



West Virginia

Smoking Restrictions

Overall Summary of Smoking Restrictions

No broad restrictions on smoking in state law; there are laws, regulation or policies that restrict and/or prohibit smoking in state government buildings, schools and child care facilities. See below for more details.

W. VA. CODE §§ 16-9A-4 (1987) & 31-20-5b (1997); WV Div. of Personnel Policy, Smoking Restrictions in the Workplace (2004); WV CSR §§ 64-21-10 (1997), 64-21-20 (1997) & 126-66-1 et seq. (1998).

Exceptions to the Law

No broad restrictions in state law, so places where smoking is prohibited are the exception.

Stronger Local Laws on Smoking

Stronger local regulations by county/city boards of health further restricting smoking are specifically allowed by decision of the West Virginia Supreme Court. Stronger local laws/ordinances by city and county governments are allowed as well.

Note: In West Virginia, all 55 counties have regulations restricting smoking of varying strength promulgated by county boards of health as of January 1, 2011. All county regulations are stronger than state law.

Government Buildings

It is the responsibility of the appointing authority to ensure that all state places of employment maintain a smokefree environment and to make both state employees and the public aware of their responsibility to ensure this smokefree environment. Therefore, smoking by employees of the state is prohibited in their places of employment and in adjacent nonsmoking spaces. Appointing authorities are not required to make accommodations for individual outdoor smoking areas. Public waiting rooms and receiving areas shall be smokefree, and smoking restrictions shall be actively enforced by the individuals responsible for those areas. State residential facilities, including but not limited to, hospitals, group homes, and prisons shall comply with this policy to the maximum extent possible.

WV Div. of Personnel Policy, Smoking Restrictions in the Workplace (2004).

The West Virginia Regional Jail and Correctional Facility Authority shall prohibit the use or possession of tobacco products by inmates held in facilities operated solely by the authority. The authority may establish smoking cessation programs to facilitate the prohibition.

W. VA. CODE § 31-20-5b (1997).

Private Workplaces

No restrictions.

Schools

No person shall distribute or use any tobacco product at all times in any building, property or vehicle leased, owned or operated by a county board of education, a Regional Education Service Agency (RESA), the State Department of Education or the State Board of Education. This policy shall apply to any private building, or other property, including automobiles or other vehicles used for school activities when students or staff is present. Individuals supervising students off school grounds are prohibited from distributing or using any tobacco product while in the presence of students or any time while engaged in any activities directly involving students.

WV CSR §§ 126-66-1 et seq. (1998).

Except as specified above, the use of all tobacco products and tobacco-derived products is prohibited, including on any lot or grounds of the school used for instructional purposes, while the school is occupied for school purposes except for faculty or staff lounges or offices that students do not have access to. Violation is a misdemeanor punishable by a fine of \$1 to \$5 for each offense.

W. VA. CODE § 16-9A-4 (2014).

Child Care Facilities

Staff members of child care centers shall not use tobacco in any form while engaged in any food service activities, feeding children or administering to the children's needs. Smoking is also prohibited in all children's areas. 'Child care center' is defined as any child care facility providing nonresidential child care for seven or more children for all or part of a day. The term 'child care center' includes: day care centers, family day care facilities, nursery schools, and preschools. Violators are guilty of a misdemeanor punishable by a fine of not more than \$200, imprisonment for not more than 30 days or both the fine and imprisonment.

WV CSR §§ 64-21-10 & 64-21-20 (1997).

Health Care Facilities

No restrictions.

Restaurants

No restrictions.

Bars

No restrictions.

Tobacco Taxes

Tax on Cigarettes

Tax rate per pack of 20: \$1.20

Date last changed: July 1, 2016 -- from 55 cents to \$1.20

Year first enacted: 1947

W. VA. CODE § 11-17-3(b) (2016).

Use of Cigarette Tax Revenue - Summary

Revenue from the cigarette tax is distributed to the state General Revenue Fund.

W. VA. CODE § 11-17-3(a) (2016).

Taxes on Other Tobacco Products

E-Cigarette Liquid: 7.5 cents/milliliter or fraction thereof;

All other tobacco products: 12% of the wholesale price.

W. VA. CODE § 11-17-3(c) & 11-17-4b (2016).

Use of Other Tobacco Products Tax Revenue - Summary

Revenue from the tax on other tobacco products and e-cigarette liquid is distributed to the state General Revenue Fund.

W. VA. CODE § 11-17-3(a) (2016).

Revenue Collected from Cigarette Taxes

Revenue collected in Fiscal Year 2012 (July 1, 2011 to June 30, 2012): \$102,866,000

Tobacco Control Program Funding

Source of funding

State funding for West Virginia's tobacco control program comes from the state general fund.

