

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 755

By Senators Barrett, Caputo, and Woelfel

[Originating in the Committee on the Judiciary;

reported February 26, 2024]

1 A BILL to amend and reenact §16-9E-1, §16-9E-2, §16-9E-3, §16-9E-4, §16-9E-5, §16-9E-6, and
2 §16-9E-7 of the Code of West Virginia, 1931, as amended, all relating to the delivery sales
3 of tobacco products; expanding article to regulate all tobacco products; defining terms;
4 clarifying that delivery sale may be via Internet website or mobile application; clarifying that
5 a delivery sale of delta-8 tetrahydrocannabinol, delta-10 tetrahydrocannabinol, or kratom
6 products is prohibited; raising legal minimum age for delivery sale of tobacco product to 21
7 years of age; prohibiting delivery sales of tobacco products to underage individuals;
8 requiring delivery sales of tobacco products to comply with certain requirements;
9 prohibiting persons from accepting a purchase order, selling, mailing, delivering, or
10 causing to be delivered certain tobacco products without complying with certain applicable
11 requirements for age verification, shipping, labeling, registration, and reporting; authorizing
12 use of check box for confirming certain purchaser information to make purchase order for
13 delivery sale of tobacco products via Internet website or mobile application if certain
14 criteria met; requiring collection and remission of applicable excise taxes; and establishing
15 criminal penalties for violations of article.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9E. DELIVERY SALES OF TOBACCO PRODUCTS.

§16-9E-1.

Definitions.

16 For purposes of this article:

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

19 ~~(b)(1)~~ "Consumer" means an individual who does not hold a business registration
20 certificate in this state for the business of selling tobacco products as a wholesale or retail dealer.

21 ~~(c)(2)~~ "Delivery sale" means any sale of cigarettes a tobacco product to a consumer in this
22 state where either: ~~(1)(A)~~ The purchaser submits the order for such sale by means of a telephonic
23 or other method of voice transmission, the mails or any other delivery service, ~~or the an~~ internet

24 website, a mobile application, or other online service; or (2)(B) the cigarettes are tobacco product
25 is delivered by use of the mails or a delivery service. A sale of cigarettes a tobacco product shall be
26 a delivery sale regardless of whether or not the seller is located within this state: A *Provided, That*
27 a sale of cigarettes a tobacco product not for personal consumption to a person who holds a
28 business registration certificate as a wholesale dealer or a retail dealer shall not be is not a
29 delivery sale: *Provided, however, That notwithstanding any provision of this code to the contrary, a*
30 delivery sale of delta-8 tetrahydrocannabinol, delta-10 tetrahydrocannabinol, or kratom products is
31 prohibited.

32 (d)(3) "Delivery service" means any person who is engaged in the commercial delivery of
33 letters, packages, or other containers.

34 (e)(4) "Department" means the State Tax Department.

35 (f)(5) "Electronic smoking device" means any device that can be used to deliver any
36 heated, aerosolized, or vaporized solution to the person inhaling from the device, including, but not
37 limited to, any e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device
38 includes any component part, or accessory of the device, whether or not sold separately, and
39 includes any solution intended to be heated, aerosolized, or vaporized during the use of the
40 device, whether or not the solution contains nicotine. Electronic smoking device does not include
41 drugs, devices, or combination products approved by the United States Food, Drug, and Cosmetic
42 Act.

43 (f)(6) "Legal minimum purchase age" is means at least ~~eighteen~~ 21 years of age as defined
44 by ~~section two, article nine a of this chapter for the purchase of cigarettes in this state.~~

45 (g)(7) "Mails" or "mailing" means the shipment of cigarettes any tobacco product through
46 the United States postal service.

47 (h) "~~Shipping container~~" means ~~a container in which cigarettes are~~ any tobacco product is
48 ~~shipped in connection with a delivery sale.~~

49 (i) "~~Shipping documents~~" means ~~bills of lading, airbills, or any other documents used to~~

50 ~~evidence the undertaking by a delivery service to deliver letters, packages, or other containers.~~

51 (8) "Tobacco product" means any product containing, made, or derived from tobacco or
52 nicotine that is intended for human consumption, whether absorbed, inhaled, or ingested by any
53 other means, including, but not limited to, cigarettes, cigars, cigarillos, little cigars, pipe tobacco,
54 snuff, snus, chewing tobacco, or other common tobacco-containing products. A "tobacco product"
55 also includes electronic smoking devices and any accessory of a tobacco product or electronic
56 smoking device, whether or not any of these contain tobacco or nicotine, including, but not limited
57 to, filters, rolling papers, blunt or hemp wraps, and pipes. A "tobacco product" does not include
58 drugs, devices, or combination products that are regulated by the United States Food and Drug
59 Administration under Chapter V of the Food, Drug and Cosmetic Act.

