

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 717

BY SENATORS TAKUBO, WOELFEL, WOODRUM, DEEDS,

AND NELSON

[Originating in the Committee on the Judiciary;

reported February 24, 2024]

1 A BILL to amend and reenact §16-9A-1, §16-9A-2, §16-9A-3, §16-9A-4, §16-9A-7, and §16-9A-8
2 of the Code of West Virginia, 1931, as amended, all relating to tobacco products;
3 amending legislative intent; defining terms; prohibiting sale or gift of tobacco products to
4 persons younger than 21 years of age; setting forth fines and criminal penalties; removing
5 penalties for possession of a tobacco product by a person younger than the age of 21;
6 providing that an employee who sells a tobacco product to a person younger than 21 years
7 of age is subject to noncriminal, nonmonetary penalties; allowing an employee who sells
8 a tobacco product to a person younger than 21 years of age to be fired under certain
9 circumstances; permitting persons younger than 21 years of age to be used in inspections
10 of retail outlets where tobacco products are sold; removing the West Virginia Alcohol
11 Beverage Control Administration as an agency with authority to conduct inspections;
12 designating the Bureau for Behavioral Health as one of the agencies to conduct
13 inspections; removing the requirement for the West Virginia Alcohol Beverage Control
14 Administration to submit a report; requiring the Commissioner of the Bureau for Behavioral
15 Health to submit a report; and amending language regarding vending machines to conform
16 to the increased age requirement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-1. Legislative findings and intent.

1 Intent. — The Legislature hereby declares it to be the policy and intent of this state to
2 discourage and ban the use of tobacco products by minors. As basis for this policy, the Legislature
3 hereby finds and accepts the medical evidence that ~~smoking~~ tobacco products may cause lung
4 cancer, lung or heart disease, emphysema, and other serious health problems while the use of
5 smokeless tobacco may cause gum disease and oral cancer. It is the further intent of the
6 Legislature to reduce tobacco use by keeping tobacco products out of the hands of youth and
7 young adults in ~~by banning the use of tobacco products by minors~~ the sale of tobacco products

8 to persons younger than 21 years of age to ease the personal tragedy and eradicate the severe
9 economic loss associated with the use of tobacco and to provide the state with a citizenry free
10 from the use of tobacco.

~~§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 "Electronic smoking device" means any device that can be used to deliver any heated,
3 aerosolized or vaporized substance to the person inhaling from the device, including but not
4 limited to any e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device
5 includes any component part, or accessory of the device, whether or not sold separately, and
6 includes any substance intended to be heated, aerosolized, or vaporized during the use of the
7 device, whether or not the substance contains nicotine. Electronic smoking device does not
8 include drugs, devices, or combination products approved by the United States Food, Drug, and
9 Cosmetic Act.

10 (4) "Tobacco product" and ~~"tobacco-derived product"~~ means any product, containing,
11 made, or derived from tobacco, or ~~containing nicotine derived from tobacco,~~ that is intended for
12 human consumption, whether ~~smoked, breathed, chewed,~~ absorbed, ~~dissolved,~~ inhaled
13 ~~vaporized, snorted, sniffed,~~ or ingested by any other means, including but not limited to cigarettes,
14 cigars, cigarillos, little cigars, pipe tobacco, snuff, snus, chewing tobacco, or other common
15 tobacco-containing products. A ~~tobacco-derived~~ product also includes electronic cigarettes or
16 similar devices, alternative nicotine products and vapor products electronic smoking devices and
17 any accessory of a tobacco product or electronic smoking device, whether or not any of these
18 contain tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps,

19 and pipes. Tobacco product or ~~"tobacco-derived product"~~ does not include ~~any product~~ drugs,
20 devices, or combination products that is are regulated by the United States Food and Drug
21 Administration under Chapter V of the Food, Drug and Cosmetic Act.