State Funding Details

West Virginia appropriated \$4,871,887 for tobacco prevention and cessation programs in FY2015 (July 1, 2014 to June 30, 2015). In FY2014, \$5,260,488 was appropriated.

FY2015 Annual Budget (S.B. 306) enacted 3/19/14 and effective 7/1/14.

Funding for Tobacco Control Programs

FY2015 State Funding for Tobacco Control Programs: \$4,871,887

FY2015 Federal Funding for State Tobacco Control Programs: \$2,153,472*

FY2015 Total Funding for State Tobacco Control Programs: \$7,025,359

Funding Level Recommended by CDC: \$27,400,000

Percentage of CDC-Recommended Level: 25.6%

*Includes regular and supplemental quitline funding from the Centers for Disease Control and Prevention and state youth access contract funding from the U.S. Food and Drug Administration.

Laws Restricting Youth Access to Tobacco Products

Compliance/Enforcement

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 the state, shall periodically conduct random unannounced inspections at locations where tobacco products or tobacco-derived products as defined are sold or distributed. Persons under 18 years of age may be enlisted to test compliance with these sections if the tests are conducted under the direct supervision of the acting authority and written parental consent is first obtained. Any other use of a minor to test compliance is a misdemeanor, punishable by the same fine listed under the Penalties for Sales to Minors section.

W. VA. CODE § 16-9A-7 (2014).

Penalties for Sales to Minors

No person, firm or corporation may sell, give or furnish, or cause to be sold or furnished any cigar, cigarette, snuff, chewing tobacco or tobacco product, in any form; tobacco-derived product, alternative nicotine product or vapor product or cigarette papers to a person under age 18. Firms or corporations that violate these provisions are guilty of a misdemeanor and shall be fined \$50 for the first offense; \$250 to \$500 for the second offense within two years of the first conviction; \$500 to \$750 for the third offense within two years of the first conviction; and \$1,000 to \$5,000 for any subsequent offenses within five years of the first conviction. 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 18 years any of these products, in any form, is guilty of a misdemeanor and, upon conviction thereof, for the first offense shall be fined not more than \$100; and for a second or subsequent offense, shall be fined \$100 to \$500. It is an affirmative defense to prosecution if the buyer or recipient falsely evidenced that he was 18 years of age or older; the appearance of the buyer or recipient was such that a prudent person would believe them to be 18 years of age or older; and such person carefully checked specified identification 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 they were 18 years of age or older. An employer may dismiss an employee for cause for selling or furnishing tobacco products to minors, which could affect the employee's ability to collect unemployment benefits.

W. VA. CODE §§ 16-9A-2 & 16-9A-7 (2014).

Sign Posting Requirements

No state law/regulation.

Restrictions on Sales of Bidi Cigarettes

The possession, importation, distribution and sale of bidis is prohibited. Violation is a misdemeanor and is subject to a fine of up to \$500. Second and subsequent violations are subject to a fine of not less than \$1,000 and not more than \$5,000 for each offense and/or a possible jail term for up to six months.

W. VA. CODE § 16-9A-9 (2001).

Purchase/Possession of Tobacco Products by Minors

No person under the age of 18 years shall have on or about their person or premises or use any cigarette paper or any other paper for smoking any tobacco products, in any form; any pipe, snuff, chewing tobacco or tobacco product; or tobacco-derived product. This does not apply to minors participating in compliance inspections. 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 16 hours of community service; and for a third and each subsequent violation, the person shall be fined \$200 and be required to serve 24 hours of community service.

W. VA. CODE § 16-9A-3 (2014).

Placement of Tobacco Products

No state law/regulation.

Internet Sales of Tobacco Products

No person shall mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless prior to the first delivery sale to a consumer, the person complies with: 1) specific age verification requirements, including, obtaining a certification from the prospective consumer including date of birth and verification of this information; 2) disclosure requirements; 3) shipping requirements, including use of a delivery service that requires the person to sign to accept delivery and to display a photographic identification; 4) registration and reporting requirements; and 5) tax collection requirements. A first violation of any provision of this article shall be a misdemeanor punishable by a fine of \$500 or five times the retail value of the cigarettes involved, whichever is greater. Any person who knowingly violates any provision of this article, or who knowingly and falsely submits a certification in another person's name, shall be guilty of a misdemeanor and be fined \$1,000 or ten times the retail value of the cigarettes involved, whichever is greater, or confined not more than six months, or both. Failure to collect or remit taxes is a civil penalty of five times the retail value of the cigarettes involved, in addition to any other penalty.

W. VA. CODE §§ 16-9E-1 to 16-9E-8 (2003).

Note: Some parts of this law may be affected by the U.S. Supreme Court decision in *Rowe v. New Hampshire Motor Transport Association*, decided February 20, 2008.