§16-9E-2. Requirements for delivery sales.

1 ~~(a) No person~~ A person shall not, make in connection with a delivery sale, of cigarettes
2 accept a purchase order, sell, mail, deliver, or cause to be delivered any tobacco product to any
3 individual who is under the legal minimum purchase age in this state.

4 (b) Each person accepting a purchase order for, selling, mailing, delivering, or cause to be
5 delivered of any tobacco product in connection with a delivery sale shall comply with:

6 (1) ~~The applicable~~ age verification requirements set forth in section three of this article §16-
7 9E-3 of this code;

8 ~~(2) The disclosure requirements set forth in subdivision (3), subsection (a), section three of~~
9 this article;

10 ~~(3)(2) The applicable~~ shipping requirements set forth in section four of this article §16-9E-4
11 of this code;

12 ~~(4)(3) The applicable~~ registration and reporting requirements set forth in section five of this
13 article §16-9E-5 of this code;

14 ~~(5)(4) The tax collection requirements set forth in section six of this article §16-9E-6 of this~~
15 code; and

20 ~~(A) A prominent and clearly legible statement that cigarette sales to a consumer below the legal~~
21 ~~minimum purchase age is illegal; (B) a prominent and clearly legible statement that consists of one~~
22 ~~of the warnings set forth in section 4(a)(1) of the federal Cigarette Labeling and Advertising Act, 15~~
23 ~~U.S.C. §1333(a)(1), rotated on a quarterly basis; (C) a prominent and clearly legible statement that~~
24 ~~sales of cigarettes are restricted to those consumers who provide verifiable proof of age in~~
25 ~~accordance with section three of this article; and (D) a prominent and clearly legible statement that~~
26 ~~cigarette sales are subject to excise and sales taxes in this state, and an explanation of how such~~
27 ~~taxes have been, or are to be, paid with respect to the delivery sale.~~

28 ~~(4) In the case of an order for cigarettes pursuant to an advertisement on the Internet,~~
29 ~~receives payment for the delivery sale from the prospective consumer by a credit or debit card or~~
30 ~~check that has been issued in the consumer's name.~~

31 ~~(b) Persons accepting purchase orders for delivery sales may request that prospective~~
32 ~~consumers provide their e-mail addresses.~~

33 (b) A person may use a check box on an internet website or mobile application to confirm
34 the full name, birth date, and registered address of a purchaser prior to accepting a delivery sale
35 for a tobacco product via an internet website or mobile application if:

36 (1) The purchaser provided his or her full name, birth date, and registered address upon
37 registering as a user of the internet website or mobile application; and

38 (2) The person has verified the full name, birth date, and registered address of the
39 purchaser upon registration using a commercially available database or aggregate of databases,
40 consisting primarily of data from government sources, that are regularly used by government and
41 businesses for the purpose of age and identity verification and authentication, to ensure that the
42 purchaser is at least 21 years of age.

§16-9E-4. Shipping and labeling requirements.

1 ~~(a) Each person who, mails, ships, or otherwise delivers cigarettes~~ A person shall not, in
2 connection with a delivery sale, accept a purchase order, sell, mail, deliver, or cause to be

3 delivered any tobacco product that is subject to 15 U.S.C. §375 et seq. unless the delivery sale
4 complies with all applicable shipping and labeling requirements of 15 U.S.C. §376a.

5 ~~(1) Shall include as part of the bill of lading or other shipping documents a clear and~~
6 ~~conspicuous statement providing as follows: "Cigarettes: West Virginia Law Prohibits Shipping to~~
7 ~~Individuals Under 18, and Requires the Payment of all Applicable Taxes";~~

8 ~~(2) Shall use a method of mailing, shipping, or delivery that obligates the delivery service to~~
9 ~~require: (i) The consumer placing the purchase order for the delivery sale, or another adult of legal~~
10 ~~minimum purchase age, to sign to accept delivery of the shipping container; and (ii) proof, in the~~
11 ~~form of a valid, government-issued identification bearing a photograph of the individual who signs~~
12 ~~to accept delivery of the shipping container, demonstrating that he is either the addressee or~~
13 ~~another adult of legal minimum purchase age; and~~

