

1 **Senate Bill No. 211**

2 (By Senator Beach)

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4 [Introduced January 8, 2014; referred to the Committee on Health  
5 and Human Resources; and then to the Committee on the Judiciary.]

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10 A BILL to amend and reenact §16-9A-2, §16-9A-3, §16-9A-7 and  
11 §16-9A-8 of the Code of West Virginia, 1931, as amended, all  
12 relating to defining "alternative nicotine product" and  
13 "electronic cigarette"; prohibiting the sale of alternative  
14 nicotine products to individuals under eighteen years of age;  
15 prohibiting the use and possession of alternative nicotine  
16 products by an individual under eighteen years of age; adding  
17 alternative nicotine products to the list of products for  
18 which unannounced inspections may be conducted to ensure  
19 compliance with sales restrictions; and restricting the sale  
20 of alternative nicotine products in vending machines.

21 *Be it enacted by the Legislature of West Virginia:*

22 That §16-9A-2, §16-9A-3, §16-9A-7 and §16-9A-8 of the Code of  
23 West Virginia, 1931, as amended, be amended and reenacted, all to

1 read as follows:

2 **ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.**

3 **§16-9A-2. Definitions; sale or gift of cigarette, cigarette paper,**  
4 **pipe, cigar, snuff, or chewing tobacco, or alternative**  
5 **nicotine products to persons under eighteen;**  
6 **penalties for first and subsequent offense;**  
7 **consideration of prohibited act as grounds for**  
8 **dismissal; impact on eligibility for unemployment**  
9 **benefits.**

10 (a) In this article:

11 (1) "Alternative nicotine product" means an electronic  
12 cigarette or any product that consists of or contains nicotine that  
13 can be ingested into the body by chewing, smoking, absorbing,  
14 dissolving, inhaling or by other means. An alternative nicotine  
15 product does not include a cigarette, or other tobacco product  
16 referenced in this article, a product that is a drug under 21  
17 U.S.C. § 321(g) (1), a product that is a device under 21 U.S.C. §  
18 321(h), or a combination product described in 21 U.S.C. 353(g);

19 (2) "Electronic cigarette" means an electronic product or  
20 device that produces a vapor that delivers nicotine or other  
21 substances to the person inhaling from the device to simulate  
22 smoking, and is likely to be offered to, or purchased by consumers

1 as an electronic cigarette, electronic cigar, electronic cigarillo  
2 or electronic pipe. Electronic cigarette does not include a  
3 cigarette, or other tobacco product referenced in this article, a  
4 product that is a drug under 21 U.S.C. § 321(g) (1), a product that  
5 is a device under 21 U.S.C. § 321(h), or a combination product  
6 described in 21 U.S.C. § 353(g).

7 ~~(a)~~ (b) No person, firm, corporation or business entity may  
8 sell, give or furnish, or cause to be sold, given or furnished, to  
9 any person under the age of eighteen years:

10 (1) Any pipe, cigarette paper or any other paper prepared,  
11 manufactured or made for the purpose of smoking any tobacco or  
12 tobacco product; ~~or~~

13 (2) Any cigar, cigarette, snuff, chewing tobacco or tobacco  
14 product, in any form; or

15 (3) Any alternative nicotine product, or any component or  
16 cartridge of an alternative nicotine product.

17 ~~(b)~~ (c) Any firm or corporation that violates any of the  
18 provisions of subdivision (1), (2) or ~~(2)~~ (3), subsection ~~(a)~~ (b)  
19 of this section and any individual who violates any of the  
20 provisions of subdivision (1), subsection ~~(a)~~ (b) of this section  
21 is guilty of a misdemeanor and, upon conviction thereof, shall be  
22 fined \$50 for the first offense. Upon any subsequent violation at  
23 the same location or operating unit, the firm, corporation or

1 individual shall be fined as follows: at least \$250 but not more  
2 than \$500 for the second offense, if it occurs within two years of  
3 the first conviction; at least \$500 but not more than \$750 for the  
4 third offense, if it occurs within two years of the first  
5 conviction; and at least \$1,000 but not more than \$5,000 for any  
6 subsequent offenses, if the subsequent offense occurs within five  
7 years of the first conviction.

