

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 900

By Senator Stuart

[Introduced March 24, 2025; referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

A BILL to amend and reenact §16-9A-2, §16-9A-3, and §16-9A-7 of the Code of West Virginia, 1931, as amended; and to amend the code by adding five new sections, designated §16-9A-12, §16-9A-13, §16-9A-14, §16-9A-15, and §16-9A-16, relating to prohibiting sales of unauthorized electronic smoking devices and any other products intended for inhaling or ingesting; setting penalties for the sale of unauthorized electronic smoking devices; setting penalties for the sale of authorized electronic smoking devices to individuals under 21 years of age; setting definitions; requiring reporting of citations to the Alcohol Beverage Control Commission; requiring the Secretary of State to develop a list of retailers that sell electronic smoking devices and provide the list to the Alcohol Beverage Control Commission; requiring the Alcohol Beverage Control Commission to develop and maintain a list of retailers of authorized electronic smoking devices and a tobacco noncompliance database and reporting system; permitting existing enforcement entities to enforce new provisions; requiring manufacturers of electronic smoking devices to provide authorizing documentation to wholesalers and retailers; setting forth fines and penalties for a manufacturer's provision of false or misleading information; requiring wholesalers of electronic smoking devices to sell only authorized devices; requiring wholesalers to verify that retailers are not in the tobacco noncompliance database before selling them electronic smoking devices; setting forth fines and penalties for a wholesaler of electronic smoking devices to an unauthorized retailer; and requiring the Commissioner of the Alcohol Beverage Control Commission to promulgate rules.

Be it enacted by the Legislature of West Virginia:

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

For purposes of this article, the term:

"Authorized electronic smoking device" means an electronic smoking device:

(a) That is not illegal or otherwise banned in the county of origin; and

4 (b)(1) For which the manufacturer has obtained a marketing authorization or similar order
5 for the electronic smoking device from the United States Food and Drug Administration pursuant
6 to 21 U.S.C. § 387j; or

7 (2) That was marketed in the United States as of August 8, 2016, and for which the
8 manufacturer submitted a premarket tobacco product application to the United States Food and
9 Drug Administration pursuant to 21 U.S.C. § 3877 on or before September 9, 2020, and

10 (A) The application remains under review by the United States Food and Drug
11 Administration;

12 (B) A final decision on the application has not taken effect;

13 (C) The manufacturer has received a marketing denial order from the United States Food
14 and Drug Administration that remains under a stay or continues to be subject to an appeal to or
15 review by a court of competent jurisdiction; or

16 (D) The manufacturer has received a marketing denial order that has been rescinded by
17 the United States Food and Drug Administration or vacated by a court of competent jurisdiction.

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

26 "Retailer" means any person, firm, corporation, or business entity, online or in person, that
27 sells tobacco or other products intended for ingestion or inhalation to a consumer for any purpose
28 other than resale.

29 "Tobacco noncompliance database and reporting system" means the database of retailers

created by §16-9A-13(b) of this code.

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

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

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

subsequent offense occurs within five years of the first conviction.

(c) Any person who violates subsection (a) of this section while acting as a non-management agent or employee of a retail outlet where tobacco products are sold is subject to non-criminal, non-monetary penalties, including, but not limited to, education classes, diversion programs, and community service. The alcohol beverage control commissioner shall promulgate rules for legislative approval pursuant to §29A-3-1 *et seq.* of this code, to establish standards for education classes, diversion programs, and community service. Provided, That this subsection does not apply to any person or retailer that violates subsection (a) of this section more than once within a two-year period, in which case the provisions of subsection (b) of this section shall apply to the second and any subsequent offenses.

(d) Any retailer with unpaid fines under this section that are more than 60 days overdue shall lose the ability to lawfully sell tobacco products until the fines are paid.

~~(d)~~ (e) Any employer who discovers that his or her employee has sold or furnished tobacco products to any person younger than 21 years of age may dismiss the employee for cause, if the employer has provided the employee with prior written notice in the workplace that such act or acts may result in his or her termination from employment.

(f) All fees and penalties collected pursuant to this section shall be used for administration and enforcement of this section.

§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.

