

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3229

By Delegates Clark, Crouse, Ferrell, Honaker, Pinson,
and Fast

[Introduced February 02, 2023; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §16-9A-2 and §16-9A-3 of the Code of West Virginia, 1931, as
 2 amended, all relating to the increasing the legal age to purchase tobacco products to 21
 3 years of age.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-2. Definitions; sale or gift of cigarette, paper, pipe, cigar, snuff, chewing tobacco, pipe tobacco, roll-your-own tobacco, tobacco products, tobacco-derived and alternative nicotine product or vapor products to persons under ~~eighteen~~ twenty-one; penalties for first and subsequent offense; consideration of prohibited act as grounds for dismissal; impact on eligibility for unemployment benefits.

1 (a) For purposes of this article, the term:

2 (1) "Tobacco product" and "tobacco-derived product" means any product, containing,
 3 made or derived from tobacco, or containing nicotine derived from tobacco, that is intended for
 4 human consumption, whether smoked, breathed, chewed, absorbed, dissolved, inhaled,
 5 vaporized, snorted, sniffed or ingested by any other means, including but not limited to cigarettes,
 6 cigars, cigarillos, little cigars, pipe tobacco, snuff, snus, chewing tobacco or other common
 7 tobacco-containing products. A "tobacco-derived product" includes electronic cigarettes or similar
 8 devices, alternative nicotine products and vapor products. "Tobacco product" or "tobacco-derived
 9 product" does not include any product that is regulated by the United States Food and Drug
 10 Administration under Chapter V of the Food, Drug and Cosmetic Act.

11 (2) "Alternative nicotine product" means any non-combustible product containing nicotine
 12 that is intended for human consumption, whether chewed, absorbed, dissolved or ingested by any
 13 other means. "Alternative nicotine product" does not include any tobacco product, vapor product
 14 or product regulated as a drug or device by the United States Food and Drug Administration under
 15 Chapter V of the Food, Drug and Cosmetic Act.

16 (3) "Vapor product" means any non-combustible product containing nicotine that employs
17 a heating element, power source, electronic circuit or other electronic, chemical or mechanical
18 means, regardless of shape and size, that can be used to produce vapor from nicotine in a solution
19 or other form. "Vapor product" includes any electronic cigarette, electronic cigar, electronic
20 cigarillo, electronic pipe or similar product or device, and any vapor cartridge or other container of
21 nicotine in a solution or other form that is intended to be used with or in an electronic cigarette,
22 electronic cigar, electronic cigarillo, electronic pipe or similar product or device. "Vapor product"
23 does not include any product that is regulated by the United States Food and Drug Administration
24 under Chapter V of the Food, Drug and Cosmetic Act.

25 (b) No person, firm, corporation or business entity may sell, give or furnish, or cause to be
26 sold, given or furnished, to any person under the age of ~~eighteen~~ twenty-one years:

27 (1) Any pipe, cigarette paper or any other paper prepared, manufactured or made for the
28 purpose of smoking any tobacco or tobacco product;

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

30 (3) Any tobacco-derived product, alternative nicotine product or vapor product.

31 (c) Any firm or corporation that violates any of the provisions of subsection (b) of this
32 section and any individual who violates any of the provisions of subsection (b) of this section is
33 guilty of a misdemeanor and, upon conviction thereof, shall be fined \$50 for the first offense. Upon
34 any subsequent violation at the same location or operating unit, the firm, corporation or individual
35 shall be fined as follows: At least \$250 but not more than \$500 for the second offense, if it occurs
36 within two years of the first conviction; at least \$500 but not more than \$750 for the third offense, if
37 it occurs within two years of the first conviction; and at least \$1,000 but not more than \$5,000 for
38 any subsequent offenses, if the subsequent offense occurs within five years of the first conviction.

39 (d) Any individual who knowingly and intentionally sells, gives or furnishes or causes to be
40 sold, given or furnished to any person under the age of ~~eighteen~~ twenty-one years any cigar,
41 cigarette, snuff, chewing tobacco, tobacco product or tobacco-derived product, in any form, is

42 guilty of a misdemeanor and, upon conviction thereof, for the first offense shall be fined not more
43 than \$100; upon conviction thereof for a second or subsequent offense, is guilty of a misdemeanor
44 and shall be fined not less than \$100 nor more than \$500.

45 (e) Any employer who discovers that his or her employee has sold or furnished tobacco
46 products or tobacco-derived products to minors may dismiss such employee for cause. Any such
47 discharge shall be considered as "gross misconduct" for the purposes of determining the
48 discharged employee's eligibility for unemployment benefits in accordance with the provisions of
49 §21A-6-3 of this code, if the employer has provided the employee with prior written notice in the
50 workplace that such act or acts may result in their termination from employment.

**§16-9A-3. Use or possession of tobacco products, alternative nicotine products or vapor
products by persons under the age of ~~18~~ 21 years; penalties.**

1 A person under the age of ~~18~~ 21 years of age shall not have on or about his or her person
2 or premises or use any cigarette, or cigarette paper, or any other paper prepared, manufactured,
3 or made for the purpose of smoking any tobacco products, in any form; any pipe, snuff, chewing
4 tobacco, tobacco product, or tobacco-derived product: Provided, that minors participating in the
5 inspection of locations where tobacco products or tobacco-derived products are sold or distributed
6 pursuant to §16-9A-7 of this code is not considered to violate the provisions of this section. Any
7 person violating the provisions of this section shall, for the first violation, ~~be fined \$50 and be~~
8 required to serve eight hours of community service; for a second violation, the person shall be
9 ~~fined \$100 and be~~ required to serve 16 hours of community service; and for a third and each
10 subsequent violation, ~~the person shall be fined \$200 and~~ be required to serve 24 hours of
11 community service. Notwithstanding the provisions of §49-4-701 of this code, the magistrate court
12 has concurrent jurisdiction.

NOTE: The purpose of this bill is to change the West Virginia law regarding tobacco sales to the minimum age of 21 to align with federal 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.