8       ~~(c)~~ (d) Any individual who knowingly and intentionally sells,  
9 gives or furnishes or causes to be sold, given or furnished to any  
10 person under the age of eighteen years any cigar, cigarette, snuff,  
11 chewing tobacco or tobacco product, in any form, or any alternative  
12 nicotine product, or any component or cartridge of an alternative  
13 nicotine product is guilty of a misdemeanor and, upon conviction  
14 thereof, for the first offense shall be fined not more than \$100;  
15 upon conviction thereof for a second or subsequent offense, is  
16 guilty of a misdemeanor and shall be fined not less than \$100 nor  
17 more than \$500.

18       ~~(d)~~ (e) Any employer who discovers that his or her employee  
19 has sold or furnished tobacco products or any alternative nicotine  
20 product, or any component or cartridge of an alternative nicotine  
21 product to minors may dismiss ~~such~~ the employee for cause. Any  
22 such discharge shall be considered as "gross misconduct" for the  
23 purposes of determining the discharged employee's eligibility for

1 unemployment benefits in accordance with the provisions of section  
2 three, article six, chapter twenty-one-a of this code, if the  
3 employer has provided the employee with prior written notice in the  
4 workplace that such act or acts may result in their termination  
5 from employment.

6 **§16-9A-3. Use or possession of tobacco, ~~or~~ tobacco products, or**  
7 **alternative nicotine products by persons under the**  
8 **age of eighteen years; penalties.**

9 No person under the age of eighteen years shall have on or  
10 about his or her person or premises or use any cigarette, or  
11 cigarette paper or any other paper prepared, manufactured or made  
12 for the purpose of smoking any tobacco products, in any form; ~~or,~~  
13 any pipe, snuff, chewing tobacco or tobacco product; or any  
14 alternative nicotine product, or any component or cartridge of an  
15 alternative nicotine product: *Provided*, That minors participating  
16 in the inspection of locations where tobacco products or  
17 alternative nicotine products are sold or distributed pursuant to  
18 section seven of this article is not considered to violate the  
19 provisions of this section. Any person violating the provisions of  
20 this section shall for the first violation be fined \$50 and be  
21 required to serve eight hours of community service; for a second  
22 violation, the person shall be fined \$100 and be required to serve  
23 sixteen hours of community service; and for a third and each

1 subsequent violation, the person shall be fined \$200 and be  
2 required to serve twenty-four hours of community service.  
3 Notwithstanding the provisions of section two, article five,  
4 chapter forty-nine, the magistrate court has concurrent  
5 jurisdiction.

6 **§16-9A-7. Enforcement of youth smoking laws; retail tobacco outlet**  
7 **inspections; use of minors in inspections; annual**  
8 **reports; penalties; defenses.**

9 (a) The Commissioner of the West Virginia Alcohol Beverage  
10 Control Administration, the Superintendent of the West Virginia  
11 State Police, the sheriffs of the counties of this state and the  
12 chiefs of police of municipalities of this state, may periodically  
13 conduct unannounced inspections at locations where tobacco products  
14 or alternative nicotine products are sold or distributed to ensure  
15 compliance with the provisions of sections two and three of this  
16 article and in such manner as to conform with applicable federal  
17 and state laws, rules and regulations. Persons under the age of  
18 eighteen years may be enlisted by ~~such~~ the commissioner,  
19 superintendent, sheriffs or chiefs of police or employees or agents  
20 thereof to test compliance with these sections: *Provided*, That the  
21 minors may be used to test compliance only if the testing is  
22 conducted under the direct supervision of the commissioner,  
23 superintendent, sheriffs or chiefs of police or employees or agents

1 thereof and written consent of the parent or guardian of ~~such~~ the  
2 person is first obtained and ~~such~~ the minors shall not be in  
3 violation of section three of this article and chapter when acting  
4 under the direct supervision of the commissioner, superintendent,  
5 sheriffs or chiefs of police or employees or agents thereof and  
6 with the written consent of the parent or guardian. It is unlawful  
7 for any person to use persons under the age of eighteen years to  
8 test compliance in any manner not set forth herein and the person  
9 so using a minor is guilty of a misdemeanor and, upon conviction  
10 thereof, shall be fined the same amounts as set forth in section  
11 two of this article.

