

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 81**

BY SENATORS TAKUBO, BOSO, STOLLINGS, JEFFRIES,

LINDSAY, AND IHLENFELD

[Originating in the Committee on Health and Human

Resources; Reported on January 30, 2019]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §16-9A-11, relating to prohibiting smoking of tobacco products in a motor  
3 vehicle while an individual 17 years of age or less is present; defining terms; making the  
4 violation a secondary misdemeanor offense; and providing a penalty.

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

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

**§16-9A-11. Smoking prohibited in motor vehicle while a person 17 years of age or less is present; penalty.**

1 (a) The following words have the following meaning:

2 (1) A “lit tobacco product” means an electrical or electronic device that provides a smoke,  
3 vapor, fog, mist, gas, or aerosol suspension of nicotine or another substance that, when used or  
4 inhaled, simulates the activity of smoking. The term “lit tobacco product” includes, but is not  
5 limited to, a device that is composed of a heating element, battery or electrical or electronic circuit,  
6 or combination of heating element, battery, and electrical or electronic circuit, which works in  
7 combination with e-liquid to produce an inhalable product. The term “lit tobacco product” includes,  
8 but is not limited to, any so designed, or similarly designed, product that is manufactured,  
9 distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other name or  
10 descriptor. The term “simulates the activity of smoking”, in the context of this definition, means  
11 replicating, mimicking, or reproducing an experience similar to inhaling, or otherwise drawing into  
12 the mouth or nose, or exhaling the smoke or combustion product of burning tobacco or any other  
13 product or material that can be used in a similar fashion.

14 (2) A motor vehicle is defined as a Class A, Class B, Class H or Class J vehicle as those  
15 terms are defined in §17A-10-1 of this code.

16 (b) No person who is 18 years of age or older may smoke or possess a lit tobacco product  
17 in a motor vehicle if an individual 17 years of age or less is in the motor vehicle.

18 (c) Any person who violates this section is guilty of a misdemeanor and, upon conviction,

19 shall be fined not more than \$25. This fine shall be payable to the Department of Health and  
20 Human Resources and used for tobacco education. No court costs or other fees may be  
21 assessed for a violation of this section.

22 (d) Enforcement of this section may only be accomplished as a secondary action when a  
23 driver of a vehicle, as defined in this section, has been detained for probable cause of violating  
24 another section of this code.

25 (e) Each time a driver of a vehicle is detained for probable cause of violating another  
26 provision of this code and is cited for the offense created pursuant to this section, it shall be  
27 considered a single offense regardless of the number of individuals 17 years of age or less in the  
28 motor vehicle.

NOTE: The purpose of this bill is to prohibit the use of lit tobacco products in a motor vehicle while individuals 17 years of age or under are present. The bill also provides that the misdemeanor offense is a secondary offense that may only be charged if a driver has been detained for violation of another vehicle law.

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