State Preemption of Local Youth Access Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger laws/ordinances further restricting youth access to tobacco products.

Photo Identification Requirements to Buy Tobacco Products

No state law/regulation.

Minimum Sales Age for Tobacco Products

18

Tobacco Product Samples/Minimum Sales Amounts for Tobacco Products

Tobacco Product Samples

No person, firm or corporation may give or furnish, or cause to be given or furnished any tobacco product in any form, cigarette paper, tobacco-derived product, alternative nicotine product or vapor product to a person under age 18. Violators are guilty of a misdemeanor and subject to the same fines as selling these products to minors.

W. VA. CODE § 16-9A-2 (2014).

Minimum Tobacco Products Sales Amounts

A person or business entity may not sell or offer for sale cigarettes: 1) in any form other than an original factory-wrapped package; 2) in a package that contains fewer than 20 cigarettes; 3) as a single cigarette; or 4) in any form that does not display the warnings required by the Federal Cigarette Labeling and Advertising Act, as amended. Any person or business entity that violates these provisions is guilty of a misdemeanor and subject to a fine of \$250.

W. VA. CODE § 16-9A-10 (2009).

State Preemption of Local Samples Laws

No specific provision concerning preemption in state law; local communities are allowed to pass stronger laws/ordinances further restricting sampling or minimum sales amounts of tobacco products.

Sales of Tobacco Products from Vending Machines

Vending Machine Placement

No person or business entity may offer for sale any cigarette, tobacco product or tobacco-derived product as defined in a vending machine. An establishment is exempt from this prohibition if individuals under the age of 18 years are not permitted to be in the establishment or if the establishment is licensed by the Alcohol Beverage Control Commission as a Class A licensee.

W. VA. CODE § 16-9A-8 (2014).

Penalties for Vending Machine Violations

Any person or business entity which violates the provisions concerning placement of tobacco product vending machines is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$250.

W. VA. CODE § 16-9A-8 (2014).

Sign Posting Requirements for Vending Machines

No state law/regulation.

State Preemption of Local Vending Machine Laws

No specific provision concerning preemption in state law; local communities are likely allowed to pass stronger laws/ordinances further restricting the placement of and/or required sign posting on tobacco product vending machines.

Licensing Requirements for Tobacco Products

Overall Summary of Licensing Requirements

Each person who sells cigarettes, or other tobacco products or cigarette wrappers at wholesale or retail shall apply for and receive a license. The cigarette license application shall be a part of the business registration certificate application or the renewal application for a business registration certificate. Any person or company who sells any cigarettes, or other tobacco products or cigarette wrappers at wholesale or retail without obtaining a license is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$100 or more than \$250.

W. VA. CODE § 11-12-4a (2000).

License Fees

No fees specified.

License Suspension for Sales to Minors

No provisions.

License Required for Retailers of Cigarettes

Yes

License Required for Retailers of Other Tobacco Products

Yes

License Required for Wholesalers/Distributors of Cigarettes

Yes

License Required for Wholesalers/Distributors of Other Tobacco Products

Yes

Smoking Protection Laws

Smoking Protection Law

It shall be unlawful for any public or private employer to refuse to hire any individual or to discharge any employee or otherwise disadvantage or penalize any employee with respect to compensation, terms, conditions or privileges of employment solely because such individual uses tobacco products off the premises of the employer during non-working hours. This section does not apply to a nonprofit organization, which, as one of its primary purposes or objectives, discourages the use of one or more tobacco products by the general public. An employer may offer a health, disability or life insurance policy that makes distinctions between employees for type or price of coverage based on the employee's use of tobacco products provided, that any differential premium rates charged to employees must reflect differential costs to the employee and provided, that the employer must provide employees with a statement delineating the differential rates used by its insurance carriers.

W. VA. CODE § 21-3-19 (1992).

Advertising & Promotion

Advertising & Promotion

Any outdoor billboard advertisement for smokeless 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 such products in an alternating sequence. Any outdoor billboard advertisement that does not conform to the provisions of this section shall be deemed a nuisance affecting public health.

W. VA. CODE § 16-9A-5 (1987).

Product Disclosure

Product Disclosure

No state law/regulation.

Divestment

Divestment

No state law/regulation.

Liability

Tobacco Industry Liability

The bond that any appellant who is a signatory or a successor to a signatory of the Master Settlement Agreement (MSA) or who controls or is under common control with a signatory of the MSA may be required to post to stay execution on a judgment during an appeal in any cause of action shall be set in accordance with existing law except that an appeal bond may not exceed \$100 million for compensatory damages and all other portions of a judgment other than punitive damages and \$100 million for punitive damages unless the appellee proves by a preponderance of the evidence that the appellant or appellants are purposefully dissipating or diverting assets outside of the ordinary course of its business to the effect that the ability to pay the ultimate judgment is impaired.