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

27 ~~(3) "Vapor product" means any noncombustible product containing nicotine that employs~~
28 ~~a heating element, power source, electronic circuit or other electronic, chemical or mechanical~~
29 ~~means, regardless of shape and size, that can be used to produce vapor from nicotine in a solution~~
30 ~~or other form. "Vapor product" includes any electronic cigarette, electronic cigar, electronic~~
31 ~~cigarillo, electronic pipe or similar product or device, and any vapor cartridge or other container~~
32 ~~of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette,~~
33 ~~electronic cigar, electronic cigarillo, electronic pipe or similar product or device. "Vapor product"~~
34 ~~does not include any product that is regulated by the United States Food and Drug Administration~~
35 ~~under Chapter V of the Food, Drug and Cosmetic Act.~~

36 ~~(b) No person, firm, corporation, or business entity may sell, give or furnish, or cause to~~
37 ~~be sold, given or furnished, to any person under the age of 18 years:~~

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

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

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

42 ~~(c) Any firm or corporation that violates any of the provisions of subsection (b) of this~~
43 ~~section and any individual who violates any of the provisions of subsection (b) of this section is~~
44 ~~guilty of a misdemeanor and, upon conviction thereof, shall be fined \$50 for the first offense. Upon~~

45 any subsequent violation at the same location or operating unit, the firm, corporation or individual
46 shall be fined as follows: At least \$250 but not more than \$500 for the second offense, if it occurs
47 within two years of the first conviction; at least \$500 but not more than \$750 for the third offense,
48 if it occurs within two years of the first conviction; and at least \$1,000 but not more than \$5,000
49 for any subsequent offenses, if the subsequent offense occurs within five years of the first
50 conviction.

51 (d) Any individual who knowingly and intentionally sells, gives or furnishes or causes to be
52 sold, given or furnished to any person under the age of eighteen years any cigar, cigarette, snuff,
53 chewing tobacco, tobacco product or tobacco-derived product, in any form, is guilty of a
54 misdemeanor and, upon conviction thereof, for the first offense shall be fined not more than \$100;
55 upon conviction thereof for a second or subsequent offense, is guilty of a misdemeanor and shall
56 be fined not less than \$100 nor more than \$500

57 (e) Any employer who discovers that his or her employee has sold or furnished tobacco
58 products or tobacco-derived products to minors may dismiss such employee for cause. Any such
59 discharge shall be considered as "gross misconduct" for the purposes of determining the
60 discharged employee's eligibility for unemployment benefits in accordance with the provisions of
61 §21A-6-3 of this code, if the employer has provided the employee with prior written notice in the
62 workplace that such act or acts may result in their termination from employment.

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

1 A person under the age of 18 years shall not have on or about his or her person or
2 premises or use any cigarette, or cigarette paper, or any other paper prepared, manufactured or
3 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.~~

§16-9A-3. Sale or gift of tobacco products to persons younger than 21 years of age;
penalties for first and subsequent offense; provision of non-criminal, non-monetary
penalties; consideration of prohibited act as grounds for dismissal.

1 (a) A person, firm, corporation, or business entity may not sell, give, or furnish, or cause
2 to be sold, given, or furnished, any tobacco product, in any form, to any person younger than 21
3 years of age.

4 (b) Any firm, corporation, or business entity that violates the provisions of subsection (a)
5 of this section and any individual who violates the provisions of subsection (a) of this section is
6 guilty of a misdemeanor and, upon conviction thereof, shall be fined \$50 for the first offense. Upon
7 any subsequent violation at the same location or operating unit, the firm, corporation, or business
8 entity or the individual shall be fined as follows: At least \$250 but not more than \$500 for the
9 second offense, if it occurs within two years of the first conviction; at least \$500 but not more than
10 \$750 for the third offense, if it occurs within two years of the first conviction; and at least \$1,000
11 but not more than \$5,000 for any subsequent offenses, if the subsequent offense occurs within
12 five years of the first conviction.

