

HB 4237

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2014



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4237

(By Delegates Lawrence, Barrett, Guthrie,
Skinner, Perdue, Campbell, Marshall, Poore,
Fleischauer, Staggers and Evans, A.)



Passed March 8, 2014

In effect ninety days from passage.

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FOR

H. B. 4237

**(BY DELEGATES LAWRENCE, BARRETT, GUTHRIE,
SKINNER, PERDUE, CAMPBELL, MARSHALL, POORE,
FLEISCHAUER, STAGGERS AND EVANS, A.)**

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AN ACT to amend and reenact §16-9A-2, §16-9A-3, §16-9A-4, §16-9A-7 and §16-9A-8 of the Code of West Virginia, 1931, as amended, all relating to restrictions placed on tobacco products and tobacco-derived products containing nicotine; defining terms; defining vapor products and alternative nicotine products as tobacco-derived products; creating exclusions; limiting the use of and sale of tobacco-derived products to persons under the age of eighteen in the same manner as tobacco; prohibiting the sale or furnishing of tobacco and tobacco-derived products to individuals under eighteen years of age; prohibiting the use and possession of tobacco or tobacco-derived products by an individual under eighteen years of age; allowing employers to dismiss an employee for cause for the knowing or intentional sale or furnishing of

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tobacco or tobacco-derived to someone under the age of eighteen; allowing for the conduct of unannounced inspections to ensure compliance with sales restrictions; restricting the use of tobacco and tobacco-derived products on school grounds; restricting the sale of tobacco and tobacco-derived products in vending machines; creating misdemeanor offenses and criminal penalties relating to tobacco-derived products that are consistent with tobacco products; creating a defense in certain circumstances; and authorizing continued rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §16-9A-2, §16-9A-3, §16-9A-4, §16-9A-7 and §16-9A-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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
3 any product, containing, made or derived from tobacco, or
4 containing nicotine derived from tobacco, that is intended for
5 human consumption, whether smoked, breathed, chewed,
6 absorbed, dissolved, inhaled, vaporized, snorted, sniffed or
7 ingested by any other means, including but not limited to
8 cigarettes, cigars, cigarillos, little cigars, pipe tobacco, snuff,
9 snus, chewing tobacco or other common tobacco-containing
10 products. A "tobacco-derived product" includes electronic
11 cigarettes or similar devices, alternative nicotine products and

12 vapor products. "Tobacco product" or "tobacco-derived product"
13 does not include any product that is regulated by the United
14 States Food and Drug Administration under Chapter V of the
15 Food, Drug and Cosmetic Act.

16 (2) "Alternative nicotine product" means any non-combusti-
17 ble product containing nicotine that is intended for human
18 consumption, whether chewed, absorbed, dissolved or ingested
19 by any other means. "Alternative nicotine product" does not
20 include any tobacco product, vapor product or product regulated
21 as a drug or device by the United States Food and Drug Admin-
22 istration under Chapter V of the Food, Drug and Cosmetic Act.

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

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

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

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

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

47 (c) Any firm or corporation that violates any of the provi-
48 sions of subsection (b) of this section and any individual who
49 violates any of the provisions of subsection (b) of this section is
50 guilty of a misdemeanor and, upon conviction thereof, shall be
51 fined \$50 for the first offense. Upon any subsequent violation at
52 the same location or operating unit, the firm, corporation or
53 individual shall be fined as follows: At least \$250 but not more
54 than \$500 for the second offense, if it occurs within two years of
55 the first conviction; at least \$500 but not more than \$750 for the
56 third offense, if it occurs within two years of the first conviction;
57 and at least \$1,000 but not more than \$5,000 for any subsequent
58 offenses, if the subsequent offense occurs within five years of
59 the first conviction.

60 (d) Any individual who knowingly and intentionally sells,
61 gives or furnishes or causes to be sold, given or furnished to any
62 person under the age of eighteen years any cigar, cigarette, snuff,
63 chewing tobacco, tobacco product or tobacco-derived product,
64 in any form, is guilty of a misdemeanor and, upon conviction
65 thereof, for the first offense shall be fined not more than \$100;
66 upon conviction thereof for a second or subsequent offense, is
67 guilty of a misdemeanor and shall be fined not less than \$100
68 nor more than \$500.

69 (e) Any employer who discovers that his or her employee
70 has sold or furnished tobacco products or tobacco-derived
71 products to minors may dismiss such employee for cause. Any
72 such discharge shall be considered as "gross misconduct" for the
73 purposes of determining the discharged employee's eligibility
74 for unemployment benefits in accordance with the provisions of
75 section three, article six, chapter twenty-one-a of this code, if the
76 employer has provided the employee with prior written notice in
77 the workplace that such act or acts may result in their termina-
78 tion 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 eighteen years; penalties.

1 No person under the age of eighteen years shall have on or
2 about his or her person or premises or use any cigarette, or
3 cigarette paper or any other paper prepared, manufactured or
4 made for the purpose of smoking any tobacco products, in any
5 form; any pipe, snuff, chewing tobacco, tobacco product or
6 tobacco-derived product: *Provided*, That minors participating in
7 the inspection of locations where tobacco products or tobacco-
8 derived products, are sold or distributed pursuant to section
9 seven of this article is not considered to violate the provisions of
10 this section. Any person violating the provisions of this section
11 shall for the first violation be fined \$50 and be required to serve
12 eight hours of community service; for a second violation, the
13 person shall be fined \$100 and be required to serve sixteen hours
14 of community service; and for a third and each subsequent
15 violation, the person shall be fined \$200 and be required to serve
16 twenty-four hours of community service. Notwithstanding the
17 provisions of section two, article five, chapter forty-nine, the
18 magistrate court has concurrent jurisdiction.

