WEST VIRGINIA CODE CHAPTER 16 ARTICLE 9A

WV Legislature

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

Intent. - The Legislature hereby declares it to be the policy and intent of this state to discourage and ban the use of tobacco products by minors. As basis for this policy, the Legislature hereby finds and accepts the medical evidence that tobacco products may cause lung cancer, lung or heart disease, emphysema, and other serious health problems while the use of smokeless tobacco may cause gum disease and oral cancer. It is the further intent of the Legislature to reduce tobacco use by keeping tobacco products out of the hands of youth and young adults by banning the sale of tobacco products to persons younger than 21 years of age to ease the personal tragedy and eradicate the severe economic loss associated with the use of tobacco and to provide the state with a citizenry free from the use of tobacco.

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§16-9A-2. Definitions.

For purposes of this article, the term:

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

"Tobacco product" means any product containing, made, or derived from tobacco, or nicotine, that is intended for human consumption, whether absorbed, inhaled or ingested by any other means, including but not limited, to cigarettes, cigars, cigarillos, little cigars, pipe tobacco, snuff, snus, chewing tobacco, or other common tobacco-containing products. A tobacco product also includes electronic smoking devices and any accessory of a tobacco product or electronic smoking device, whether or not any of these contain tobacco or nicotine, including but not limited to, filters, rolling papers, blunt or hemp wraps, and pipes. Tobacco product does not include drugs, devices, or combination products that are regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act.

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

(a) A person, firm, corporation, or business entity may not sell, give, or furnish, or cause to be sold, given, or furnished, any tobacco product, in any form, to any person younger than 21 years of age, which shall be verified by a valid driver's license, state identification card, or any valid and unexpired federally issued identification card such as a passport or military identification card:

(b) Any firm, corporation, or business entity that violates the provisions of subsection (a) of this section and any individual who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined $250 for the first offense. Upon any subsequent violation at the same location or operating unit, the firm, corporation, or business entity or the individual shall be fined as follows: At least $500, but not more than $750 for the second offense, if it occurs within two years of the first conviction; at least $750, but not more than $1,000 for the third offense, if it occurs within two years of the first conviction; and at least $2,000, but not more than $5,000 for any subsequent offenses, if the subsequent offense occurs within five years of the first conviction.

(c) Any person who violates subsection (a) of this section while acting as a non-management agent or employee of a retail outlet where tobacco products are sold is subject to non-criminal, non-monetary penalties, including, but not limited to, education classes, diversion programs, and community service. The alcohol beverage control commissioner shall promulgate rules for legislative approval pursuant to §29A-3-1 *et seq*. of this code, to establish standards for education classes, diversion programs, and community service.

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

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§16-9A-4. Use of tobacco products, in certain areas of certain public schools prohibited; penalty.

Any person who uses any tobacco product in any building or part thereof used for instructional purposes, in any public school of this state, as defined in this code, or on any lot or grounds actually used for instructional purposes of any public school of this state while the public school is used or occupied for school purposes, is guilty of a misdemeanor, and, upon conviction thereof, shall be punished for each offense by a fine of not less than one nor more than $5: *Provided*, That this prohibition shall not be construed to prevent the use of any tobacco product, in any faculty lounge, staff lounge, faculty office or other area of the public school not used for instructional purposes: *Provided, however*, That students do not have access to the area: *Provided further*, That nothing contained in this section shall be construed to prevent any county board of education from promulgating rules and regulations that further restrict the use of tobacco products, in any form, from any other part or section of any public school building under its jurisdiction.

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§16-9A-5. Outdoor billboard advertisements for smokeless tobacco products, nuisance affecting public health.

(a) Any outdoor billboard advertisement for snuff and chewing tobacco products must conspicuously display one of the following statements:

"WARNING: THIS PRODUCT MAY CAUSE MOUTH CANCER"

"WARNING: THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS"

"WARNING: THIS PRODUCT IS NOT A SAFE ALTERNATIVE TO

CIGARETTES"

The warnings shall be rotated every four months by the manufacturer, packager or importer of snuff and chewing tobacco products in an alternating sequence in the advertisement for each brand of such tobacco product. Such warning shall appear in the format and type style prescribed under 15 U.S.C. 1333 (b) (3), as amended.

No other warning, format, or type style in any outdoor billboard advertisement shall be required by any state or local statute or regulation.

(b) Any outdoor billboard advertisement that does not conform to the provisions of this section shall be deemed a nuisance affecting the public health.

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§16-9A-6.

Repealed.

Acts, 1993 1st Ex. Sess., Ch. 9.

