

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 717

By Senators Takubo, Woelfel, Woodrum, Deeds, and

Nelson

[Introduced February 8, 2024; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §16-9A-1, §16-9A-2, §16-9A-3, §16-9A-4, §16-9A-7, and §16-9A-8
 2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding
 3 thereto a new section, designated §16-9A-2a, all relating to tobacco products; amending
 4 purpose; defining terms; prohibiting sale or gift of tobacco to persons younger than 21
 5 years of age; setting forth fines and criminal penalties; permitting persons younger than 21
 6 years of age to be used in inspections of tobacco retailers; making technical changes
 7 consistent with newly defined terms; removing the West Virginia Alcohol Beverage Control
 8 Administration as an agency with authority to conduct inspections; designating the Bureau
 9 for Behavioral Health as one of the agencies to conduct inspections; removing the
 10 requirement for the West Virginia Alcohol Beverage Control Administration to submit a
 11 report; requiring the Commissioner of the Bureau for Behavioral Health to submit a report;
 12 and amending language regarding vending machines to conform to the increased age
 13 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 smoking tobacco or using tobacco or tobacco
 4 derived products may cause lung cancer, lung or heart disease, emphysema, and other serious
 5 health problems while the use of smokeless tobacco may cause gum disease and oral cancer. It is
 6 the further intent of the Legislature to reduce tobacco use by keeping tobacco products out of the
 7 hands of youth and young adults in banning ~~the use of tobacco products by minors~~ the sale of
 8 tobacco products to persons younger than 21 years of age to ease the personal tragedy and
 9 eradicate the severe economic loss associated with the use of tobacco and to provide the state
 10 with a citizenry free from the use of tobacco.

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

9 (4) "Tobacco product" and ~~"tobacco-derived product"~~ means any product, containing,
10 made or derived from tobacco, or ~~containing nicotine derived from tobacco~~, that is intended for
11 human consumption, ~~whether smoked, breathed, chewed, absorbed, dissolved, inhaled,~~
12 ~~vaporized, snorted, sniffed,~~ or ingested by any other means, including but not limited to cigarettes,
13 cigars, cigarillos, little cigars, pipe tobacco, snuff, snus, chewing tobacco or other common
14 tobacco-containing products. A ~~"tobacco-derived product"~~ also includes electronic cigarettes or
15 similar devices, alternative nicotine products and vapor products electronic smoking devices, any
16 substance that may be aerosolized or vaporized by such device, whether or not the substance
17 contains nicotine; or any component part, or accessory of a tobacco product or electronic smoking
18 device, whether or not any of these contain tobacco or nicotine, including but not limited to filters,
19 rolling papers, blunt or hemp wraps, and pipes. "Tobacco product" ~~or "tobacco-derived product"~~
20 does not include ~~any product~~ drugs, devices, or combination products that ~~is~~ are regulated by the
21 United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act.

22 ~~(2) "Alternative nicotine product" means any non-combustible product containing nicotine~~
23 ~~that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by~~
24 ~~any other means. "Alternative nicotine product" does not include any tobacco product, vapor~~
25 ~~product or product regulated as a drug or device by the United States Food and Drug~~
26 ~~Administration under Chapter V of the Food, Drug and Cosmetic Act.~~

27 ~~(3) "Vapor product" means any noncombustible product containing nicotine that employs a~~
28 ~~heating element, power source, electronic circuit or other electronic, chemical or mechanical~~
29 ~~means, regardless of shape and size, that can be used to produce vapor from nicotine in a solution~~
30 ~~or other form. "Vapor product" includes any electronic cigarette, electronic cigar, electronic~~
31 ~~cigarillo, electronic pipe or similar product or device, and any vapor cartridge or other container of~~
32 ~~nicotine in a solution or other form that is intended to be used with or in an electronic cigarette,~~
33 ~~electronic cigar, electronic cigarillo, electronic pipe or similar product or device. "Vapor product"~~
34 ~~does not include any product that is regulated by the United States Food and Drug Administration~~
35 ~~under Chapter V of the Food, Drug and Cosmetic Act.~~

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

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

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

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

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

48 it occurs within two years of the first conviction; and at least \$1,000 but not more than \$5,000 for
49 any subsequent offenses, if the subsequent offense occurs within five years of the first conviction.