§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 person who shall smoke a cigarette or cigarettes, pipe,
2 cigar or other implement, of any type or nature, designed, used
3 or employed for smoking any tobacco or tobacco product; or
4 who shall use any tobacco product or tobacco-derived product in
5 any building or part thereof used for instructional purposes, in
6 any school of this state, as defined in section one, article one,
7 chapter eighteen of this code, or on any lot or grounds actually
8 used for instructional purposes of any such school of this state
9 while such school is used or occupied for school purposes, shall
10 be guilty of a misdemeanor, and, upon conviction thereof, shall

11 be punished for each offense by a fine of not less than one nor
12 more than five dollars: *Provided*, That this prohibition shall not
13 be construed to prevent the use of any tobacco or tobacco
14 product or tobacco-derived product, in any faculty lounge or
15 staff lounge or faculty office or other area of said public school
16 not used for instructional purposes: *Provided, however*, That
17 students do not have access thereto: *Provided further*, That
18 nothing herein contained shall be construed to prevent any
19 county board of education from promulgating rules and regula-
20 tions that further restrict the use of tobacco products or tobacco-
21 derived products, in any form, from any other part or section of
22 any public school building under its jurisdiction.

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

1 (a) The commissioner of the West Virginia alcohol beverage
2 control administration, the Superintendent of the West Virginia
3 State Police, the sheriffs of the counties of this state and the
4 chiefs of police of municipalities of this state, may periodically
5 conduct unannounced inspections at locations where tobacco
6 products or tobacco-derived products, are sold or distributed to
7 ensure compliance with the provisions of sections two and three
8 of this article and in such manner as to conform with applicable
9 federal and state laws, rules and regulations. Persons under the
10 age of eighteen years may be enlisted by such commissioner,
11 superintendent, sheriffs or chiefs of police or employees or
12 agents thereof to test compliance with these sections: *Provided*,
13 That the minors may be used to test compliance only if the
14 testing is conducted under the direct supervision of the commis-
15 sioner, superintendent, sheriffs or chiefs of police or employees
16 or agents thereof and written consent of the parent or guardian
17 of such person is first obtained and such minors shall not be in
18 violation of section three of this article and chapter when acting

19 under the direct supervision of the commissioner, superinten-
20 dent, sheriffs or chiefs of police or employees or agents thereof
21 and with the written consent of the parent or guardian. It is
22 unlawful for any person to use persons under the age of eighteen
23 years to test compliance in any manner not set forth herein and
24 the person so using a minor is guilty of a misdemeanor and, upon
25 conviction thereof, shall be fined the same amounts as set forth
26 in section two of this article.

27 (b) A person charged with a violation of section two or three
28 of this article as the result of an inspection under subsection (a)
29 of this section has a complete defense if, at the time the cigarette,
30 other tobacco product or tobacco-derived product, or cigarette
31 wrapper, was sold, delivered, bartered, furnished or given:

32 (1) The buyer or recipient falsely evidenced that he or she
33 was eighteen years of age or older;

34 (2) The appearance of the buyer or recipient was such that a
35 prudent person would believe the buyer or recipient to be
36 eighteen years of age or older; and

37 (3) Such person carefully checked a driver's license or an
38 identification card issued by this state or another state of the
39 United States, a passport or a United States armed services
40 identification card presented by the buyer or recipient and acted
41 in good faith and in reliance upon the representation and
42 appearance of the buyer or recipient in the belief that the buyer
43 or recipient was eighteen years of age or older.

44 (c) Any fine collected after a conviction of violating section
45 two of this article shall be paid to the clerk of the court in which
46 the conviction was obtained: *Provided*, That the clerk of the
47 court upon receiving the fine shall promptly notify the Commis-
48 sioner of the West Virginia Alcohol Beverage Control Adminis-
49 tration of the conviction and the collection of the fine: *Provided*,
50 *however*, That any community service penalty imposed after a
51 conviction of violating section three of this article shall be

52 recorded by the clerk of the court in which the conviction was
53 obtained: *Provided further*, That the clerk of the court upon
54 being advised that community service obligations have been
55 fulfilled shall promptly notify the Commissioner of the West
56 Virginia Alcohol Beverage Control Administration of the
57 conviction and the satisfaction of imposed community service
58 penalty.

59 (d) The Commissioner of the West Virginia Alcohol
60 Beverage Control Administration or his or her designee shall
61 prepare and submit to the Governor on the last day of September
62 of each year a report of the enforcement and compliance
63 activities undertaken pursuant to this section and the results of
64 the same, with a copy to the Secretary of the West Virginia
65 Department of Health and Human Resources. The report shall be
66 in the form and substance that the Governor shall submit to the
67 applicable state 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 person or business entity may offer for sale any cigarette,
2 tobacco product or tobacco-derived product, in a vending
3 machine. Any person or business entity which violates the
4 provisions of this section is guilty of a misdemeanor and, upon
5 conviction thereof, shall be fined \$250: *Provided*, That an
6 establishment is exempt from this prohibition if individuals
7 under the age of eighteen years are not permitted to be in the
8 establishment or if the establishment is licensed by the alcohol
9 beverage control commissioner as a Class A licensee. The
10 alcohol beverage control commissioner shall promulgate rules
11 pursuant to article three, chapter twenty-nine-a of this code to
12 establish standards for the location and control of the vending
13 machines in Class A licensed establishments for the purpose of
14 restricting access by minors.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman, House Committee



Member ~~Chairman~~, Senate Committee

Originating in the House.

In effect ninety days from passage.



Clerk of the House of Delegates



Clerk of the Senate



Speaker of the House of Delegates



President of the Senate

The within is approved this the 28th
day of March, 2014.



Governor

PRESENTED TO THE GOVERNOR

MAR 28 2014

Time

10:45 am