

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2746

By Delegates Hornby, Chiarelli, and Ellington

[Introduced February 21, 2025; referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new section,
2 designated §16-9A-12, relating to certain acts of retail licensees for electronic smoking
3 devices prohibited; providing for criminal penalties; and providing for regulation of
4 electronic smoking devices to be sold.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-12. Certain acts of retail licensees prohibited; criminal penalties; regulation of electronic smoking devices to be sold.

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

9 (b) Enactment. – It is unlawful for any retail licensee, or agent or employee thereof, on the
10 retail licensee's premises to:

11 (1) Sell or offer for sale any electronic smoking device other than from the original package
12 or container;

13 (2) Sell, give away, or permit the sale of, gift of, or the procurement of, any electronic
14 smoking device, for or to any person under 21 years of age;

15 (3) Sell, give away, or permit the sale of, gift of, or the procurement of, any electronic
16 smoking device, for or to any person visibly impaired or intoxicated;

17 (4) Sell or offer for sale any electronic smoking device other than during the hours
18 permitted for the sale of electronic smoking devices by retail licensees as provided under this

19 article;

20 (5) Permit the ingestion or consumption by any person of any electronic smoking device;

21 (6) With the intent to defraud, alter, change, or misrepresent the quality, quantity, or brand
22 name of any electronic smoking device;

23 (7) Permit any person under 18 years of age to sell, furnish, or give electronic smoking
24 devices to any other person, except as provided in subsection (c) of this section;

25 (8) Purchase or otherwise obtain electronic smoking devices in any manner or from any
26 source other than that specifically authorized in this article; or

27 (9) Permit any person to break the seal on any package or cartridge of electronic smoking
28 devices.

29 (c) *Penalties.* – Any person who violates any provision of this article or section, or any rule
30 promulgated by the board or the commissioner, or who makes any false statement concerning any
31 material fact, or who omits any material fact with intent to deceive, in submitting an application for
32 a retail license or for a renewal of a retail license or in any hearing concerning the suspension or
33 revocation thereof, or who commits any of the acts declared in this article to be unlawful, is guilty of
34 a misdemeanor and, shall, upon conviction thereof, for each offense be fined not less than \$100 or
35 more than \$5,000, or imprisoned in the county jail for not less than 30 days nor more than one
36 year, or both fined and imprisoned. Magistrates have concurrent jurisdiction with the circuit courts
37 for offenses under this article.

38 (d) *Employment.* – Nothing in this article, or any rule of the board or commissioner,
39 prevents or prohibits any retail licensee from employing any person who is at least 18 years of age
40 to serve in any retail licensee's lawful employment at any retail outlet operated by the retail
41 licensee, or from having the person sell electronic smoking devices or transport electronic
42 smoking devices on behalf of a manufacturer under the provisions of this article. With the prior
43 approval of the commissioner, a retail licensee may employ persons at any retail outlet operated
44 by a retail licensee who are less than 18 years of age but at least 16 years of age, the persons'

duties may include the sale of electronic smoking devices only when directly supervised by a person 21 years of age or older: *Provided*, That the authorization to employ the persons under the age of 18 years shall be clearly indicated on the retail licensee's license: *Provided, however*, That nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least 21 years of age for the ordering and delivery of electronic smoking devices when licensed for electronic smoking device ordering and delivery under the provisions of this chapter.

(e) Guidelines and regulations. – Electronic smoking device shops shall be subject to the appropriate state agency guidelines to ensure that only regulated, tested, and approved electronic smoking device are sold within the confines of their business. The Department of Health and the Department of Agriculture are empowered to establish standards for the safe sale of electronic smoking device. All vape shops and electronic smoking shops in this state shall coordinate with the Department of Health and the Department of Agriculture to ensure appropriate standards are created for vape and electronic smoking shops.

NOTE: The purpose of this bill relates to certain acts of retail licensees for electronic smoking devices prohibited. The bill provides for criminal penalties. Finally, the bill provides for regulation of electronic smoking devices to be sold.

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