if the testing is conducted under the direct supervision of the
10 commissioner, superintendent, sheriffs, or chiefs of police or employees or agents thereof, and
11 written consent of his or her parent or guardian. It is unlawful for any person to use persons
12 younger than the age of 21 to test compliance in any manner not set forth in this subsection and
13 the person using a minor is guilty of a misdemeanor and, upon conviction thereof, shall be fined
14 the same amounts as set forth in §16-9A-3 of this code.

15 (b) A person charged with a violation of §16-9A-3 of this code, as the result of an inspection
16 under subsection (a) of this section has a complete defense if, at the time the tobacco product
17 was sold, delivered, bartered, furnished, or given, the person carefully checked a driver's license
18 or an identification card issued by this state or another state of the United States, a passport, or
19 a United States armed services identification card presented by the buyer or recipient and acted
20 in good faith and in reliance upon the representation and appearance of the buyer or recipient in
21 the belief that the buyer or recipient was 21 years of age or older.

22 (c) Any fine collected after a conviction of violating §16-9A-3 of this code, shall be paid to
23 the clerk of the court in which the conviction was obtained: *Provided*, That the clerk of the court,
24 upon receiving the fine, shall promptly notify the Commissioner of the West Virginia Alcohol
25 Beverage Control Administration of the conviction and the collection of the fine: *Provided*,
26 *however*, That any non-criminal, non-monetary penalty imposed on an employee of a retail outlet
27 where tobacco products are sold who violated §16-9A-3 of this code shall be recorded by the
28 clerk of the court in which the violation occurred: *Provided further*, That the clerk of the court, upon
29 being advised that non-criminal, non-monetary obligations have been fulfilled, shall promptly
30 notify the Commissioner of the West Virginia Alcohol Beverage Control Administration of the
31 violation and the satisfaction of imposed non-criminal, non-monetary penalty.

32 (d) The Commissioner of the Bureau for Behavioral Health or his or her designee shall
33 prepare and submit to the Governor on the last day of September of each year, a report of the

34 enforcement and compliance activities undertaken pursuant to this section and the results of the
35 activities. The report shall be in the form and substance that the Governor shall submit to the
36 applicable state and federal programs.

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

1 A person or business entity may not offer for sale any tobacco product in a vending
2 machine. Any person or business entity which violates the provisions of this section is guilty of a
3 misdemeanor and, upon conviction thereof, shall be fined \$250: *Provided*, That an establishment
4 is exempt from this prohibition if individuals younger than 21 years of age are not permitted to be
5 in the establishment or if the establishment is licensed by the alcohol beverage control
6 commissioner as a Class A licensee. The alcohol beverage control commissioner shall
7 promulgate rules for legislative approval 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 persons younger than 21 years of age.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2024.

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Governor