12 (b) A person charged with a violation of section two or three  
13 of this article as the result of an inspection under subsection (a)  
14 of this section has a complete defense if, at the time the  
15 cigarette, ~~or~~ other tobacco product, ~~or~~ cigarette wrapper, or  
16 alternative nicotine product was sold, delivered, bartered,  
17 furnished or given:

18 (1) The buyer or recipient falsely evidenced that he or she  
19 was eighteen years of age or older;

20 (2) The appearance of the buyer or recipient was such that a  
21 prudent person would believe the buyer or recipient to be eighteen  
22 years of age or older; and

23 (3) ~~Such~~ The person carefully checked a driver's license or

1 an identification card issued by this state or another state of the  
2 United States, a passport or a United States armed services  
3 identification card presented by the buyer or recipient and acted  
4 in good faith and in reliance upon the representation and  
5 appearance of the buyer or recipient in the belief that the buyer  
6 or recipient was eighteen years of age or older.

7 (c) Any fine collected after a conviction of violating section  
8 two of this article shall be paid to the clerk of the court in  
9 which the conviction was obtained: *Provided*, That the clerk of the  
10 court upon receiving the fine shall promptly notify the  
11 Commissioner of the West Virginia Alcohol Beverage Control  
12 Administration of the conviction and the collection of the fine:  
13 *Provided, however*, That any community service penalty imposed after  
14 a conviction of violating section three of this article shall be  
15 recorded by the clerk of the court in which the conviction was  
16 obtained: *Provided further*, That the clerk of the court upon being  
17 advised that community service obligations have been fulfilled  
18 shall promptly notify the Commissioner of the West Virginia Alcohol  
19 Beverage Control Administration of the conviction and the  
20 satisfaction of imposed community service penalty.

21 (d) The Commissioner of the West Virginia Alcohol Beverage  
22 Control Administration or his or her designee shall prepare and  
23 submit to the Governor on the last day of September of each year a



1 report of the enforcement and compliance activities undertaken  
2 pursuant to this section and the results of the same, with a copy  
3 to the secretary of the West Virginia Department of Health and  
4 Human Resources. The report shall be in the form and substance  
5 that the Governor shall submit to the applicable state and federal  
6 programs.

7 **§16-9A-8. Selling of tobacco products in vending machines**  
8 **prohibited except in certain places.**

9 No person or business entity may offer for sale any cigarette,  
10 ~~or~~ other tobacco product, or alternative nicotine product in a  
11 vending machine. Any person or business entity which violates the  
12 provisions of this section is guilty of a misdemeanor and, upon  
13 conviction thereof, shall be fined \$250: *Provided*, That an  
14 establishment is exempt from this prohibition if individuals under  
15 the age of eighteen years are not permitted to be in the  
16 establishment or if the establishment is licensed by the Alcohol  
17 Beverage Control Commissioner as a Class A licensee. The Alcohol  
18 Beverage Control Commissioner shall promulgate rules pursuant to  
19 article three, chapter twenty-nine-a of this code prior to July 1,  
20 2000, which rules shall establish standards for the location and  
21 control of the vending machines in Class A licensed establishments  
22 for the purpose of restricting access by minors.

NOTE: The purpose of this bill is to define alternative nicotine products and electronic cigarettes, prohibit the sale of alternative nicotine products to individuals under eighteen years of age, prohibit the use and possession of alternative nicotine products by an individual under eighteen years of age, add alternative nicotine products to the list of products for which unannounced inspections may be conducted to ensure compliance with sales restrictions, and restrict the sale of alternative nicotine products in vending machines.

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