

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 4567

**FISCAL
NOTE**

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Dittman, Kyle, Leavitt, Browning, Burkhammer,
Stephens, and Foggin

[Introduced January 20, 2026; referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,
 2 designated §16-9AA-1, §16-9AA-2, §16-9AA-3, and §16-9AA-4, relating to vape and vape
 3 products; providing legislative findings and intent; providing definitions; creating criminal
 4 and non-monetary penalties; and clarifying age verification requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9AA. VAPE AND VAPE PRODUCT USAGE RESTRICTIONS.

§16-9AA-1. Legislative findings and intent.

1 The Legislature hereby declares it to be the policy and intent of this state to discourage and
 2 ban the use of vape and vape products by minors. As basis for this policy, the Legislature hereby
 3 finds and accepts the medical evidence that vapes expose users to addictive nicotine, cancer-
 4 causing chemicals, and ultrafine particles that damage the lungs, heart, and developing brains,
 5 leading to addiction, lung diseases like COPD, heart issues, and potential brain harm, especially
 6 for youth, with risks including severe lung injuries (EVALI - E-cigarette or Vaping Product Use-
 7 Associated Lung Injury) linked to additives like Vitamin E acetate in illicit THC vapes. It is the
 8 further intent of the Legislature to reduce vape use by keeping vape products out of the hands of
 9 youth and young adults by banning the sale of vape products to persons younger than 21 years of
 10 age to ease the health and economic loss associated with the use of vapes and to provide the
 11 state with a citizenry free from the use of vapes.

§16-9AA-2. Definitions.

1 For purposes of this article, the term:
 2 "Alternative nicotine product" means a product or device not consisting of or containing
 3 tobacco that provides for the ingestion into the body of nicotine, whether by chewing, smoking,
 4 absorbing, dissolving, inhaling, snorting, sniffing, or by any other means. "Alternative nicotine
 5 product" does not include: cigarettes as defined in in §16-9A-1 et seq. of this code; tobacco
 6 products and electronic cigarettes as defined in this section; or any product approved by the
 7 United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco

dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

"Electronic cigarette" includes, but is not limited to, any electronic nicotine delivery system, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vape pen, or similar product or device, any components or parts that can be used to build the product or device, and any component, part, or accessory of a device used during the operation of the device, even if the part or accessory was sold separately. "Electronic cigarette" does not include: cigarettes as defined in §16-9A-1 *et seq.* of this code; tobacco product and alternative nicotine product as defined in this section; any product approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose; any asthma inhaler prescribed by a physician for that condition and is being marketed and sold solely for that approved purpose; any device that meets the definition of cannabis paraphernalia or any cannabis product sold by a dispensing organization pursuant to the Medical Cannabis Act under §16A-1-1 *et seq.* of this code.

"Distributor" means a person who sells, offers for sale, or transfers any tobacco, electronic cigarette, or tobacco product for resale and not for use or consumption.

"Retailer" means a person who engages in this State in the sale of or offers for sale electronic cigarettes for use or consumption and not for resale in any form.

"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,

34 devices, or combination products that are regulated by the United States Food and Drug
35 Administration under Chapter V of the Food, Drug and Cosmetic Act.

§16-9AA-3. Sale or gift of electronic cigarettes , tobacco products, or alternative nicotine
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.

1 (a) A retailer, firm, corporation, or business entity shall not distribute, give, or furnish, or
2 cause to be sold, given, or furnished, any electronic cigarette, tobacco product, or alternative
3 nicotine product in any form, to any person younger than 21 years of age, which shall be verified by
4 a valid driver's license, state identification card, or any valid and unexpired federally issued
5 identification card such as a passport or military identification card.

6 (b) Before selling, offering for sale, giving, or furnishing a tobacco product, electronic
7 cigarette, or alternative nicotine product to another person, the retailer selling, offering for sale,
8 giving, or furnishing the tobacco product, electronic cigarette, or alternative nicotine product shall
9 verify that the person is at least 21 years of age by:

10 (1) Examining from any person that appears to be under 30 years of age a government-
11 issued photographic identification that establishes the person to be 21 years of age or older;

12 (2) For sales of tobacco products, electronic cigarettes, or alternative nicotine products
13 made through the Internet or other remote sales methods, performing an age verification through
14 an independent, third party age verification service that compares information available from
15 public records to the personal information entered by the person during the ordering process that
16 establishes the person is 21 years of age or older; and

17 (3) Utilizing any form of microphotographic or electronic digitizing process capable of
18 reproducing or recording a true and correct image of an original source document for the
19 recording, filing and preserving of all its records, forms, and documents. The retailer may also
20 permit the electronic transmission of information for direct recording in its records and systems.

Information transmitted by electronic means, approved by the retailer, shall constitute a "record" for the purposes of this code.

(c) No person shall cause electronic cigarettes ordered or purchased by mail, through the Internet, or other remote sale methods, to be shipped to anyone under 21 years of age in the state other than:

(1) A distributor; or

(2) A retailer.

(b) Any retailer, firm, corporation, or business entity 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 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.

(d) Any employer who discovers that his or her employee has sold or furnished any tobacco product, alternative nicotine product, or electronic cigarette 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

47 from employment.

§16-9AA-4. Age verification requirements.

1 (a) A person shall not, in connection with a delivery or sale, accept a purchase order, sell,
 2 mail, deliver, or cause to be delivered any electronic cigarette, tobacco product, or alternative
 3 nicotine product that is subject to 15 U.S.C. §375 *et seq.* unless the delivery sale complies with all
 4 applicable age verification requirements of 15 U.S.C. §376a.

5 (b) A person may use a check box on an internet website or mobile application to confirm
 6 the full name, birth date, and registered address of a purchaser prior to accepting a delivery sale
 7 for a tobacco product via an internet website or mobile application if:

8 (1) The purchaser provided his or her full name, birth date, and registered address upon
 9 registering as a user of the internet website or mobile application; and

10 (2) The person has verified the full name, birth date, and registered address of the
 11 purchaser upon registration using a commercially available database or aggregate of databases,
 12 consisting primarily of data from government sources, that are regularly used by government and
 13 businesses for the purpose of age and identity verification and authentication, to ensure that the
 14 purchaser is of the legal minimum purchase age.

15 (c) A person who obtains a consumer's electronic signature upon delivery of any electronic
 16 cigarette, tobacco product, or alternative nicotine product shall be deemed to satisfy 15 U.S.C. §
 17 376a.

NOTE: The purpose of this bill is to prohibit the sale of vapes and vape products to underage children.

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