13 (c) Any person who violates subsection (a) of this section while acting as a non-
14 management agent or employee of a retail outlet where tobacco products are sold is subject to
15 non-criminal, non-monetary penalties, including, but not limited to, education classes, diversion

16 programs, and community service. The alcohol beverage control commissioner shall promulgate
17 rules for legislative approval pursuant to §29A-3-1 et seq. of this code, to establish standards for
18 education classes, diversion programs, and community service.

19 (d) Any employer who discovers that his or her employee has sold or furnished tobacco
20 products to any person younger than 21 years of age may dismiss the employee for cause, if the
21 employer has provided the employee with prior written notice in the workplace that such act or
22 acts may result in his or her termination from employment.

**§16-9A-4. Use of ~~tobacco~~, tobacco products, ~~alternative nicotine products or vapor~~
~~products~~ in certain areas of certain public schools prohibited; penalty.**

1 ~~Every~~ Any person who shall ~~smoke a cigarette or cigarettes, pipe, cigar or other~~
2 ~~implement, of any type or nature, designed, used or employed for smoking any tobacco or tobacco~~
3 ~~product; or who shall use~~ uses any tobacco product or ~~tobacco-derived product~~ in any building or
4 part thereof used for instructional purposes, in any public school of this state, as defined in ~~section~~
5 ~~one, article one, chapter eighteen~~ of this code, or on any lot or grounds actually used for
6 instructional purposes of any such public school of this state while such ~~the public~~ school is used
7 or occupied for school purposes, ~~shall be~~ is guilty of a misdemeanor, and, upon conviction thereof,
8 shall be punished for each offense by a fine of not less than one nor more than \$5: *Provided*, That
9 this prohibition shall not be construed to prevent the use of any ~~tobacco or tobacco product or~~
10 ~~tobacco-derived product~~, in any faculty lounge, or staff lounge, or faculty office or other area of
11 ~~said the~~ the public school not used for instructional purposes: *Provided, however*, That students do
12 not have access ~~thereto~~ to the area: *Provided further*, That nothing ~~herein~~ contained in this section
13 shall be construed to prevent any county board of education from promulgating rules and
14 regulations that further restrict the use of tobacco products ~~or tobacco-derived products~~, in any
15 form, from any other part or section of any public school building under its jurisdiction.

§16-9A-7. Enforcement of youth smoking laws and youth nicotine restrictions; inspection of retail outlets where tobacco, ~~tobacco products, vapor products or alternative nicotine products~~ are sold; use of minors in inspections; annual reports; penalties; defenses.

1 (a) ~~The Commissioner of the West Virginia Alcohol Beverage Control Administration~~
2 Bureau for Behavioral Health of the Department of Human Services, the Superintendent of the
3 West Virginia State Police, the sheriffs of the counties of this state, and the chiefs of police of
4 municipalities of this state, may periodically conduct unannounced inspections at locations where
5 tobacco products ~~or tobacco-derived products~~, are sold or distributed to ensure compliance with
6 the provisions of ~~§16-9A-2 and §16-9A-3~~ of this code and in such manner as to conform with
7 applicable federal and state laws, rules and regulations. Persons ~~under the age of eighteen~~
8 younger than 21 years of age may be enlisted by ~~such~~ the commissioner, superintendent, sheriffs
9 or chiefs of police or employees or agents thereof, to test compliance with these sections:
10 *Provided, That* ~~minors~~ a person younger than 21 years of age may be used to test compliance
11 only if the testing is conducted under the direct supervision of the commissioner, superintendent,
12 sheriffs, or chiefs of police or employees or agents thereof, and written consent of ~~the~~ his or her
13 parent or guardian ~~of such person is first obtained and such minors shall not be in violation of~~
14 ~~§16-9A-3 of this code article and chapter when acting under the direct supervision of the~~
15 ~~commissioner, superintendent, sheriffs or chiefs of police or employees or agents thereof and~~
16 ~~with the written consent of the parent or guardian.~~ It is unlawful for any person to use persons
17 ~~under the age of eighteen years~~ younger than the age of 21 to test compliance in any manner not
18 set forth ~~herein~~ in this subsection and the person ~~so~~ using a minor is guilty of a misdemeanor and,
19 upon conviction thereof, shall be fined the same amounts as set forth in ~~§16-9A-2~~ §16-9A-3 of
20 this code.

