

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 758

By Senators Taylor and Stuart

[Introduced March 14, 2025; referred
to the Committee on Health and Human Resources;
and then to the Committee on the Judiciary]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article, designated §16-9H-1, §16-9H-2, §16-9H-3, §16-9H-4, §16-9H-5, §16-9H-6, §16-9H-7, §16-9H-8, §16-9H-9, and §16-9H-10, relating to regulating locations, operating requirements, and property standards for smoke shops and vape shops; establishing safe advertising that does not appeal to minors; and setting standards for inspections, fines for violations, and appeals.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9H. VAPE AND SMOKE SHOP LOCATION AND OPERATING REQUIREMENTS **ACT.**

§16-9H-1. **Short** **title.**

This article shall be known as the "Vape and Smoke Shop Location and Operating Requirements Act."

§16-9H-2. **Legislative** **findings.**

(a) The Legislature finds that it has a substantial governmental interest in protecting the public health, safety, and welfare of its citizens; and

(b) Much of the electronic cigarette marketing uses bright colors, candy- and fruit-flavored liquids, cartoons, and characters, and mirrors the marketing used in prior decades by tobacco companies that was determined to target youth and is now prohibited; and

(c) A 2017 study published by the Journal of American Medical Association Pediatrics found an association between initial electronic cigarette use and subsequent tobacco cigarette smoking initiation and determined that state and local agencies needed to engage in regulatory actions to discourage youths' use of electronic cigarettes; and

(d) Both the United States Food and Drug Administration (FDA) and the United States Centers for Disease Control and Prevention (CDC) are investigating the cause of the severe respiratory illness and lung injuries associated with the use of vaping products, including e-

cigarettes. The FDA and the CDC have indicated they will take appropriate actions as the facts emerge, but the cause has not yet been identified.

§16-9H-3.**Definitions.**

(a) "Abandonment" and "abandoned:" mean that the use with respect to a premises, regardless of intent of the user, has ceased or has discontinued for a period of at least 30 days, or an explicit declaration by the user of a premises that it has ceased a use with respect to the premises that is non-conforming to this article.

(b) "Adult " means a person who is the age of 21 years or older.

(c) "Alternative nicotine product" means any non-combustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means.

(d) "Applicant" means a person who has any legal or beneficial interest in the premises who applies to obtain or re-obtain a permit with respect to the premises.

(e) "Application" means the form or forms provided by the county health department and completed by an applicant together with all documents and items that this article requires, by which the applicant seeks to obtain a permit.

(f) "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

(g) "Electronic cigarette" means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term "electronic cigarette" includes any such device, whether manufactured, distributed, marketed, or sold as an e- cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

(h) "Existing use" means the use or uses to which any part or all of a premises, or part or all of any Improvement thereon, before the effective date are lawfully pursued as a matter of right

24 under local, state and/or federal law.

25 (i) "Improvement" means any building or structure, excluding fence, whether existing on
26 the effective date located on a premises or, if there is a vested right to erect such structure or
27 building, to be located within or upon a premises.

28 (j) "Permit" means a written document issued by the county health department to an
29 applicant based upon the application, wherein the issuer certifies that the application complies
30 with the provisions of this article.

31 (k) "Person" means any individual, corporation, limited liability company, general
32 partnership, limited partnership, joint venture, limited liability partnership, trust, estate, or any other
33 legal entity that is duly organized or existing and authorized to transact business in the State of
34 West Virginia.

35 (l) "Agent" means the individual whom the county health department has designated to be
36 responsible for the administration of the terms of this article enacted pursuant to this article and
37 §8A-1-1, §8A-2-1 et seq., and §8A-5-1 of this code.

38 (m) "Premises" means a tract or tracts of land, whether containing existing or proposed
39 improvements, within the territorial limits that are identified as a parcel or parcels on a tax district
40 map or maps on file with the office of the county health department.

