

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 3071

BY DELEGATES LAVENDER-BOWE, ROHRBACH, ROWE,
FLEISCHAUER, DOYLE, STAGGERS, C. THOMPSON,
ZUKOFF, ESTEP-BURTON AND WALKER

[Introduced February 12, 2019; Referred
to the Committee on Health and Human Resources
then Finance.]

1 A BILL to amend and reenact §11-17-4b of the Code of West Virginia, 1931, as amended; and to
 2 amend said code by adding thereto a new article, designated §16-5AA-1, 16-5AA-2, and
 3 16-5AA-3, all relating to electronic cigarettes; increasing the tax on electronic cigarette
 4 liquid; providing legislative findings; defining terms; creating the Young West Virginians
 5 Tobacco Cessation Initiative Fund; directing the Department of Health and Human
 6 Resources to administer the fund; and providing directives on expending funds to cover
 7 costs of administration and to promote tobacco use reduction in young West Virginians.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.

**§11-17-4b. Levy of tax on e-cigarette liquid; definitions; rate; invoice; report; payment;
 authority of the Tax Commissioner to inspect and examine witnesses; presumption;
 bond.**

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

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

13 experience similar to inhaling, or otherwise drawing into the mouth or nose, or exhaling the smoke
14 or combustion product of burning tobacco or any other product or material that can be used in a
15 similar fashion.

16 (2) "E-cigarette liquid" means any of the liquids or liquid mixtures used in e-cigarettes and
17 is also known as e-juice, e-fluid, e-liquid or e-liquid product. E-cigarette liquid includes e-cigarette
18 liquid mixing kits and e-cigarette liquid mixing kit components. When used in, or with, an e-
19 cigarette, e-cigarette liquid is vaporized or otherwise converted into an inhalable product. E-
20 cigarette liquid may or may not include, without limitation, propylene glycol, vegetable glycerin,
21 nicotine from any source or flavorings.

22 (b) *Levy of tax; rate.* —

23 (1) On and after July 1, 2016, an excise tax is levied and imposed on sales of e-cigarette
24 liquid at the rate of 7.5 cents per milliliter or fraction thereof, or if not sold, then at the same rate
25 upon the use by the wholesaler or dealer. On and after July 1, 2019, an excise tax is levied and
26 imposed on sales of e-cigarette liquid at the rate of 15 cents per milliliter or fraction thereof, or if
27 not sold, then at the same rate upon the use by the wholesaler or dealer; with 7.5 cents per
28 milliliter or fraction thereof, or if not sold, then at the same rate upon the use by the wholesaler or
29 dealer, shall be deposited into the special account in the State Treasury to be known as the
30 "Young West Virginians Tobacco Cessation Initiative Fund" created pursuant to §16-5AA-3 of this
31 code. For purposes of this article, any distributor, dealer, sub jobber, sub jobber dealer, retailer
32 or any other person that imports or transports e-cigarette liquids into this state, or that causes e-
33 cigarette liquids to be imported or transported into this state, is hereby deemed to be a wholesaler
34 for purposes of this section and is liable for the tax imposed under this article. No wholesaler or
35 other person may purchase e-cigarette liquids from any seller not approved by the Tax
36 Commissioner. E-cigarette liquid mixing kits and e-cigarette liquid mixing kit components shall be
37 taxed in accordance with the amount of e-cigarette liquid, in milliliters, that can be produced by or
38 from the kit or components thereof, as determined by the Tax Commissioner.

39 (2) Only one sale of e-cigarette liquid shall be used in computing the amount of tax due
40 under this section.

41 (c) *How tax paid; invoice required; reports required; due date; records to be kept.* —

42 (1) The tax imposed in this section on e-cigarette liquid shall be paid using an invoice
43 method prescribed by the Tax Commissioner.

44 (2) The tax will be paid on any and all e-cigarette liquid coming into the state for the
45 purpose of sale or use in this state on and after July 1, 2016.

46 (3) *Contents of delivery ticket or invoice.* — Unless otherwise permitted in writing by the
47 Tax Commissioner, each delivery ticket or invoice for each purchase or sale of e-cigarette liquid
48 must be recorded upon a serially numbered invoice showing:

49 (A) The name and address of the seller and the purchaser;

50 (B) The point of delivery;

51 (C) The date;

52 (D) (i) The number of e-cigarette cartridges, apparatus, containers or other devices; (ii)
53 the quantity in milliliters of each cartridge, apparatus, container or other device; (iii) the wholesale
54 price of each e-cigarette cartridge, apparatus, container or other device delivered in this state; or
55 (iv) if sold outside of a cartridge or other device or container, the total quantity in milliliters of e-
56 cigarette liquid not in cartridges, apparatus or other device or container delivered in this state and
57 the wholesale price of the e-cigarette liquid;

58 (E) The invoice must either set out the amount of tax imposed by this article separately on
59 the invoice or the invoice may instead indicate that the tax imposed under this article is included
60 in the total price; and

61 (F) Any other information required by the Tax Commissioner.