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

(a) The Bureau for Behavioral Health of the Department of Human Services, the Superintendent of the West Virginia State Police, the sheriffs of the counties of this state, and the chiefs of police of municipalities of this state, may periodically conduct unannounced inspections at locations where tobacco products are sold or distributed to ensure compliance with the provisions of §16-9A-3 of this code and in such manner as to conform with applicable federal and state laws, rules, and regulations. Persons younger than 21 years of age may be enlisted by the commissioner, superintendent, sheriffs or chiefs of police or employees or agents thereof, to test compliance with these sections: *Provided*, That a person younger than 18 years of age may be used to test compliance only if the testing is conducted under the direct supervision of the commissioner, superintendent, sheriffs, or chiefs of police or employees or agents thereof, and written consent of his or her parent or guardian. It is unlawful for any person to use persons younger than the age of 21 to test compliance in any manner not set forth in this subsection and the person using a minor is guilty of a misdemeanor and, upon conviction thereof, shall be fined the same amounts as set forth in §16-9A-3 of this code.

(b) A person charged with a violation of §16-9A-3 of this code, as the result of an inspection under subsection (a) of this section has a complete defense if, at the time the tobacco product was sold, delivered, bartered, furnished, or given, the person carefully checked a driver's license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 years of age or older.

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

(d) The Commissioner of the Bureau for Behavioral Health or his or her designee shall prepare and submit to the Governor on the last day of September of each year, a report of the enforcement and compliance activities undertaken pursuant to this section and the results of the activities. The report shall be in the form and substance that the Governor

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shall submit to the applicable state and federal programs.

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§16-9A-8. Selling of tobacco products in vending machines prohibited except in certain places.

A person or business entity may not offer for sale any tobacco product in a vending machine. Any person or business entity which violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined $250: *Provided*, That an establishment is exempt from this prohibition if individuals younger than 21 years of age are not permitted to be in the establishment or if the establishment is licensed by the alcohol beverage control commissioner as a Class A licensee. The alcohol beverage control commissioner shall promulgate rules for legislative approval pursuant to §29A-3-1 *et seq*. of this code, to establish standards for the location and control of the vending machines in Class A licensed establishments for the purpose of restricting access by persons younger than 21 years of age.

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§16-9A-9. Selling of bidis prohibited; penalties.

(a) The Legislature finds that young people in this state have been enticed into smoking or using tobacco products by first using or experimenting with hand-rolled, flavored tobacco products called "bidis" or "beedies." Recognizing that the use of bidis is an emerging public health problem, the Legislature hereby adopts a public policy that the tobacco products known as "bidis" should not be imported, sold or distributed in the State of West Virginia.

(b) Notwithstanding any other provision of law, no person or business entity shall possess, import, sell, offer for sale or distribute any tobacco product commonly referred to as "bidis" or "beedies."

(c) For purposes of this section, "bidis" or "beedies" means a product containing tobacco that is wrapped in temburni leaf or leaves (diospyros melanoxylon) or tendu leaf or leaves (diospyros exculpra), or any other product or substance that is offered to or purchased by consumers as bidis or beedies. As used in this section, the terms "bidis" and "beedies" have the same meaning and may be used interchangeably.

(d) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500; and upon a second or subsequent conviction thereof, shall be fined not less than $1,000 nor more than $5,000 for each offense, or confined in a county or regional jail not more than six months, or both.

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§16-9A-10. The sale of cigarettes in a container other than its original factory-wrapped packaging prohibited; sale of individual cigarettes prohibited; and warnings required.

(a) A person or business entity may not sell or offer for sale cigarettes in any form other than an original factory-wrapped package.

(b) No person or business entity may sell or offer for sale cigarettes in a package that contains fewer than twenty cigarettes.

(c) No person or business entity may sell or offer for sale single cigarettes.

(d) A person or business entity may not sell or offer for sale cigarettes in any form that does not display the warnings with the display characteristics required by the provisions of 15 U.S.C. §1333(b)(3), as amended.

(e) Any person or business entity who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined $250.

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§16-9A-11. Smoking prohibited in motor vehicle while a person 16 years of age or less is present; penalty.

(a) As used in this section:

(1) "Lit tobacco product" means any lighted pipe, cigarette, cigar, or other lighted device or product containing a tobacco-based product manufactured or made for the purpose of smoking.

(2) "Motor vehicle" means a Class A, Class B, Class H, or Class J vehicle as those terms are defined in §17A-10-1 of this code.

(b) No person who is 18 years of age or older may smoke or possess a lit tobacco product in a motor vehicle if an individual 16 years of age or less is in the motor vehicle.

(c) Any person who violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $25. No court costs or other fees may be assessed for a violation of this section.

(d) Enforcement of this section may only be accomplished as a secondary action when a driver of a vehicle, as defined in this section, has been detained for probable cause of violating another section of this code.

(e) Each time a driver of a vehicle is detained for probable cause of violating another provision of this code and is cited for the offense created pursuant to this section, it shall be considered a single offense regardless of the number of individuals 16 years of age or less in the motor vehicle.

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