

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 859

**FISCAL
NOTE**

By Senator Takubo

[Introduced March 21, 2025; referred
to the Committee on Health and Human Resources;
and then to the Committee on Finance]

1 A BILL to amend and reenact §11-17-2 of the Code of West Virginia, 1931, as amended; and to
2 amend the code by adding two new sections, designated §16-4C-27 and §16-4C-28,
3 relating to tobacco products; defining terms; levying a user fee on cigarettes; providing the
4 user fee be directed to support emergency medical services; and creating a special
5 revenue fund to receive funds from the created user fee.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.

§11-17-2. Definitions.

1 (a) When used in this article, words, terms and phrases defined in subsection (b) of this
2 section, and any variations thereof required by the context, have the meaning ascribed to them in
3 this section, except where the context indicates a different meaning is intended.

4 (b) *Definitions.* --

5 (1) "Cigarette" means:

6 (A)(1) Any roll for smoking made, wholly or in part, of tobacco, irrespective of size or shape
7 and whether or not the tobacco is flavored, adulterated or mixed with any ingredient, the wrapping
8 or cover of which is made of paper or any substance or material, except tobacco.

9 (B)(2) Any roll of tobacco wrapped in any substance containing tobacco which, because of
10 its appearance, the type of tobacco used in the filler, or its packing and labeling, is likely to be
11 offered to, or purchased by, consumers as a cigarette described in paragraph (A) of this
12 subdivision.

13 (2) "Commissioner" means the State Tax Commissioner and, where the meaning of the
14 context requires, all deputies or agents and employees duly authorized by him or her.

15 (3) "Consumer" means a person who receives or in any way comes into possession of
16 tobacco products for the purpose of consuming or giving them away or disposing of them in any

way other than by sale, barter or exchange.

(4) "Counterfeit stamp" means any stamp, label or print, indicium or character, that evidences, or purports to evidence, the payment of any tax levied under this article and that has not been printed, manufactured or made by authority of the commissioner, as provided in this article, and has not been issued, sold or circulated by the commissioner.

"Electronic smoking device" means any device that can be used to deliver aerosolized or vaporized nicotine, whether natural or synthetic, to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. Electronic smoking device does not include any battery or battery charger when sold separately. In addition, electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(5) "Manufacturer" means a person who manufactures or produces a tobacco product.

~~(6) "Other tobacco product" or "tobacco products other than cigarettes" means snuff and chewing tobacco and any other tobacco product that is intended by the seller to be consumed by means other than smoking and any cigar, pipe tobacco or other tobacco product other than cigarettes~~ any product other than cigarettes, that is made from or derived from tobacco or that contains nicotine whether natural or synthetic, that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. "Other tobacco product" or "tobacco products other than cigarettes" also means electronic smoking devices and any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, and substances used in electronic smoking devices, whether or not they contain nicotine. "Other tobacco product" or "tobacco products other than cigarettes"

43 does not include drugs, devices, or combination products authorized for sale by the U.S. Food and
44 Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

45 (7) "Package" means the individual package, box or other container in or from which retail
46 sales of tobacco products are normally made or intended to be made.

47 (8) "Person" means and includes any individual, firm, association, company, partnership,
48 corporation, joint-stock company, club, agency, syndicate, limited liability company, other legal
49 entity, municipal corporation or other political subdivision of this state, trust, receiver, trustee,
50 fiduciary or conservator, and when used in connection with any penalties imposed by this article,
51 means and includes officers, directors, trustees or members of any firm, copartnership,
52 association, corporation, trust or any other unit acting as a group.

53 (9) "Place of business" means a place where a tobacco product is sold or where a tobacco
54 product is brought or kept for the purpose of sale or consumption, including a vessel, airplane,
55 train or vending machine.

56 (10) "Retail dealer" includes every person in this state, other than a wholesaler or
57 subjobber, engaged in the selling of tobacco products at retail to a consumer or to any person for
58 any purpose other than resale.

59 (11) "Sale" means selling, exchange, transfer of title, barter, gift, offer for sale or distribution
60 or disposition of cigarettes or other tobacco products.

61 (12) "Sale at retail" or "retail sale" means a sale to a consumer or to any person for any
62 purpose other than resale.

63 (13) "Sale by wholesaler" means and includes any bona fide transfer of title to tobacco
64 products by a wholesaler for a valuable consideration, made in the ordinary course of trade or in
65 the usual conduct of the wholesaler's business.