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

56 (e) Any employer who discovers that his or her employee has sold or furnished tobacco
57 products or tobacco-derived products to minors may dismiss such employee for cause. Any such
58 discharge shall be considered as "gross misconduct" for the purposes of determining the
59 discharged employee's eligibility for unemployment benefits in accordance with the provisions of
60 §21A-6-3 of this code, if the employer has provided the employee with prior written notice in the
61 workplace that such act or acts may result in their termination from employment.

**§16-9A-2A. Sale or gift of tobacco products to persons younger than 21 years of age;
penalties for first and subsequent offense; consideration of prohibited act as
grounds for dismissal; impact on eligibility for unemployment benefits.**

1 (a) No person, firm, corporation, or business entity may sell, give, or furnish, or cause to be
2 sold, given, or furnished, to any person younger than 21 years of age:

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

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

6 (3) Any electronic smoking device.

7 (b) Any firm or corporation that violates any of the provisions of subsection (a) of this
8 section and any individual who violates any of the provisions of subsection (a) of this section is
9 guilty of a misdemeanor and, upon conviction thereof, shall be fined \$50 for the first offense. Upon

10 any subsequent violation at the same location or operating unit, the firm, corporation or individual
11 shall be fined as follows: At least \$250 but not more than \$500 for the second offense, if it occurs
12 within two years of the first conviction; at least \$500 but not more than \$750 for the third offense, if
13 it occurs within two years of the first conviction; and at least \$1,000 but not more than \$5,000 for
14 any subsequent offenses, if the subsequent offense occurs within five years of the first conviction.

15 (c) Any individual who knowingly and intentionally sells, gives or furnishes or causes to be
16 sold, given or furnished to any person younger than 21 years of age any cigar, cigarette, snuff,
17 chewing tobacco, tobacco product, in any form, is guilty of a misdemeanor and, upon conviction
18 thereof, for the first offense shall be fined not more than \$100; upon conviction thereof for a second
19 or subsequent offense, is guilty of a misdemeanor and shall be fined not less than \$100 nor more
20 than \$500.

21 (d) Any employer who discovers that his or her employee has sold or furnished tobacco
22 products to minors may dismiss such employee for cause. Any such discharge shall be considered
23 as "gross misconduct" for the purposes of determining the discharged employee's eligibility for
24 unemployment benefits in accordance with the provisions of §21A-6-3 of this code if the employer
25 has provided the employee with prior written notice in the workplace that such act or acts may
26 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. Use of Persons
younger than 21 for the inspection of tobacco retailers.

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 younger~~
5 ~~than the age of 21 may participate participating in the inspection of locations where tobacco~~
6 ~~products or tobacco-derived products are sold or distributed pursuant to §16-9A-7 of this code.~~

7 Participation in persons younger than 21 years of age is not considered to violate the provisions of
 8 this section. ~~Any person violating the provisions of this section shall for the first violation be fined~~
 9 ~~\$50 and be required to serve eight hours of community service; for a second violation, the person~~
 10 ~~shall be fined \$100 and be required to serve 16 hours of community service; and for a third and~~
 11 ~~each subsequent violation, the person shall be fined \$200 and be required to serve 24 hours of~~
 12 ~~community service. Notwithstanding the provisions of §49-4-701 of this code, the magistrate court~~
 13 ~~has _____ concurrent _____ jurisdiction~~