(a) ~~The Bureau for Behavioral Health of the Department of Human Services~~ Alcohol Beverage Control Administration, the Superintendent of the West Virginia State Police, the sheriffs of the counties of this state, and the chiefs of police of municipalities of this state, may periodically conduct unannounced inspections at locations where tobacco products are sold or distributed to ensure compliance with the provisions of §16-9A-3, §16-9A-14, §16-9A-15, and §16-9A-16 of this

code and in such manner as to conform with applicable federal and state laws, rules, and regulations. Provided, That the enforcement entities and persons set forth in this subsection may not enforce §16-9A-14 and §16-9A-15 of this code against manufacturers or wholesalers of electronic smoking devices that are not intended for resale in this state.

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

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

(e) (d) Any fine collected after a conviction of violating §16-9A-3, §16-9A-13, §16-9A-14, §16-9A-15, or §16-9A-16 of this code, shall be paid to the clerk of the court in which the conviction was obtained: *Provided, That the clerk of the court, upon receiving the fine, shall promptly notify the Commissioner of the West Virginia Alcohol Beverage Control Administration of the conviction and the collection of the fine: Provided, however, That any non-criminal, non-monetary penalty imposed on an employee of a retail outlet where tobacco products are sold who violated §16-9A-3*

or §16-9A-16 of this code shall be recorded by the clerk of the court in which the violation occurred:
Provided further, That the clerk of the court, upon being advised that non-criminal, non-monetary obligations have been fulfilled, shall promptly notify the Commissioner of the West Virginia Alcohol Beverage Control Administration of the violation and the satisfaction of imposed non-criminal, non-monetary penalty.

(e)(1) All citations issued pursuant to §16-9A-3, §16-9A-14, §16-9A-15, and §16-9A-16 of this code shall be reported to the Alcohol Beverage Control Administration.

(2) Multiple violations found during one visit shall be reported on a single citation and shall be considered to be one violation for purposes of the penalties set forth in §16-9A-3, §16-9A-14, §16-9A-15, and §16-9A-16 of this code.

(3) Each violation of §16-9A-3, §16-9A-14, §16-9A-15, and §16-9A-16 of this code shall be specific to the physical location in which the violation occurred.

(d)(f) The Commissioner of the Bureau for Behavioral Health West Virginia Alcohol Beverage Control Administration or his or her designee shall prepare and submit to the Governor on the last day of September of each year, a report of the enforcement and compliance activities undertaken pursuant to this section and the results of the activities. The report shall be in the form and substance that the Governor shall submit to the applicable state and federal programs.

(g) Beginning September 1, 2025, the Alcohol Beverage Control Commissioner shall maintain and make publicly available on the Alcohol Beverage Control Administration's website a directory that lists all electronic smoking device manufacturers and electronic smoking devices for which certification forms have been submitted.

(h) The Alcohol Beverage Control Commissioner shall provide manufacturers notice and an opportunity to cure deficiencies before removing manufacturers or electronic smoking devices from the directory as follows:

(1) The Alcohol Beverage Control Commissioner may not remove the manufacturer or its products from the directory until at least 15 days after the manufacturer has been given notice of

an intended action. Notice shall be sufficient and be considered immediately received by a manufacturer if the notice is sent either electronically or by facsimile to an electronic mail address or facsimile number, as the case may be, provided by the manufacturer in its most recent certification filed under §16-9A-14 of this code.

(2) The electronic smoking device manufacturer shall have 15 business days from the date of service of the notice of the commissioners' intended action to establish that the electronic smoking device manufacturer or its products should be included in the directory.

(i) If a product is removed from the directory, each retailer, distributor, and wholesaler shall have 21 days from the day such product is removed from the directory to remove the product from its inventory and return the product to the manufacturer for disposal. After 21 days following removal from the directory, the electronic smoking devices of a manufacturer identified in the notice of removal are contraband and are subject to seizure, forfeiture, and destruction, and may not be purchased or sold in the state. The cost of such seizure, forfeiture, and destruction shall be borne by the person from whom the products are confiscated.

§16-9A-12. Secretary of State to develop list of retailers that sell electronic smoking devices; report to the Commissioner of Alcohol Beverage Control Commission.

