

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4259

BY DELEGATES ROHRBACH, STANSBURY, BATES, BYRD,
ELLINGTON, HOUSEHOLDER, MILLER, PERDUE, WAXMAN

AND B. WHITE

[Introduced January 25, 2016; Referred
to the Committee on Health and Human Resources then
the Judiciary.]

1 A BILL to amend and reenact §16-9E-1 of the Code of West Virginia, 1931, as amended; and to
 2 amend said code by adding thereto a new section, designated §16-9E-4a, all relating to
 3 the regulation of vapor products; defining terms; prohibiting sales of vapor products that
 4 do not meet certain requirements; requiring a warning be placed on the vapor product;
 5 requiring sale through vendor assistance; prohibiting sales from self-service displays;
 6 establishing criminal penalty.

Be it enacted by the Legislature of West Virginia:

1 That §16-9E-1 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that said code be amended by adding thereto a new section, designated §16-9E-
 3 4a, all to read as follows:

ARTICLE 9E. DELIVERY SALES OF TOBACCO.

§16-9E-1. Definitions.

1 For purposes of this article:

2 (a) "Adult" means a person who is at least the legal minimum purchase age, as defined
 3 by section two, article nine-a of this chapter.

4 (b) "Consumer" means an individual who does not hold a business registration certificate
 5 in this state for the business of selling tobacco products as a wholesale or retail dealer.

6 (c) "Delivery sale" means any sale of cigarettes to a consumer in this state where either:
 7 (1) The purchaser submits the order for such sale by means of a telephonic or other method of
 8 voice transmission, the mails or any other delivery service, or the Internet or other online service;
 9 or (2) the cigarettes are delivered by use of the mails or a delivery service. A sale of cigarettes
 10 shall be a delivery sale regardless of whether or not the seller is located within this state. A sale
 11 of cigarettes not for personal consumption to a person who holds a business registration
 12 certificate as a wholesale dealer or a retail dealer shall not be a delivery sale.

13 (d) "Delivery service" means any person who is engaged in the commercial delivery of
 14 letters, packages, or other containers.

15 (e) "Department" means the state Tax Department.

16 (f) "Legal minimum purchase age" is at least eighteen years of age as defined by section
17 two, article nine-a of this chapter for the purchase of cigarettes in this state.

18 (g) "Mails" or "mailing" means the shipment of cigarettes through the United States postal
19 service.

20 (h) "Shipping container" means a container in which cigarettes are shipped in connection
21 with a delivery sale.

22 (i) "Shipping documents" means bills of lading, airbills, or any other documents used to
23 evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

24 (j) "Vapor product" means any: (1) Device that employs a battery or other mechanism to
25 heat a solution or substance to produce a vapor or aerosol intended for inhalation; (2) cartridge
26 or container of a solution or substance intended to be used with or in the device or to refill the
27 device; or (3) solution or substance intended for use in such a device, including concentrated
28 nicotine. "Vapor product" includes electronic cigarettes, electronic nicotine delivery systems,
29 electronic cigars, electronic cigarillos, electronic pipes, vape pens, or similar products or devices.
30 "Vapor product" does not include a substance, device, or combination product approved for sale
31 by the United States Food and Drug Administration that is marketed and sold for the approved
32 purpose.

§16-9E-4a. Packaging of vapor products.

1 (a) Unless preempted by federal law, any substance intended for use in a vapor product
2 that is sold at retail in this state must be packaged in child resistant packaging in accordance with
3 16 C.F.R. Part 1700, the Poison Prevention Packaging Act, as it existed on the effective date of
4 this section, or other subsequent date as may be provided by the board by rule, consistent with
5 the purposes of this section.

6 (b) A substance contained in a cartridge sold, marketed, or intended for use in a vapor
7 product that is prefilled and sealed by the manufacturer, and not intended to be opened by the

8 consumer, is exempt from subsection (a) of this section.

9 (c) A manufacturer that knowingly sells or distributes a substance intended for use in a
10 vapor product that does not satisfy the requirements of this section is guilty of a misdemeanor.

11 (d) The provisions of this section are null and void, upon the effective date of the final
12 regulations issued by the United States Food and Drug Administration or from any other federal
13 agency, where the regulations mandate child-resistant effectiveness standards for liquid nicotine
14 containers.

15 (e) A manufacturer that advertises a vapor product shall include in any advertisement a
16 warning:

17 (1) Regarding the harmful effects of nicotine; and

18 (2) That the product must be kept away from children.

19 (f) It is unlawful to sell or distribute vapor products at retail by any means other than
20 vendor-assisted sales when the customer has no direct access to the product except through the
21 assistance of the seller.

22 (g) It is unlawful to sell or distribute vapor products from self-service displays.

NOTE: The purpose of this bill is to regulate vapor products.

Strike-throughs indicate language that would be stricken from a heading or the present law,
and underscoring indicates new language that would be added.