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.
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
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.

(a) For purposes of this article, the term:

1 (1) "Tobacco product" and "tobacco-derived product" means any product, containing, made or derived from tobacco, or containing nicotine derived from tobacco, that is intended for human consumption, whether smoked, breathed, chewed, absorbed, dissolved, inhaled, vaporized, snorted, sniffed 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-derived product" includes electronic cigarettes or similar devices, alternative nicotine products and
vapor products. “Tobacco product” or “tobacco-derived product”
does not include any product that is regulated by the United
States Food and Drug Administration under Chapter V of the
Food, Drug and Cosmetic Act.

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

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

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

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

(2) Any cigar, cigarette, snuff, chewing tobacco or tobacco
product, in any form; or
(3) Any tobacco-derived product, alternative nicotine product or vapor product.

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

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

(e) Any employer who discovers that his or her employee has sold or furnished tobacco products or tobacco-derived products to minors may dismiss such employee for cause. Any such discharge shall be considered as "gross misconduct" for the purposes of determining the discharged employee's eligibility for unemployment benefits in accordance with the provisions of section three, article six, chapter twenty-one-a of this code. If the employer has provided the employee with prior written notice in the 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 eighteen years; penalties.

No person under the age of eighteen years shall have on or about his or her person or premises or use any cigarette, or cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco products, in any form; any pipe, snuff, chewing tobacco, tobacco product or tobacco-derived product: Provided, That minors participating in the inspection of locations where tobacco products or tobacco-derived products, are sold or distributed pursuant to section seven of this article is not considered to violate the provisions of this section. Any person violating the provisions of this section shall for the first violation be fined $50 and be required to serve eight hours of community service; for a second violation, the person shall be fined $100 and be required to serve sixteen hours of community service; and for a third and each subsequent violation, the person shall be fined $200 and be required to serve twenty-four hours of community service. Notwithstanding the provisions of section two, article five, chapter forty-nine, the 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.

Every person who shall smoke a cigarette or cigarettes, pipe, cigar or other implement, of any type or nature, designed, used or employed for smoking any tobacco or tobacco product; or who shall use any tobacco product or tobacco-derived product in any building or part thereof used for instructional purposes, in any school of this state, as defined in section one, article one, chapter eighteen of this code, or on any lot or grounds actually used for instructional purposes of any such school of this state while such school is used or occupied for school purposes, shall be 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 five dollars: Provided, That this prohibition shall not
be construed to prevent the use of any tobacco or tobacco
product or tobacco-derived product, in any faculty lounge or
staff lounge or faculty office or other area of said public school
not used for instructional purposes: Provided, however, That
students do not have access thereto: Provided further, That
nothing herein contained shall be construed to prevent any
county board of education from promulgating rules and regula-
tions that further restrict the use of tobacco products or tobacco-
derived products, in any 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 to-
bacco, tobacco products, vapor products or alterna-
tive nicotine products are sold; use of minors in
inspections; annual reports; penalties; defenses.

(a) The commissioner of the West Virginia alcohol beverage
control administration, 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 or tobacco-derived products, are sold or distributed to
ensure compliance with the provisions of sections two and three
of this article and in such manner as to conform with applicable
federal and state laws, rules and regulations. Persons under the
age of eighteen years may be enlisted by such commissioner,
superintendent, sheriffs or chiefs of police or employees or
agents thereof to test compliance with these sections: Provided,
That the minors may be used to test compliance only if the
testing is conducted under the direct supervision of the commis-
sioner, superintendent, sheriffs or chiefs of police or employees
or agents thereof and written consent of the parent or guardian
of such person is first obtained and such minors shall not be in
violation of section three of this article and chapter when acting
under the direct supervision of the commissioner, superintendent, sheriffs or chiefs of police or employees or agents thereof and with the written consent of the parent or guardian. It is unlawful for any person to use persons under the age of eighteen years to test compliance in any manner not set forth herein and the person so using a minor is guilty of a misdemeanor and, upon conviction thereof, shall be fined the same amounts as set forth in section two of this article.

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

1. The buyer or recipient falsely evidenced that he or she was eighteen years of age or older;

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

3. Such 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 eighteen years of age or older.

(c) Any fine collected after a conviction of violating section two of this article 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 community service penalty imposed after a conviction of violating section three of this article shall be
recorded by the clerk of the court in which the conviction was obtained: Provided further, That the clerk of the court upon being advised that community service obligations have been fulfilled shall promptly notify the Commissioner of the West Virginia Alcohol Beverage Control Administration of the conviction and the satisfaction of imposed community service penalty.

(d) The Commissioner of the West Virginia Alcohol Beverage Control Administration 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 same, with a copy to the Secretary of the West Virginia Department of Health and Human Resources. The report shall be in the form and substance that the Governor shall submit to the 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.

No person or business entity may offer for sale any cigarette, tobacco product or tobacco-derived 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 under the age of eighteen years 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 pursuant to article three, chapter twenty-nine-a 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 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 bill is approved this the 28th day of March, 2014.

Governor
PRESENTED TO THE GOVERNOR

MAR 28, 2019

Time 10:45 AM