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COMMITTEE SUBSTITUTE

FOR

H. B. 2773

(By Delegates Lawrence, Fragale, Perdue, Sobonya,

Paxton, D. Walker, Stowers, Moore, Eldridge, Hall and Smith)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §16-9A-2 and §16-9A-3 of the Code of West Virginia, 1931, as amended, all relating to prohibited access and usage of tobacco products by minors; increasing the monetary penalties for selling tobacco products to minors; providing that the sale or furnishing of tobacco products to minors may constitute grounds for dismissal as an act of misconduct; clarifying the impact of such a dismissal on the discharged employees' eligibility to receive unemployment benefits; and increasing the monetary penalties for minors possessing tobacco products.

Be it enacted by the Legislature of West Virginia:

That §16-9A-2 and §16-9A-3 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. Sale or gift of cigarette, cigarette paper, pipe, cigar, snuff, or chewing tobacco 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) 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; or
 - (2) Any cigar, cigarette, snuff, chewing tobacco or tobacco product, in any form.
- (b) Any firm or corporation that violates any of the provisions of subdivision (1) or (2), subsection (a) of this section and any individual who violates any of the provisions of subdivision (1), subsection (a) 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.
- (c) 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 or tobacco 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.
- (d) Any employer who discovers that his or her employee has sold or furnished tobacco 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 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; or, any pipe, snuff, chewing tobacco or tobacco product: *Provided*, That minors participating in the inspection of locations where tobacco 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.