41 (n) "Remedy of violation" means bringing a structure or other development into
42 compliance with the requirements of this ordinance, or, if full compliance is not possible, to reduce
43 the adverse impacts of the non-compliance to the greatest extent feasible.

44 (o) "Residence" means a detached or un-detached dwelling for one or more persons and in
45 which there is not a predominating commercial or non-housing use, and shall not mean a motel,
46 hotel, inn, or other lodging facility for transient persons.

47 (p) "Responsible Person" means the individual person whom an applicant has designated
48 to attest .

49 (q) "Tobacco-Derived Product" means any product containing, made or derived from

tobacco, or containing nicotine derived from tobacco, that is intended for human consumption, whether smoked, breathed, chewed, absorbed, dissolved, inhaled, vaporized, snorted, sniffed, or ingested by any other means, including but not limited to cigarettes, cigars, cigarillos, little cigars, pipe tobacco, snuff, snus, chewing tobacco or other common tobacco- containing products. A "tobacco-derived product" includes electronic cigarettes or similar devices, alternative nicotine products and vapor products.

(r) "Vape/smoke shop" means a retail establishment that specializes in selling tobacco products and accessories, as well as tobacco-derived and alternative nicotine products or vapor products and accessories. These shops may cater to individuals who use electronic cigarettes (e-cigarettes) or other vaping products and/or devices. These shops may sometimes allow vaping on site.

(s) "Vapor Product" means any non-combustible product containing nicotine that employs a heating element, power source, electronic circuit or other electronic, chemical, or mechanical means, regardless of shape and size, that can be used to produce vapor from nicotine in a solution or other form. A "vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electric pipe or similar product or device, and any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe or similar product or device.

(t) "Violation" means the failure of any structure, development, and/or land use change to be fully compliant with all requirements of this ordinance.to the truthfulness and accuracy of the contents of an application.

§16-9H-4. Land use regulations.

(a) On and after the effective date, no person shall locate and/or operate a vape/smoke shop except in compliance or conformance with this article.

(b) This article shall not prohibit the continuance of the existing use of any tract of land or improvement for the purpose for which such tract of land or improvement is used on the effective

date. This article shall not prohibit the alteration or replacement of any improvement for the purpose for which such Improvement is used on the effective date, except that the use shall not be expanded or enlarged unless it shall conform to this article.

(c) Notwithstanding anything in this article to the contrary, if an existing use is non-conforming with this article and has been abandoned, any future use of such land, premises or improvement(s) shall conform with this article.

§16-9H-5. Location.

(a) No public entrance to a vape/smoke shop shall be located within 5,280 feet of any property on which is situated any of the following:

(1) A public or private child daycare facility, kindergarten, elementary, grade, middle, junior, senior, secondary, or vocational school.

(2) A public or private institution of higher education.

(3) A public or private business school or college.

(4) A public park or recreational facility; including but not limited to a park, a playground, nature trail, swimming pool, athletic field, basketball court, tennis court, wilderness area or other similar public land within the county limits.

(5) A public library.

(6) A church, mosque, temple or synagogue or other building used as a place of religious worship or instruction.

(7) A Federal, state, county, or municipal office building.

(8) Another vape/smoke shop.

(A) An establishment that is licensed to serve alcoholic beverages; or

(B) A residence.

(b) Each of the prescribed distances in §16-9H-5 of this code to a public entrance of a vape/smoke shop shall be measured along a straight line from the nearest property line of the tract from which the measurement is to be made.

§16-9H-6.**Signs.**

1 (a) It is the purpose of this section of this article to protect property values by encouraging
2 visually appealing, non-distracting signs; to permit such signs that will not, by reason of their size,
3 location or manner of display, to detract from the economic viability of other persons and
4 establishments in the vicinity; to prevent signs from causing an annoyance or disturbance to a
5 substantial number of persons; and to promote a healthy and business-friendly environment in
6 which signs relating to a vape/smoke shop contribute to and encourage rather than detract from
7 the economic viability of other persons and establishments in the vicinity.

