

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 3199

By Delegates Hornby and Chiarelli

[Introduced March 06, 2025; referred to the
Committee on Health and Human Resources]

1 A BILL to amend and reenact §16-9A-2 the Code of West Virginia, 1931, as amended, and to
2 amend said code by adding thereto a new section, designated §16-9A-12, relating to
3 restrictions on tobacco usage; defining terms; and clarifying legislative intent of the
4 Legislature with respect to preempting the field of legislation concerning the regulation of
5 certain tobacco products and devices.

Be it enacted by the Legislature of West Virginia:

ARTICLE	9A.	TOBACCO	USAGE	RESTRICTIONS.
§16-9A-2.				Definitions.

1 For purposes of this article, the term:

2 "Alternative nicotine product" means a noncombustible tobacco product containing natural
3 or synthetic nicotine that is intended for human consumption, whether chewed, absorbed,
4 dissolved, or ingested by any other means: *Provided*, That "alternative nicotine product" does not
5 include any electronic smoking device, tobacco product containing tobacco leaf, or any product
6 regulated as a drug or device by the United States food and drug administration under subchapter
7 V of the Food, Drug and Cosmetic Act.

8 "Characterizing flavor" means the taste or smell of fruit, chocolate, cocoa, vanilla, honey,
9 candy, dessert, any alcoholic beverage, herb, spice, or any other taste or smell: *Provided*, That
10 "characterizing flavor" does not include the taste or smell of tobacco, menthol, mint, or
11 wintergreen.

12 "Electronic smoking device" means any device that can be used to deliver any heated,
13 aerosolized or vaporized substance to the person inhaling from the device, including, but not
14 limited to, any e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device
15 includes any component part, or accessory of the device, whether or not sold separately, and
16 includes any substance intended to be heated, aerosolized, or vaporized during the use of the
17 device, whether or not the substance contains nicotine. Electronic smoking device does not
18 include drugs, devices, or combination products approved by the United States Food, Drug, and

19 Cosmetic Act.

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

29 **§16-9A-12.** **Preemption.**

1 (a) It is the intent of the Legislature by this section and other provisions of this code to
2 occupy and preempt the entire field of legislation concerning the regulation of tobacco products
3 and electronic smoking devices, but only to the extent those products do not have a characterizing
4 flavor as defined by §16-9A-2(b) of this code. The foregoing sentence shall apply to electronic
5 smoking devices and alternative nicotine products only to the extent that they have received a
6 marketing granted order from the U.S. Food and Drug Administration pursuant to 21. U.S.C. 387j.

7 (b) Any local law, rule or other regulation of tobacco products or electronic smoking devices
8 as described in subsection (a) of this section enacted prior to or after the effective date of this
9 section by any political subdivision of the state is void and unenforceable.

NOTE: The purpose of this bill is to clarify the intent of the Legislature in preempting all local laws and rules enacted by a political subdivision in the state with respect to certain tobacco products and devices.

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