

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5437

FISCAL
NOTE

By Delegates McCormick, Maynor, Kyle, Akers, Clark,
Fehrenbacher, Heckert, Drennan, Worrell, and Pinson

[Introduced February 11, 2026; referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,
 2 designated §16-9H-1, §16-9H-2, §16-9H-3, §16-9H-4, §16-9H-5, §16-9H-6, §16-9H-7,
 3 §16-9H-8, §16-9H-9, §16-9H-10, §16-9H-11, §16-9H-12, §16-9H-13, and §16-9H-14,
 4 relating to regulating vape and smoke shop retailers; creating definitions; regulating
 5 locations, operating requirements, and property standards for smoke retailers and vape
 6 retailers; creating license requirements for retailers; creating requirements for
 7 manufacturers and wholesalers; creating license fees; creating civil penalties; creating
 8 criminal penalties; providing for appeals; providing for rulemaking; providing regulatory
 9 authority of the Commissioner of the Alcohol Beverage Control Commission; providing
 10 jurisdictional requirements for retailers; and setting standards for inspections.

Be it enacted by the Legislature of West Virginia:

ARTICLE	9H.	VAPE	SAFETY	ACT.
§16-9H-1.		Short		title.

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

§16-9H-2.				Definitions.
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1 "Abandonment" and "abandoned:" mean that the use with respect to a premises,
 2 regardless of intent of the user, has ceased or has discontinued for a period of at least 30 days, or
 3 an explicit declaration by the user of a premises that it has ceased a use with respect to the
 4 premises that is non-conforming to this article.

5 "Adult " means a person who is the age of 21 years or older.

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

9 "Authorized vapor product" means a vapor product is listed in the E-cigarette and E-
 10 cigarette Liquid Directory established in §16-9H-10 of this code.

11 "Commissioner" means the Alcohol Beverage Control Commissioner or a duly authorized
12 agent thereof.

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

18 "Improvement" means any building or structure, excluding fence, whether existing on the
19 effective date located on a premises or, if there is a vested right to erect such structure or building,
20 to be located within or upon a premises.

21 "Manager" means the individual person whom an applicant for a license has designated to
22 attest to the information in the license application, who meets all the requirements of this article,
23 and who is responsible for violations of this article.

24 "Person" means any individual, corporation, limited liability company, general partnership,
25 limited partnership, joint venture, limited liability partnership, trust, estate, or any other legal entity
26 that is duly organized or existing and authorized to transact business in the State of West Virginia.

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

30 "Residence" means a detached or un-detached dwelling for one or more persons and in
31 which there is not a predominating commercial or non-housing use, and shall not mean a motel,
32 hotel, inn, or other lodging facility for transient persons.

33 "Tobacco-Derived Product" means any product containing, made or derived from tobacco,
34 or containing nicotine derived from tobacco, that is intended for human consumption, whether
35 smoked, breathed, chewed, absorbed, dissolved, inhaled, vaporized, snorted, sniffed, or ingested
36 by any other means, including but not limited to cigarettes, cigars, cigarillos, little cigars, pipe

37 tobacco, snuff, snus, chewing tobacco or other common tobacco- containing products. A
38 "tobacco-derived product" includes electronic cigarettes or similar devices, alternative nicotine
39 products and vapor products.

40 "Vape or smoke retailer" means a retail establishment that sells tobacco products and
41 accessories, as well as tobacco-derived and alternative nicotine products or vapor products and
42 accessories. These retailers may cater to individuals who use electronic cigarettes (e-cigarettes)
43 or other vaping products and/or devices. These retailers may sometimes allow vaping on site.

44 "Vape or smoke shop" means a vape or smoke retailer that devotes at least 33 percent of
45 its floor space to selling tobacco products and accessories, as well as tobacco-derived and
46 alternative nicotine products or vapor products and accessories. These shops may cater to
47 individuals who use electronic cigarettes (e-cigarettes) or other vaping products and/or devices.
48 These shops may sometimes allow vaping on site.

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

56 "Violation" means the failure to be fully compliant with all requirements of this article.

§16-9H-3. License required; compliance with laws; penalties.

1 (a) A person, firm, or corporation shall not operate as a vape or smoke shop in or on any
2 premises in the state without first obtaining a license issued by the commissioner pursuant to this
3 article.

4 (b) A vape or smoke retailer may only sell authorized vapor products that are currently
5 listed in the Vapor Product Directory and shall comply with all federal, state, and local laws relating

6 to the sales of tobacco, tobacco-derived products, and vapor products.

7 (c) Any person who, by himself or herself or through another, directly or indirectly, violates
8 subsection (a) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall
9 be fined not more than \$10,000 and confined in jail for not more than one year.

§16-9H-4. Jurisdiction.

1 By obtaining a vape or smoke shop license, the licensee is deemed to have agreed and
2 consented to the jurisdiction of the commissioner, which is Charleston, West Virginia and the
3 Kanawha County circuit court, concerning enforcement of this article and any other related laws or
4 rules.

§16-9H-5. License application; information required; application to be accompanied by
fees; bond.