8 (b) On and after the effective date, no person shall erect, structurally alter, or relocate any
9 sign to advertise or promote any vape/smoke shop except in conformance with this article. It shall
10 be unlawful for any person to erect, structurally alter or relocate any sign or improvement
11 supporting a sign on or off the premises of a vape/smoke shop without first obtaining a permit
12 based on an application, therefore.

13 (c) The application for the approval of a sign shall be made upon forms that the county
14 health department shall prepare and provide and shall include, without limitation, an accurate
15 scaled sketch or drawing of the proposed sign, its proposed location, and the content of the
16 proposed sign. The county health department's agent may require that the location of a proposed
17 sign be based on a survey by a registered land surveyor or engineer, at the expense of the
18 applicant.

19 (d) After a sign is constructed or installed based on the application, the applicant shall
20 provide a letter to the county health department certifying that the sign was designed (including
21 content), fabricated, sized, constructed, and installed according to the application as approved.

22 (e) Any sign promoting a vape/smoke shop shall be flat and mounted to the wall of the
23 improvement in which the vape/smoke shop is located and shall be mounted so that no part of the
24 sign extends beyond the height of the improvement on which it is displayed.

25 (f) No merchandise or depictions of merchandise including images of marijuana and/or

marijuana paraphernalia shall be displayed on any sign, exterior Improvement or fence advertising or promoting a vape/smoke shop or otherwise nor in any windows or any other area that may be viewed from a public street, alley, sidewalk, or public way.

(g) The size of any sign promoting a vape/smoke shop shall not exceed more than one square foot per one lineal foot of unit frontage of the property on which a vape/smoke shop is located; however, at no time shall the maximum aggregate area of the sign 30 square feet. The permitted maximum size of a sign shall apply to the entire area enclosing the extreme limits of writing, representation, emblem, or figure, together with any frame or other material or color forming an integral party of the display or used to differentiate a sign from the background against which it is placed. If a sign is painted on a wall, and includes background colors or graphics, and if the sign is an integral part of the overall graphic scheme, the entire wall shall be considered a sign and its measurement computed as such. If a sign is painted on a wall, and the sign can be logically separated and measured separately from the background graphics, the background graphic scheme shall not be computed in the sign size.

(h) No vape/smoke shop shall erect or display the following:

(1) Any portable or movable sign on the premises thereof.

(2) Any sign advertising or promoting a vape/smoke shop at an off-premises location.

(3) Any flashing sign or animated sign which incorporates in any manner flashing or moving lights or any other visible moving or revolving part, except for the time, temperature, or date sign.

(4) Any commercial banner, pennant, flag, spinner, or streamer.

(5) Any sign that obstructs or impairs the vision of drivers, or obstructs or detracts from the visibility of, or resembles any traffic sign or traffic control device on a public street or road, by reason of size, shape, location, color, or illumination.

(6) Any sign that makes use of such words as "stop", "look", "danger" or other similar words, phrases, symbols, or characters in such a manner as to imply the need or requirement of

52 stopping or the existence of danger.

53 (7) Any sign that obstructs free ingress or egress from a door, window, fire escape or other
54 exit way.

55 (8) Any sign that no longer advertises a bona fide business, activity, campaign, service, or
56 product; or

57 (9) Any sign advertising or promoting a business that has been abandoned.

58 (i) No vape/smoke shop shall erect or maintain more than one sign advertising or
59 promoting a vape/smoke shop on the premises thereof.

60 (j) No sign promoting a vape/smoke shop shall contain lights or animated parts that
61 incorporate in any manner flashing or moving lights or any other visible moving or revolving part,
62 except for a sign indicating time, temperature, or date.

63 (k) No sign promoting a vape/smoke shop shall project more than 18 inches from the wall.

