

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 755

By Senators Barrett, Caputo, and Woelfel

[Passed March 9, 2024; in effect 90 days from

passage]

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

Be it enacted by the Legislature of West Virginia:

ARTICLE 9E. DELIVERY SALES OF TOBACCO PRODUCTS.

§16-9E-1.

Definitions.

14 For purposes of this article:

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

17 (2) "Delivery sale" means any sale of a tobacco product to a consumer in this state where
18 either: (A) The consumer submits the order for the sale by means of a telephone or other method
19 of voice transmission, the mail, or the internet or other online service, or the seller is otherwise not
20 in the physical presence of the buyer when the request for purchase or order is made; or (B) the
21 tobacco product is delivered to the buyer by common carrier, private delivery service, or other
22 method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer
23 obtains possession of the cigarettes or smokeless tobacco: *Provided*, That a sale of a tobacco

24 product not for personal consumption to a person who holds a business registration certificate as a
25 wholesale dealer or a retail dealer is not a delivery sale.

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

28 (4) "Department" means the State Tax Department.

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

36 (6) "Legal minimum purchase age" state shall have the same meaning as provided in §16-
37 9A-1 *et seq.* of this code.

38 (7) "Mails" or "mailing" means the shipment of any tobacco product through the United
39 States Postal Service.

40 (8) "Tobacco product" means any product containing, made, or derived from tobacco or
41 nicotine that is intended for human consumption, whether absorbed, inhaled, or ingested by any
42 other means, including, but not limited to, cigarettes, cigarillos, little cigars, snuff, snus, chewing
43 tobacco, or other common tobacco-containing products. A "tobacco product" also includes
44 electronic smoking devices and any accessory of a tobacco product or electronic smoking device,
45 whether or not any of these contain tobacco or nicotine, including, but not limited to, filters, rolling
46 papers, blunt or hemp wraps, and pipes. A "tobacco product" does not include drugs, devices, or
47 combination products that are regulated by the United States Food and Drug Administration under
48 Chapter V of the Food, Drug and Cosmetic Act, , nor does "tobacco product" include cigars as
49 defined in Title 26 U.S.C. §5702.

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

1 (a) A person shall not, in connection with a delivery sale, accept a purchase order, sell,
2 mail, deliver, or cause to be delivered any tobacco product to any individual who is under the legal
3 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 §16-9E-3 of this code;

7 (2) The applicable shipping requirements set forth in §16-9E-4 of this code;

8 (3) The applicable registration and reporting requirements set forth in §16-9E-5 of this
9 code;

10 (4) The tax collection requirements set forth in §16-9E-6 of this code; and

11 (5) All other laws of this state generally applicable to sales of tobacco products that occur
12 entirely within this state, including, but not limited to, those laws imposing:

13 (A) Excise taxes;

14 (B) Sales taxes;

15 (C) License and revenue-stamping requirements; and

16 (D) Escrow or other payment obligations.

§16-9E-3. Age verification requirements.

1 (a) A person shall not, in connection with a delivery sale, accept a purchase order, sell,
2 mail, deliver, or cause to be delivered any tobacco product that is subject to 15 U.S.C. §375 *et seq.*
3 unless the delivery sale complies with all applicable age verification requirements of 15 U.S.C.
4 §376a.

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

8 (1) The purchaser provided his or her full name, birth date, and registered address upon

9 registering as a user of the internet website or mobile application; and

10 (2) The person has verified the full name, birth date, and registered address of the
11 purchaser upon registration using a commercially available database or aggregate of databases,
12 consisting primarily of data from government sources, that are regularly used by government and
13 businesses for the purpose of age and identity verification and authentication, to ensure that the
14 purchaser is of the legal minimum purchase age.

15 (c) A person who obtains a consumer's electronic signature upon delivery of a tobacco
16 product shall be deemed to satisfy 15 U.S.C. § 376a.

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

1 A person shall not, in connection with a delivery sale, accept a purchase order, sell, mail,
2 deliver, or cause to be delivered any tobacco product that is subject to 15 U.S.C. §375 *et seq.*
3 unless the delivery sale complies with all applicable shipping and labeling requirements of 15
4 U.S.C. §376a.

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

1 (a) A person shall not, in connection with a delivery sale, accept a purchase order, sell,
2 mail, deliver, or cause to be delivered any tobacco product that is subject to 15 U.S.C. §375 *et seq.*
3 unless the delivery sale complies with all applicable record-keeping requirements of 15 U.S.C.
4 §376a.

5 (b) A person shall not, in connection with a delivery sale, accept a purchase order, sell,
6 mail, deliver, or cause to be delivered from a location outside of this state to a consumer within this
7 state any tobacco product that is subject to 15 U.S.C. §375 *et seq.* unless the person complies
8 with all applicable requirements of 15 U.S.C. §376.

§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 applicable taxes under §11-17-1 *et seq.* imposed by this
3 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 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 §16-9E-3 of this code in another person's name, is guilty of a
6 misdemeanor and, upon conviction thereof, shall be fined \$1,000 or 10 times the retail value of the
7 tobacco products involved, whichever is greater, or confined in jail not more than six months, or
8 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 tobacco products involved.

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