66 (14) "Stamp" or "meter impression" means any cigarette stamp or any meter or ink
67 impression or other indicia authorized by the Tax Commissioner to serve as a stamp and shall be
68 of the design and color as prescribed by the Tax Commissioner.

~~(15)~~ "Stamped cigarettes" means that the stamp or meter impression, as required by this article, has been affixed to the bottom of the package of cigarettes.

~~(16)~~ "Subjobber" or "subjobber dealer" includes any person who purchases stamped cigarettes or tax-paid tobacco products from a wholesaler or from any other person who purchases from the manufacturer or importer and who purchases the tax-paid tobacco products solely for the purpose of bona fide resale to retail dealers.

~~(17)~~ "Tax-not-paid tobacco product" means a tobacco product upon which the tax imposed by this article has not been paid.

~~(18)~~ "Tax-paid tobacco products" means a tobacco product upon which the tax imposed by this article has been paid.

~~(19)~~ "Tobacco product" includes cigarettes and any other tobacco product.

~~(20)~~ "Transportation company" means a person operating or supplying to common carriers, cars, boats or other vehicles for the transportation or accommodation of passengers and engaged in the sale of a tobacco product at retail.

~~(21)~~ "Transporter" means a person importing or transporting into this state a tobacco product obtained from a source located outside this state or transporting within this state tobacco products belonging to another person.

~~(22)~~ "Unstamped cigarettes" means that the stamp or impression as required by this article has not been affixed to the bottom of the package of cigarettes.

~~(23)~~ "Vending machine operator" means any person operating one or more vending machines for the sale of tobacco products. The sale of tobacco products through a vending machine will be construed as sales at retail and subjects the vending machine operator to this article and rules pertaining to retail dealers.

Whenever any tobacco products vending machine operator purchases tax-not-paid tobacco products directly from the manufacturer or any other person, the vending machine operator shall be considered to be a wholesaler and is liable for payment of the excise tax imposed

by this article and the affixing of the required stamps.

(24) "Wholesale price" means the gross invoice price, including all federal excise taxes, at which the manufacturer of the tobacco product sells the tobacco product to unaffiliated distributors, excluding all trade discounts and other reductions in the manufacturer's price. If the taxpayer buys from other than a manufacturer, "wholesale price" means the gross invoice price, including all federal excise taxes and excluding all trade discounts and other similar reductions in price.

(25) "Wholesaler" or "wholesale dealer" includes any person in this state who purchases tax-not-paid tobacco products directly from the manufacturer, or such other seller as may be approved by the Tax Commissioner. Any distributor, dealer, subjobber, subjobber dealer, retailer or any other person that imports or transports tax-not-paid tobacco products into this state, or that causes tax-not-paid tobacco products to be imported or transported into this state is a wholesaler liable for the tax imposed under this article and, in the case of cigarettes purchased, is liable for affixing tax indicia in accordance with the requirements of this article. No wholesaler or other person may purchase tax-not-paid tobacco products from any seller not approved by the Tax Commissioner.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-27. Levy of user fee; ratio; dedication of proceeds.

(a) User fee on cigarettes. — For the purpose of providing revenue for emergency medical service agencies, a user fee is levied and imposed on sales of cigarettes: *Provided*, That the county seeking to impose the user fee currently has provided emergency medical services as defined in §16-4C-3(f) of this code continuously, in the past 12 months, on a county-wide basis and has an operational emergency medical services levy: *Provided, however*, That funds collected pursuant to this article shall only be used to fund emergency medical services in the county.

7 (b) User fee on rate on cigarettes. —On and after July 1, 2025, the user fee levied and
8 imposed on the sale of cigarettes is \$1.00 on each 20 cigarettes or in like ratio on any part thereof:
9 Provided, That the conditions in subsection (a) are met. Only one sale of the same article shall be
10 used in computing the amount of user fee due under this subsection.

§16-4C-28. Creation of fund emergency medical fund.

1 There is hereby created in the State Treasury a special revenue fund designated and
2 known as the Emergency Medical Service Agency Fund. The fund is established to support the
3 provision of emergency medical services in the state. The funds in the account consist of moneys
4 appropriated by the legislature pursuant to a user fee created pursuant to §16-4C-27 of this code
5 and shall only be expended for the purposes set forth in §16-4C-27 of this code. Any balance,
6 including accrued interest in the emergency medical service agency fund shall remain in the fund
7 and be expended as provided in this section.

NOTE: The purpose of this bill is to levy a \$1 user fee on cigarettes; provide the user fee be directed to support Emergency Medical Services; and create a special revenue fund to receive funds from the created user fee.

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