

# **WEST VIRGINIA LEGISLATURE**

**2024 REGULAR SESSION**

**ENGROSSED**

**Committee Substitute**

**for**

**House Bill 5084**

By Delegates Tully, Summers, Mallow, Heckert,

Marple, Westfall, Brooks, Barnhart, Willis,

Burkhammer, and Clark

[Originating in the Committee of the Judiciary;

Reported on February 1, 2024]



1 A BILL to amend and reenact §16-9A-2 of the Code of West Virginia, 1931, as amended, all  
2 relating to requiring that a valid driver's license or state identification card be presented to  
3 verify the minimum age of eighteen for the purchase or acceptance of tobacco related  
4 products; relating to increasing penalties for any firm or corporation, or business entity that  
5 violates the provisions of this section of the code; and relating to increasing penalties for  
6 any person, or employee of any firm or corporation, or business entity that violates the  
7 provisions of this section of the code.

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

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

**§16-9A-2. Definitions; sale or gift of cigarette, 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; 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 years, which shall be verified by a  
27 valid driver's license, state identification card, or any valid and unexpired federally issued  
28 identification card such as a passport or military identification card:

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

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

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

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

39 more than ~~\$750~~ 1,000 for the third offense, if it occurs within two years of the first conviction; and at  
40 least ~~\$1,000~~ 2,000 but not more than \$5,000 for any subsequent offenses, if the subsequent  
41 offense occurs within five years of the first conviction.

42 (d) Any individual person, or employee of any firm or corporation, or business entity who  
43 knowingly and intentionally sells, gives or furnishes or causes to be sold, given or furnished to any  
44 person under the age of eighteen years any cigar, cigarette, snuff, chewing tobacco, tobacco  
45 product or tobacco-derived product, in any form, is guilty of a misdemeanor and, upon conviction  
46 thereof, for the first offense shall be fined ~~not more than \$100~~ 250; upon conviction thereof for a  
47 second or subsequent offense, is guilty of a misdemeanor and shall be fined not less than \$100  
48 ~~nor more than \$500~~.

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