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

1 Every person who shall ~~smoke a cigarette or cigarettes, pipe, cigar or other implement, of~~
 2 ~~any type or nature, designed, used or employed for smoking any tobacco or tobacco product; or~~
 3 ~~who shall use~~ uses any tobacco product ~~or tobacco-derived product~~ in any building or part thereof
 4 used for instructional purposes, in any school of this state, as defined in ~~section one, article one,~~
 5 ~~chapter eighteen~~§ of this code, or on any lot or grounds actually used for instructional purposes of
 6 any such school of this state while such school is used or occupied for school purposes, shall be
 7 guilty of a misdemeanor, and, upon conviction thereof, shall be punished for each offense by a fine
 8 of not less than one nor more than five dollars: *Provided*, That this prohibition shall not be
 9 construed to prevent the use of any tobacco or tobacco product or tobacco-derived product, in any
 10 faculty lounge or staff lounge or faculty office or other area of said public school not used for
 11 instructional purposes: *Provided, however*, That students do not have access thereto: *Provided*
 12 *further*, That nothing herein contained shall be construed to prevent any county board of education
 13 from promulgating rules and regulations that further restrict the use of tobacco products or
 14 tobacco-derived products, in any form, from any other part or section of any public school building
 15 under its 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 Bureau for Behavioral Health of the Department of Human Services, the Superintendent of the
3 West Virginia State Police, the sheriffs of the counties of this state and the chiefs of police of
4 municipalities of this state, may periodically conduct unannounced inspections at locations where
5 tobacco products ~~or tobacco-derived products~~, are sold or distributed to ensure compliance with
6 the provisions of §16-9A-2 and §16-9A-3 of this code and in such manner as to conform with
7 applicable federal and state laws, rules and regulations. Persons ~~under the age of eighteen~~
8 younger than 21 years of age may be enlisted by such commissioner, superintendent, sheriffs or
9 chiefs of police or employees or agents thereof to test compliance with these sections: *Provided*,
10 That the ~~miners~~ persons younger than 21 years of age may be used to test compliance only if the
11 testing is conducted under the direct supervision of the commissioner, superintendent, sheriffs or
12 chiefs of police or employees or agents thereof and written consent of the parent or guardian of
13 ~~such that~~ person is first obtained and ~~such minors~~ those persons under the age of 21 ~~shall~~ are not
14 ~~be~~ in violation of §16-9A-3 of this code ~~article and chapter~~ when acting under the direct supervision
15 of the commissioner, superintendent, sheriffs or chiefs of police or employees or agents thereof
16 and with the written consent of the parent or guardian. It is unlawful for any person to use persons
17 ~~under the~~ younger than ~~age of eighteen~~ 21 years to test compliance in any manner not set forth
18 herein and the person so using a minor is guilty of a misdemeanor and, upon conviction thereof,
19 shall be fined the same amounts as set forth in §16-9A-2 of this code.

20 (b) A person charged with a violation of §16-9A-2 and §16-9A-3 of this code as the result of
21 an inspection under subsection (a) of this section has a complete defense if, at the time the
22 cigarette, other tobacco product ~~or tobacco-derived product~~, or cigarette wrapper, was sold,
23 delivered, bartered, furnished, or given:

24 (1) The buyer or recipient falsely evidenced that he or she was ~~eighteen~~ 21 years of age or

25 older;

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

28 (3) ~~Such~~ The person carefully checked a driver's license or an identification card issued by
29 this state or another state of the United States, a passport or a United States armed services
30 identification card presented by the buyer or recipient and acted in good faith and in reliance upon
31 the representation and appearance of the buyer or recipient in the belief that the buyer or recipient
32 was ~~eighteen~~ 21 years of age or older.

33 (c) Any fine collected after a conviction of violating section two of this article shall be paid to
34 the clerk of the court in which the conviction was obtained: *Provided*, That the clerk of the court
35 upon receiving the fine shall promptly notify the Commissioner of the West Virginia Alcohol
36 Beverage Control Administration of the conviction and the collection of the fine: *Provided*,
37 *however*, That any community service penalty imposed after a conviction of violating §16-9A-3 of
38 this code shall be recorded by the clerk of the court in which the conviction was obtained: *Provided*
39 *further*, That the clerk of the court upon being advised that community service obligations have
40 been fulfilled shall promptly notify the Commissioner of the West Virginia Alcohol Beverage
41 Control Administration of the conviction and the satisfaction of imposed community service
42 penalty.

43 (d) ~~The Commissioner of the West Virginia Alcohol Beverage Control Administration~~
44 Commissioner of the Bureau for Behavioral Health or his or her designee shall prepare and submit
45 to the Governor on the last day of September of each year a report of the enforcement and
46 compliance activities undertaken pursuant to this section and the results of the same. ~~with a copy~~
47 ~~to the Secretary of the West Virginia Department of Health and Human Resources.~~ The report
48 shall be in the form and substance that the Governor shall submit to the applicable state and
49 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 or tobacco product ~~or~~
2 ~~tobacco-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~~ younger than 21 years of age 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.* 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 younger than 21
10 years of age.

NOTE: The purpose of this bill is to prohibit the sale of tobacco product to individuals younger than 21 years of age. The bill contains penalties.

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