W. VA. CODE § 4-11A-4 (2001).

Use of Tobacco Settlement Dollars

Use of Tobacco Settlement Dollars - Summary

All of West Virginia's future Master Settlement Agreement (MSA) payments were sold to the Tobacco Settlement Finance Authority in 2007 for a lump sum payment up front, see Securitization section. Some MSA dollars from prior to 2007 may remain in the Tobacco Settlement Fund or the Revenue Shortfall Reserve Fund_Part B, which is used as specified below. All the money from what was previously the West Virginia Tobacco Settlement Medical Trust Fund was transferred into this fund.

W. VA. CODE §§ 4-11A-3 to 4-11A-17 (2007) & 11B-2-220 (2014).

Use of Tobacco Settlement Dollars - Detailed Information

The Tobacco Settlement Fund is created as a special revenue account in the state treasury. Any monies in the Tobacco

Settlement Fund are available for appropriation by the legislature for: 1) reserve funds for continued support of the programs offered by the public employees insurance agency; 2) funding for expansion of the federal-state Medicaid program as authorized by the Legislature or mandated by the federal government; 3) funding for public health programs, services and agencies, and 4) funding for any state owned or operated health facilities. No new tobacco settlement money has been transferred to the fund since future annual Master Settlement Agreements payments were sold as bonds through the Tobacco Settlement Finance Authority for a smaller lump sum payment up front in 2007.

W. VA. CODE § 4-11A-3 (2007).

In 2006, there was created in the state treasury a fund known as the Revenue Shortfall Reserve Fund_Part B. All the money from what was previously the West Virginia Tobacco Settlement Medical Trust Fund was transferred into this fund. The legislature can make an appropriation from this fund for revenue shortfalls, emergency revenue needs caused by acts of God/natural disasters or for other fiscal needs as determined solely by the legislature, except the money can not be appropriated unless the money in the main Revenue Shortfall Reserve Fund has been expended. Any appropriation made from the fund shall be made only in instances of revenue shortfalls or fiscal emergencies of an extraordinary nature. The interest earned on moneys in this fund can be appropriated by the legislature after June 30, 2025 for: reserve funds for continued support of the programs offered by the public employees insurance agency, funding for expansion of the federal-state Medicaid program as authorized by the Legislature or mandated by the federal government, funding for public health programs, services and agencies, and funding for any state owned or operated health facilities.

W. VA. CODE § 11B-2-220 (2014).

Securitization

The Tobacco Settlement Finance Authority is created to sell, pledge or assign the state's share of the MSA sold to the authority pursuant to one or more sales agreements. The sale of the state's share of the MSA shall be executed by executive order of the governor, but the lump sum payment received by the state shall not be less than \$800 million.

W. VA. CODE §§ 4-11A-3 to 4-11A-17 (2007).

Fire Safety Standards for Cigarettes

Law Setting Fire Safety Standard for Cigarettes

To help prevent cigarette caused fires, except as provided in subsection (g) of section 47-25-3 and 47-25-10 West Virginia Code, no cigarettes may be sold or offered for sale in West Virginia or offered for sale or sold to persons located in West Virginia, unless: (i) The cigarettes have been tested in accordance with the test method and meet the performance standard specified section 47-25-3 West Virginia Code; (ii) a written certification has been filed by the manufacturer with the State Fire Marshal in accordance with section 47-25-4 West Virginia Code; and (iii) the cigarettes have been marked in accordance with section 47-25-5 West Virginia Code.

W. VA. CODE § 47-25-1 to 47-25-12 (2010).

Penalties for Fire Safety Violations

A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of section 47-25-3 above is subject to a civil penalty not to exceed \$100 for each pack

of cigarettes sold or offered for sale. Penalties against any such person shall not exceed \$100,000 during any 30-day period. A retail dealer is subject to the same civil penalty for violation, but penalties shall not exceed \$25,000 for any retail dealer during any 30-day period. In addition, any manufacturer of cigarettes who knowingly makes a false certification as required by section 47-25-4 above is subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each false certification.

W. VA. CODE § 47-25-1 to 47-25-12 (2010).

Activity

Recent Legislative Activity

Tobacco Control Program Funding: Appropriated \$5,650,000 for tobacco prevention and cessation programs in FY2012. FY2012 Annual Budget (H.B. 2012) enacted 3/23/11 and effective 7/1/11.

Tobacco Settlement/Non-Participating Manufacturers: Amends state law that help enforce the Master Settlement Agreement, specifically provisions in the law dealing with payment into escrow funds by non-participating manufacturers. H.B. 2969 enacted 3/30/11 and effective 6/9/11.