62 (4) *Reports and payments due date.* — On or before the fifteenth day of each month,
63 manufacturers, importers, every place of business as defined in this article, retail dealers, sub
64 jobbers, vending machine operators and wholesale dealers and their agents, shall file a report

65 covering the business transacted in the previous month providing any information the Tax
66 Commissioner determines necessary for the ascertainment or assessment of the taxes imposed
67 by this article. Reports shall be signed under penalty of perjury and be in a form as prescribed by
68 the Tax Commissioner. The amount of tax shown to be due on the monthly report, if any, shall be
69 remitted on or before the due date of the monthly report. The first report due for e-liquid sales is
70 August 15, 2016, for the sales completed in July 2016.

71 (5) *Reports required.* — The reports prescribed in this article are required, although a tax
72 may not be due or no business transacted, for the period covered by the report. In the case of
73 any failure to file a report on the date prescribed for filing when no tax is due, unless it is shown
74 that the failure was due to reasonable cause, there is hereby imposed a penalty of \$25 for each
75 month or fraction of a month that such report is delinquent, until the report is filed, in addition to
76 any penalties imposed under section nineteen-a of this article.

77 (6) *Records.* — Each person required to file a report shall make and keep the records
78 necessary to substantiate the accuracy of the reports required by this section including, but not
79 limited to, records of inventories, receipts, disbursements and sales. Records shall be retained
80 for a period of time not less than three years from the time the report is due or the time when the
81 report is filed, whichever is later.

82 (d) *Inspection of records and stocks; examination of witnesses; registration of e-cigarette*
83 *sellers; presumption of nontax paid.* —

84 (1) The Tax Commissioner has the authority to inspect or examine the records, books and
85 papers, and any equipment or e-cigarette apparatus, and any stock of e-cigarette liquid kept in or
86 upon the premises of persons who sell, possess or store e-cigarette liquid, for the purpose of
87 determining the quantity and value of e-cigarette liquid acquired, on hand or disbursed, to verify
88 the truth and accuracy of any statement, return, form or report and to ascertain whether the tax
89 imposed by this article has been properly paid.

90 (2) In addition to the Tax Commissioner's powers set forth in §11-10-1 *et seq.*, of this code,

91 the Tax Commissioner or the Tax Commissioner's agent may examine witnesses under oath in
92 order to ascertain the amount of taxes and reports due under this article. If a witness or person
93 fails or refuses to testify or grant access to records, books, papers, equipment or e-cigarette
94 apparatus, or any stock of e-cigarette liquid, necessary or useful to ascertain the amount of taxes
95 and reports due under this article, the Tax Commissioner shall certify the facts and names to the
96 circuit court of the county having jurisdiction of the party and the court shall issue a summons to
97 the party to appear before the Tax Commissioner at a place designated within the jurisdiction of
98 the court, on a day fixed, to be continued as the occasion may require for good cause shown, to
99 testify and give evidence and to produce for inspection any books, records and papers that may
100 be required and to grant access to records, books, papers, equipment or e-cigarette apparatus,
101 or any stock of e-cigarette liquid, for the purpose of ascertaining the amount of tax and reports
102 due, if any.

103 (3) Each wholesale dealer of e-cigarette liquid must register with the Tax Commissioner
104 and maintain a business registration certificate, showing the wholesale dealer of e-cigarette liquid
105 to be registered as a seller of tobacco products or seller of both cigarettes and tobacco products
106 prior to the sale or delivery of e-cigarette liquid to any retail dealer or sub jobber in this state. A
107 wholesale dealer may sell tax-paid e-cigarette liquid only to another wholesaler or a retail dealer
108 or sub jobber in this state. No person may purchase nontaxed e-cigarette liquid from any seller
109 not approved by the Tax Commissioner.

110 (4) Whenever e-cigarette liquid is found in the place of business of any retail dealer,
111 without evidence that the tax imposed by this section has been paid, it shall be presumed that the
112 e-cigarette liquid is kept on the premises in violation of this article.

113 (e) *Bond.* — The Tax Commissioner may require wholesalers, sub jobbers or retail dealers
114 to file a continuous surety bond in an amount to be fixed by the Tax Commissioner but no less
115 than \$1,000. The bond shall be conditioned upon faithfully complying with the provisions of this
116 article including the filing of the returns and payment of all taxes prescribed by this article.