14 ~~(3) Shall provide to the delivery service retained for such delivery sale evidence of full~~
15 ~~compliance with section seven of this article.~~

16 ~~(b) A delivery service shall be in violation of this article if it: (1) Ships or otherwise delivers~~
17 ~~cigarettes in connection with a delivery sale without first receiving evidence of compliance with~~
18 ~~section seven of this article; or (2) fails to comply with the requirements described in subsection (a)~~
19 ~~or described in section six of this article:~~

20 ~~(1) When obligated to do so under a method of shipping or delivery;~~

21 ~~(2) When delivering any container pursuant to shipping documents containing the~~
22 ~~statement described in subdivision (1), subsection (a) of this section; or~~

23 ~~(3) When delivering any container that the delivery service otherwise has reason to know~~
24 ~~contains cigarettes.~~

25 ~~(c) If the person accepting a purchase order for a delivery sale delivers the cigarettes~~
26 ~~without using a delivery service, that person shall comply with all requirements of this article~~
27 ~~applicable to a delivery service and shall be in violation of the provisions of this article upon failure~~
28 ~~to comply with the requirements.~~

§16-9E-5. Registration and reporting requirements.

1 (a) ~~Prior to making delivery sales or mailing, shipping, or otherwise delivering cigarettes in~~
2 ~~connection with any such sales, every person shall file with the department a statement setting~~
3 ~~forth the seller's name, trade name, and the address of the seller's principal place of business and~~
4 ~~any other place of business. A person shall not, in connection with a delivery sale, accept a~~
5 ~~purchase order, sell, mail, deliver, or cause to be delivered any tobacco product that is subject to~~
6 ~~15 U.S.C. §375 et seq. unless the delivery sale complies with all applicable record-keeping~~
7 ~~requirements of 15 U.S.C. §376a.~~

8 (b) ~~Not later than the tenth day of each calendar month, each person that has made a~~
9 ~~delivery sale or mailed, shipped, or otherwise delivered cigarettes in connection with any such sale~~
10 ~~during the previous calendar month shall file with the department a memorandum or a copy of the~~
11 ~~invoice that provides for each and every delivery sale: A person shall not, in connection with a~~
12 ~~delivery sale, accept a purchase order, sell, mail, deliver, or cause to be delivered from a location~~
13 ~~outside of this state to a consumer within this state any tobacco product that is subject to 15 U.S.C.~~
14 ~~§375 et seq. unless the person complies with all applicable requirements of 15 U.S.C. §376.~~

15 (1) ~~The name and address of the consumer to whom the delivery sale was made;~~

16 (2) ~~The brand or brands of the cigarettes that were sold in the delivery sale; and~~

17 (3) ~~The quantity of cigarettes that were sold in the delivery sale.~~

18 (c) ~~Any person that satisfies the requirements of 15 U.S.C. §376 shall be deemed to satisfy~~
19 ~~the requirements of this section.~~

§16-9E-6. Collection of taxes.

1 Each person accepting a purchase order for a delivery sale of any tobacco product shall
2 collect and remit to the department all cigarette applicable taxes under §11-17-1 et seq. imposed
3 by this state with respect to such delivery sale, except that the collection and remission shall not be
4 required to the extent the person has obtained proof, in the form of the presence of applicable tax
5 stamps or otherwise, that the taxes already have been paid to this state.

§16-9E-7.

Penalties.

1 (a) Except as otherwise provided in this section, a first violation of any provision of this
2 article shall be a misdemeanor and punishable by a fine of \$500 or five times the retail value of the
3 cigarettes tobacco products involved, whichever is greater.

4 (b) Any person who knowingly violates any provision of this article, or who knowingly and
5 falsely submits a certification under ~~section three of this article~~ §16-9E-3 of this code in another
6 person's name, ~~shall be~~ is guilty of a misdemeanor and, upon conviction thereof, shall be fined
7 \$1,000 or 10 times the retail value of the cigarettes tobacco products involved, whichever is
8 greater, or confined in jail not more than six months, or both.

9 (c) Any person failing to collect or remit to the department any tax required in connection
10 with a delivery sale shall be assessed, in addition to any other penalty, a penalty of five times the
11 retail value of the cigarettes tobacco products involved.

12 (d) Any cigarettes tobacco products sold or attempted to be sold in a delivery sale that
13 does not meet the requirements of this article shall be forfeited to this state and destroyed. All
14 fixtures, equipment, and all other materials and personal property on the premises of any person
15 who, with the intent to defraud this state, violates any of the requirements of this article, shall be
16 forfeited to this state.