(a) Each retailer shall, upon organizational filing or application for certificate of authority to the Secretary of State and upon its annual report, state whether it is involved in the retail sale of electronic smoking devices.

(b) The Secretary of State shall:

(1) Create a list of retailers that sell electronic smoking devices; and

(2) Provide the list of retailers created under subdivision (1) of this section to the Alcohol Beverage Control Commissioner.

§16-9A-13. Alcohol Beverage Control Commissioner to develop and maintain list of authorized electronic smoking devices, retailers of authorized electronic smoking devices, and coordinated tobacco noncompliance database.

1
1 (a) Beginning September 1, 2025, the Alcohol Beverage Control Commissioner shall:

2 (1) On the first day of each month, update and publish online:

3 (A) The list of retailers of authorized electronic smoking devices provided by the Secretary
4 of State under §16-9A-12 of this code;

5 (B) The list of all authorized electronic smoking devices required by §16-9A-7(g) of this
6 code; and

7 (C) The list of all electronic smoking device manufacturers required by §16-9A-7(g) of this
8 code;

9 (b) Develop, maintain, and utilize a coordinated tobacco noncompliance database and
10 reporting system to:

11 (1) Identify the manufacturers that have violated §16-9A-14 of this code;

12 (2) Identify the wholesalers that have violated §16-9A-15 of this code;

13 (3) Identify the retailers that have violated §16-9A-3 or §16-9A-16 of this code; and

14 (4) Publish that information online on the first day of each month.

§16-9A-14. Restriction on manufacturer sales of electronic smoking devices.

1 (a) Beginning September 1, 2025, a manufacturer of electronic smoking devices shall:

2 (1) Sell only authorized electronic smoking devices;

3 (2) Annually submit a certification to the Alcohol Beverage Control Commissioner that
4 separately lists each electronic smoking device that is sold in this state; and

5 (3) Annually certify, under penalty of perjury on a form and in the manner prescribed by the
6 Alcohol Beverage Control Commissioner that the manufacturer agrees to comply with this article
7 and that:

8 (A) The manufacturer has received a marketing authorization or similar order for each
9 electronic smoking device that it manufactures from the United States Food and Drug
10 Administration pursuant to 21 U.S.C. § 387j; or

11 (B) An electronic smoking device it manufactures was:

12 (i) Marketed in the United States as of August 8, 2016;

13 (ii) The manufacturer submitted a premarket tobacco product application for the electronic
14 smoking device to the United States Food and Drug Administration pursuant to 21 U.S.C. § 387j
15 on or before September 9, 2020; and

16 (iii) The application remains under review by the United States Food and Drug
17 Administration, a final decision on the application has not otherwise taken effect, or a final decision
18 denying marketing status has been stayed, reversed, or rescinded by the United States Food and
19 Drug Administration or a court of competent jurisdiction.

20 (b) Each annual certification form required by subsection (a) of this section shall be
21 accompanied by:

22 (1) A copy of the marketing authorization or other order for the electronic smoking device
23 issued by the United States Food and Drug Administration pursuant to 21 U.S.C. § 387j, or
24 evidence that the premarket tobacco product application for the electronic smoking device was
25 submitted to the United States Food and Drug Administration and a final authorization or order has
26 not yet taken effect; and

27 (2) A payment of \$500 for each electronic smoking device the first time a manufacturer
28 submits a certification form for that electronic smoking device and a payment of \$500 annually
29 thereafter for each electronic smoking device.

30 (c) If the United States Food and Drug Administration or a court of competent jurisdiction
31 takes final action that removes an electronic smoking device from authorized to market status, the
32 manufacturer shall provide notice of the final action to the Alcohol Beverage Control
33 Commissioner and any wholesaler or retailer that has purchased the electronic smoking device
34 from the manufacturer within 30 days of the final action being taken.

35 (d) A manufacturer of electronic smoking devices that provides false or misleading
36 information in a notice to retailers or wholesalers violates this section shall be subject to a fine of:

(1) \$25,000 for a first citation issued for a violation of this section;

(2) \$50,000 for a second citation issued for a violation of this section; and

(3) \$75,000 for a third citation issued for a violation of this section.

