

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5084

By Delegates Tully, Summers, Mallow, Heckert,

Marple, Westfall, Brooks, Barnhart, Willis,

Burkhammer, and Clark

[Originating in the Committee on 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 military identification card:

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

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

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

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

39 least ~~\$1,000~~ 2,000 but not more than \$5,000 for any subsequent offenses, if the subsequent
40 offense occurs within five years of the first conviction.

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

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

NOTE: The purpose of this bill is to require that a valid driver's license, state identification card, or military identification card be presented to verify the minimum age of eighteen for the purchase or acceptance of tobacco related products.

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