64 (l) The county health department shall inspect the sign after it is completed and, upon a
65 demonstration that such sign complies or conforms with this article, may issue a permit to the
66 applicant. If the county health department determines that the sign does not comply or conform
67 with this article, the county health department shall issue a written denial of the application
68 therefore and shall include a written statement of the reason(s) for denial.

69 (m) The county health department may inspect signs to determine whether they are a
70 nuisance and/or detrimental to public health, safety, and welfare. If so, deemed detrimental by the
71 county health department, the applicant/successor/assignee shall remove or repair the sign within
72 five days following the county health department's determination. The county health department
73 may grant additional time for the removal or repair if a good faith effort is made of working toward
74 compliance by said applicant/successor/assignee.

75 (n) If any sign promoting a vape/smoke shop is abandoned, such sign shall be deemed a
76 nuisance misleading the public and affecting or endangering surrounding property values and
77 shall be deemed detrimental to the public health, safety and general welfare of the community and

78 shall be removed and/or abated immediately.

§16-9H-7.

Application.

1 (a) All applications must be filled out by the responsible person for the business.

2 (b) The county health department shall accept no application unless the responsible
3 person attests that all the statements contained therein, and the documents attached thereto, are
4 true and accurate in all material respects.

5 (1) It is the applicant's responsibility to obtain all applicable permits and plan approvals
6 from all authorities having jurisdiction in the State of West Virginia (i.e., Department of
7 Environmental Protection, West Virginia Department of Highways, public service district , West
8 Virginia American Water, etc.).

9 (2) Each county may set its own fee schedule for licensing and permits.

§16-9H-8.

Administration

and

enforcement.

1 It shall be the duty of the county health department's agent to administer and enforce the
2 provisions of the article, except as otherwise expressly provided in this article.

3 (a) The county health department shall perform the following duties:

4 (1) Receive and process all applications.

5 (2) Endeavor to grant or deny the issuance of a vape/smoke shop permit within 10 working
6 days of receipt of a complete application.

7 (3) Conduct investigations as necessary to determine compliance or conformance with or
8 violation of this article.

9 (4) Abate any violation of this article.

10 (5) Seek the assistance of the office of the sheriff of the county or the office of the
11 prosecuting attorney of the county to abate or prosecute any violation of this article.

12 (6) Assist law enforcement officers to abate or prosecute any violation of this article.

13 (7) Provide information about this article upon the request of citizens and public agencies.

14 (8) Pursue enforcement of this article as it and other law provides; and

15 (9) Administer this article in all respects.

16 (b) No commission, board, agency, officer, or employee of the county shall issue, grant, or
17 approve any permit, license, certificate or any other authorization for any construction,
18 reconstruction, alteration, enlargement or relocation of any vape/smoke shop building or structure,
19 or for any use of land or building, that does not comply with the provisions of this article.

20 (c) In administering this article, the standard rule of rounding numbers to the nearest whole
21 shall apply. When the unit of measurement results in a fraction less than one-half or less than .5,
22 the fraction shall be disregarded. When the unit of measurement results in a fraction of one-half or
23 more, or .5 or over, the number shall be rounded up to the next nearest whole number.

§16-9H-9. Violations.

1 (a) The regulated aspects of a vape/smoke shop subject to this article shall be subject to
2 periodic inspections by the county health department for the purpose of verifying compliance with
3 the terms and conditions of this article.

4 (b) Whenever a violation of this article occurs, or is alleged to have occurred, any person
5 may file a written complaint with the county magistrate court. The complaint must state fully and
6 clearly the causes and basis thereof. The county health department shall properly record such
7 complaints, conduct appropriate investigation, and act thereon as this article provides.

8 (c) If the county health department agent finds that any of the provisions of article are
9 violated, whether reported by any person or by any commission, board, agency, officer, or
10 employee of the county commission, or by his or her own observation, he shall notify in writing the
11 person responsible for the vape/smoke shop. Service of the written notice shall be deemed
12 complete upon sending the notice by certified mail to the last known address of the person or by
13 personal service by the office of the county sheriff or county health department personnel. The
14 notice shall include the following:

15 (1) The street address or legal description of the property involved.