(e) All fees and penalties collected pursuant to this section shall be used for administration and enforcement of this section.

(f) This section does not apply to manufacturers of electronic smoking devices that are not intended for resale in this state.

§16-9A-15. Restriction on wholesaler sales of electronic smoking devices.

(a) Beginning September 1, 2025, a wholesaler may not sell:

(1) Unauthorized electronic smoking devices; or

(2) Authorized electronic smoking devices to a retailer until the wholesaler verifies that the retailer is not in the tobacco noncompliance database and reporting system.

(b) Any wholesaler that violates this section shall be subject to a fine of:

(1) \$5,000 for a first citation issued for a violation of this section; and

(2) \$15,000 for a second or subsequent citation issued for a violation of this section.

(c) All fees and penalties collected pursuant to this section shall be used for administration and enforcement of this section.

(d) This section does not apply to wholesalers of electronic smoking devices that are not intended for resale in this state.

§16-9A-16. Restriction on retailer sales and distribution of electronic smoking devices.

(a) A retailer may not sell an unauthorized electronic smoking device to any person.

(b) Any retailer selling electronic smoking devices shall obtain from the manufacturer or wholesaler an applicable marketing authorization or similar order from the United States Food and Drug Administration and shall maintain a copy of the certification at the physical location where the electronic smoking device is being sold.

(c) In addition to the fines and penalties set forth in §16-9A-3(b) of this code, any retailer

7 that violates this section shall be subject to a fine of;

8 (A) \$1,000 for the first citation issued in violation of this section;

9 (B) \$5,000 for the second or subsequent citation issued in violation of this section; and

10 (C) For any third or subsequent citation issued in violation of this section within a two-year
11 period, placed in the tobacco noncompliance database and reporting system and lose the ability to
12 lawfully sell electronic smoking devices for one year.

13 (d) A retailer in the tobacco noncompliance database and reporting system that sells
14 electronic smoking devices shall be subject to a fine of \$10,000 per transaction.

15 (e) A retailer with unpaid fines under this section that are more than 60 days overdue shall
16 lose the ability to lawfully sell electronic smoking devices until the fines are paid.

17 (f) It shall be an affirmative defense to this subsection if the retailer can establish:

18 (1) The sale was induced by the use of false, fraudulent, or altered identification paper or
19 other documents; or

20 (2) Proof of an official material change in the status of an electronic smoking device under
21 review by the United States Food and Drug Administration within 45 days of the issuance of the
22 citation.

23 (g) Evidence to support an affirmative defense under this section may be introduced either
24 in mitigation of the violation or as a defense to the violation itself.

25 (h) Any person who violates subsection (a) of this section while acting as a non-
26 management agent or employee of a retail outlet where tobacco products are sold is subject to
27 non-criminal, non-monetary penalties, including, but not limited to, education classes, diversion
28 programs, and community service. The alcohol beverage commissioner shall promulgate rules for
29 legislative approval pursuant to §29A-3-1 et seq. of this code, to establish standards for education
30 classes, diversion programs, and community service: *Provided*, That this subsection does not
31 apply to any retailer that violated subsection (a) of this section more than once within a two-year
32 period, in which case the provisions of subsection (c) of this section shall apply to the second and

33 any subsequent offenses.

34 (i) There is a cause of action under this section against a retailer who is a manager or
35 owner and who knowingly or negligently permits the retailer's employees to violate this section.

36 (j) All fees and penalties collected by the Alcohol Beverage Control Commissioner
37 pursuant to this section shall be used for administration and enforcement of this section.

38 (k) Notwithstanding any provision of this code to the contrary, a retailer may not sell any
39 product that is intended for inhalation, ingestion, or consumption of any kind, other than an
40 Authorized Electronic Smoking Device as defined in §16-9A-2 of this code, if:

41 (1) The product is illegal for use or distribution in the country of origin; or

42 (2)(A) For which the manufacturer has not obtained a marketing authorization or similar
43 order for the electronic smoking device from the United States Food and Drug Administration
44 pursuant to 21 U.S.C. § 387j.

NOTE: The purpose of this bill is to prohibit sales of electronic smoking devices that have not been approved by the United States Food and Drug Administration.

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