21 (b) A person charged with a violation of ~~§16-9A-2 and §16-9A-3~~ of this code, as the result
22 of an inspection under subsection (a) of this section has a complete defense if, at the time the

23 ~~cigarette, other tobacco product or tobacco-derived product, or cigarette wrapper~~, was sold,
24 delivered, bartered, furnished, or given:

25 (1) The buyer or recipient falsely evidenced that he or she was ~~eighteen~~ 21 years of age
26 or older;

27 (2) The appearance of the buyer or recipient was such that a prudent person would believe
28 the buyer or recipient to be ~~eighteen~~ 21 years of age or older; and

29 (3) ~~Such~~ The person carefully checked a driver's license or an identification card issued
30 by this state or another state of the United States, a passport, or a United States armed services
31 identification card presented by the buyer or recipient and acted in good faith and in reliance upon
32 the representation and appearance of the buyer or recipient in the belief that the buyer or recipient
33 was ~~eighteen~~ 21 years of age or older.

34 (c) Any fine collected after a conviction of violating ~~§16-9A-2~~ §16-9A-3 of this code, shall
35 be paid to the clerk of the court in which the conviction was obtained: *Provided*, That the clerk of
36 the court, upon receiving the fine, shall promptly notify the Commissioner of the West Virginia
37 Alcohol Beverage Control Administration of the conviction and the collection of the fine: *Provided*,
38 *however*, That any ~~community service~~ non-criminal, non-monetary penalty imposed ~~after a~~
39 ~~conviction of violating~~ on an employee of a retail outlet where tobacco products are sold who
40 violated §16-9A-3 of this code shall be recorded by the clerk of the court in which the ~~conviction~~
41 ~~was obtained~~ violation occurred: *Provided further*, That the clerk of the court upon being advised
42 that ~~community service~~ non-criminal, non-monetary obligations have been fulfilled, shall promptly
43 notify the Commissioner of the West Virginia Alcohol Beverage Control Administration of the
44 ~~conviction~~ violation and the satisfaction of imposed ~~community service~~ non-criminal, non-
45 monetary penalty.

46 (d) ~~The Commissioner of the West Virginia Alcohol Beverage Control Administration~~
47 Commissioner of the Bureau for Behavioral Health or his or her designee shall prepare and submit
48 to the Governor on the last day of September of each year, a report of the enforcement and

49 compliance activities undertaken pursuant to this section and the results of the ~~same. with a copy~~
50 ~~to the Secretary of the West Virginia Department of Health and Human Resources~~ activities. The
51 report shall be in the form and substance that the Governor shall submit to the applicable state
52 and federal programs.

**§16-9A-8. Selling of tobacco products, ~~tobacco-derived products, alternative nicotine~~
~~products or, vapor products in vending machines prohibited except in certain~~
places.**

1 No A person or business entity may not offer for sale any ~~cigarette~~ tobacco product ~~or~~
2 ~~tobacco-derived product~~, in a vending machine. Any person or business entity which violates the
3 provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined
4 \$250: *Provided*, That an establishment is exempt from this prohibition if individuals ~~under the age~~
5 ~~of eighteen~~ younger than 21 years of age are not permitted to be in the establishment or if the
6 establishment is licensed by the alcohol beverage control commissioner as a Class A licensee.
7 The alcohol beverage control commissioner shall promulgate rules for legislative approval
8 pursuant to §29A-3-1 *et seq.* of this code, to establish standards for the location and control of
9 the vending machines in Class A licensed establishments for the purpose of restricting access by
10 ~~minors~~ persons younger than 21 years of age.