117 (f) *Administration and enforcement.* — The provisions of this article and §11-9-1 *et seq.*
 118 and §11-10-1 *et. seq.* of this code apply to administration and enforcement of the excise tax on
 119 e-cigarette liquid in the same manner and to the same extent as they apply to administration and
 120 enforcement of the excise tax on tobacco products, as imposed under this article.

121 (g) *Criminal sanctions.* — The criminal sanctions imposed in §11-17-19a of this code are
 122 hereby imposed with equal force and application with relation to actions, transactions and
 123 responsibilities prescribed under this section and under this article. For the purpose of applying
 124 and interpreting the provisions of §11-17-19a of this code, the words “container of tobacco
 125 products” shall be interpreted to mean and include the words “container of tobacco products or e-
 126 cigarette liquid”.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5AA. YOUNG WEST VIRGINIANS TOBACCO CESSATION INITIATIVE.

§16-5AA-1. Legislative findings.

1 The Legislature finds that West Virginia has a serious health crisis of tobacco usage by
 2 teenagers and young adults. Currently West Virginia is leading the United States in tobacco use,
 3 including: The 7th highest rate of heavy teenage smokers at 12.9 percent; the highest rate of
 4 smoking while pregnant at 29.3 percent; the 2nd highest number of adult smokers at 28.6 percent
 5 of all adults; and further that underage tobacco consumption of e-cigarettes has contributed to
 6 this health crisis, and from June of 2018 to September of 2018, 14 retailers in West Virginia were
 7 identified as selling e-cigarettes to minors. The Legislature further finds that this public health
 8 crisis is exacerbated by the lack of education in this state regarding risks of smoking and the
 9 proliferation of e-cigarettes marketed and distributed to minors, when studies have shown the use
 10 of e-cigarettes does not discourage, and may encourage, conventional cigarette use among U.S.
 11 adolescents. Therefore, a tax is hereby levied against e-cigarette liquid to fund education and
 12 awareness and promote stoppage of tobacco smoking in teenage and young adult West

13 Virginians.

§16-5AA-2 Definitions.

1 For the purposes of this section:

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

14 (2) "E-cigarette liquid" means any of the liquids or liquid mixtures used in e-cigarettes and
15 is also known as e-juice, e-fluid, e-liquid or e-liquid product. E-cigarette liquid includes e-cigarette
16 liquid mixing kits and e-cigarette liquid mixing kit components. When used in, or with, an e-
17 cigarette, e-cigarette liquid is vaporized or otherwise converted into an inhalable product. E-
18 cigarette liquid may or may not include, without limitation, propylene glycol, vegetable glycerin,
19 nicotine from any source or flavorings.

§16-5AA-3. Creation of the Young West Virginians Tobacco Cessation Initiative fund.

1 (a) The moneys dedicated to this section pursuant to §11-17-4B of this code shall be
2 deposited into a special account in the State Treasury to be known as the "Young West Virginian
3 Tobacco Cessation Initiative fund." Expenditures from the fund shall be for the purpose set forth
4 in this section and are not authorized from collections but are to be made only in accordance with

5 appropriation by the Legislature and accordance with the provisions of §12-3-1 et seq., of this
6 code, and upon fulfillment of the provisions of §11B-2-1 et seq., of this code: *Provided*, That for
7 the fiscal year ending June 30, 2020, expenditures are authorized from collections rather than
8 pursuant to appropriation by the Legislature.

9 (b)The purpose of the fund is to prevent the use of new and emerging tobacco products,
10 including electronic cigarettes, especially among young and people of childbearing age. The
11 Department of Health and Human Resources may use moneys in the fund for the following
12 purposes:

13 (1) To create regional tobacco use prevention programs covering all 55 counties in West
14 Virginia to engage young people in tobacco use prevention teams in school districts across the
15 state;

16 (2) Provide education and training of youth leaders at the local level, and reach young
17 people with effective tobacco use prevention, with an emphasis on prevention the use of new and
18 emerging tobacco products, including electronic cigarettes;

19 (3) To provide technical assistance and oversight of state tobacco use prevention
20 programs;

21 (4) For evidence-based education campaigns on the health risks of tobacco use regarding
22 news and emerging tobacco products, including electronic cigarettes;

23 (5) Effective tobacco use prevention and control strategies and policies through channels
24 known to effectively reach youth, parents and communities across the state; and

25 (6) To conduct an independent, university-based evaluation of the reach and effectiveness
26 of the state's tobacco use prevention programs.

27 (b) The Department of Health shall develop guidelines providing for the administration of
28 the fund. The Department may use up to 25 percent of the amount appropriated to the Tobacco-
29 Use Prevention Fund to administer the fund established in this section.

NOTE: The purpose of this bill is to increase the taxes on electronic cigarettes and using the proceeds to promote tobacco cessation initiative directed towards young West Virginians administered at the Department of Health and Human Resources.

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