16 (2) A statement indicating the nature of the violation and the specific section of this article

17 that has been violated.

18 (3) A description of the action required to correct the violation.

19 (4) A statement indicating the time within which compliance with this article must be
20 accomplished; and

21 (5) A statement advising that upon failure to comply with the requirements within said time,
22 the county shall take such enforcement procedures as may be required by this article.

23 (d) The county health department or its agent are authorized to take any of the following
24 actions:

25 (1) Order the discontinuance of illegal use of land or improvements.

26 (2) Order the removal of illegal improvements or structures of illegal additions, alterations,
27 or structural changes.

28 (3) Order the discontinuance of any illegal work being done.

29 (4) Issue a written notice to the applicant who shall immediately cease and desist all use(s)
30 which are not in compliance with article.

31 (5) Any other action authorized by this article to ensure compliance with its provisions; and

32 (6) Any other remedies provided by law, including, without limitation, injunction, or
33 abatement by judicial proceeding in the magistrate or circuit court of appropriate jurisdiction.
34 Nothing contained in this article shall be deemed to prevent the county health department or its
35 agents from pursuing other lawful actions to prevent or remedy violations of this article.

36 (e) The county health department may impose a monetary fine of not less than \$100 nor
37 more than \$500 against any person or persons who violate this article, or any order or notice
38 issued thereunder. Each day during which any violation of this article continues constitutes a
39 separate offense.

§16-9H-10.

Appeals.

1 (a) Any person who is aggrieved by any order, requirement, decision, or determination
2 made by the county health department may appeal the decision to the health department. The

3 appeal shall be filed on forms prescribed by the county health department. The appeal shall
4 specify the reasons for the appeal and shall be filed within 30 calendar days of the original action in
5 question. The appeal form shall also include the names and addresses of all recorded landowners
6 of real property located within 250 feet of any part of the premises. If said real property includes a
7 lot within a subdivision, the name and address of the president of that subdivision's homeowner's
8 association shall also be included.

9 (b) The county health department shall give an opportunity to any interested persons to
10 examine or comment upon the appeal request. Upon receipt of the appeal request, the county
11 health department shall submit a notice for publication in one newspaper of general circulation to
12 be published at least 30 days prior to the meeting. At the same time as the notice is submitted for
13 newspaper publication, a notice shall be sent to all recorded landowners whose real property is
14 situated within 250 feet of any part of the premises. If said real property includes a lot within a
15 subdivision, a notice shall also be sent to the president for that subdivision's homeowners
16 association if one exists. Whenever a public hearing involves property located within 250 feet of a
17 municipality, written notice shall also be sent by certified mail to the clerk of the municipality.
18 Copies of the application, evidence of violation or violations of this article and any other relevant
19 material shall be maintained and filed by the county health department for public review prior to the
20 meeting.

21 (c) The county health department shall hold a duly scheduled public hearing on the appeal.
22 If the county health department decides to uphold the administrative decision, the administrative
23 decision stands and the appeal is denied. The county health department shall then formally notify,
24 in writing, the applicant of the decision and of the right to appeal to the county circuit court within 30
25 days of the decision by the county health department. If the county health department reverses or
26 modifies the administrative decision, the appeal stands as approved by the county health
27 department. The county health department shall then formally notify the applicant of the decision
28 in writing.

29 (d) Appeals regarding any decision made by the county health department in the
30 administration of this article shall be by Writ of Certiorari Procedure as set forth in §8A-5-10 and
31 §8A-9-1 et seq. of this code, or as state law provides.

32 (e) The county health department or its agent may waive any requirement of this article
33 where the purposes of the provisions of this article may be served by an alternative proposal.

NOTE: The purpose of this bill is to regulate locations, operating requirements, and property standards for smoke shops and vape shops, establishing safe advertising that does not appeal to minors, setting standards for inspections, fines for violations, and appeals.

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