1 (a) No vape or smoke shop license or license renewal may be granted unless the
2 commissioner has determined that the applicant satisfies all of the following qualifications:

3 (1) The applicant is a United States citizen and a person of good character, honesty, and
4 integrity;

5 (2) The applicant is a person whose background, criminal record, if any, reputation, habits,
6 and associations, do not threaten to:

7 (A) Compromise the public interest of the citizens of the state; or

8 (B) Weaken the effective regulation and control of tobacco derived products or vapor
9 products;

10 (3) The applicant has not been convicted of perjury, false swearing, or any crime
11 punishable by imprisonment in excess of one year under the applicable law of this state or in any
12 other state or foreign country;

13 (4) The applicant has disclosed to the commissioner the identity of each person who has
14 control of the applicant and those persons satisfy all qualifications required by this section and any
15 applicable qualifications required by the commissioner. For purposes of this subdivision, a "person

16 who has control of the applicant" means:

17 (A) Each person associated with a corporate applicant, including any corporate holding
18 company, parent company or subsidiary company of the applicant, but not including a bank or
19 other licensed lending institution which holds a mortgage or other lien acquired in the ordinary
20 course of business, who has the ability to control the activities of the corporate applicant or elect a
21 majority of the board of directors of that corporation;

22 (B) Each person associated with a noncorporate applicant who directly or indirectly holds
23 any beneficial or proprietary interest in the applicant or who the commission determines to have
24 the ability to control the applicant; and

25 (C) Key personnel of an applicant, including any executive, employee or agent, having the
26 power to exercise significant influence over decisions concerning any part of the applicant's
27 business operation;

28 (5) The applicant has provided a set of fingerprints and has completed and signed the
29 statement provided for in subsection (e) of this section;

30 (6) A listed manager on the applicant's license application, or a licensee's renewal
31 application, and further that the manager shall meet all other requirements of licensure; and

32 (7) The applicant has furnished all information, including financial data and documents,
33 certifications, consents, waivers, individual history forms, and other materials requested by the
34 commissioner for purposes of determining qualifications for a license.

35 (b) Except as otherwise set forth in this article, the commissioner may not disqualify an
36 applicant from initial licensure because of a prior criminal conviction that remains unreversed
37 unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In
38 determining whether a criminal conviction bears a rational nexus to a profession or occupation, the
39 commissioner shall consider at a minimum:

40 (1) The nature and seriousness of the crime for which the individual was convicted;

41 (2) The passage of time since the commission of the crime;

42 (3) The relationship of the crime to the ability, capacity, and fitness required to perform the
43 duties and discharge the responsibilities of the profession or occupation; and

44 (4) Any evidence of rehabilitation or treatment undertaken by the individual.

45 (c) Except as otherwise set forth in this article, if an applicant is disqualified from licensure
46 because of a prior criminal conviction, the commissioner shall permit the applicant to apply for
47 initial licensure if:

48 (1) A period of five years has elapsed from the date of conviction or the date of release from
49 incarceration, whichever is later;

50 (2) The individual has not been convicted of any other crime during the period of time
51 following the disqualifying offense; and

52 (3) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a
53 conviction for an offense of a violent or sexual nature may subject an individual to a longer period
54 of disqualification from licensure, to be determined by the commissioner.

55 (d) An individual with a criminal record who has not previously applied for licensure may
56 petition the commissioner at any time for a determination of whether the individual's criminal
57 record will disqualify the individual from obtaining a license. This petition shall include sufficient
58 details about the individual's criminal record to enable the commissioner to identify the jurisdiction
59 where the conviction occurred, the date of the conviction, and the specific nature of the conviction.
60 The commissioner shall provide the determination within 60 days of receiving the petition from the
61 applicant. The commissioner may charge a fee to recoup its costs for each petition.

62 (e) The commissioner may not request a background check of an applicant under this
63 section unless the applicant first provides a set of fingerprints and completes and signs a
64 statement that:

65 (1) Contains the name, address, and date of birth appearing on a valid identification
66 document of the applicant;

67 (2) Declares that the applicant has not been convicted of a crime or, if the applicant has

68 been convicted of a crime, contains a description of the crime and the particulars of the conviction.

69 For the purposes of this section, an applicant has not been convicted of a crime if he or she was

70 convicted of a non-moving motor vehicle violation or a speeding violation that does not arise in

71 connection with a motor vehicle collision;

72 (3) Notifies the applicant that the commissioner will request a background check; and

73 (4) Notifies the applicant of the applicant's rights under subsection (i) of this section.

74 (f) The State Police shall establish and maintain an adequate system for background

75 investigations that:

76 (1) Ensures that timely background investigations are conducted on applicants for a

77 license to operate a vape or smoke shop, current licensees, and other persons required to be

78 investigated by the commissioner in accordance with the provisions of this article or by legislative

79 rules promulgated pursuant to this article;

80 (2) Provides for review and oversight of applicants, current licensees, and other persons

81 on an ongoing basis;

82 (3) Provides that upon receipt of a background check report lacking disposition data,

83 further research will be conducted in whatever state and local recordkeeping systems are

84 available in order to obtain complete data;

85 (4) Provides for prompt notification to the commissioner of the results of background

86 investigations before the issuance or renewal of any license; and

87 (5) Clearly defines a standard whereby a person's prior activities, criminal record, if any, or

88 reputation, habits and associations are such as to pose a threat to the public interest or to the

89 effective regulation of vape or smoke shops, or create or enhance the dangers of unsuitable,

90 unfair, or illegal practices and methods and activities in the conduct of vape or smoke shop

91 operations, thereby rendering that person ineligible for licensing.

92 (g) The license required by this section may not be transferred from one person to another

93 or from one premises to another. A new license is required when a vape or smoke shop has a

94 change in ownership.

95 (h) The license required by this section shall be in addition to, and not in lieu of, any other
96 requirements set forth in federal, state, or local laws.

97 (i) Each applicant who is the subject of a background check is entitled to a copy of his or
98 her background investigation report, and has the right to challenge the accuracy and
99 completeness of any information contained in the report and to obtain a prompt determination as
100 to the validity of the challenge before a final determination is made by the commissioner that would
101 deny issuance of a license or renewal of a license.

102 (j) The commissioner may propose rules for legislative approval in accordance with the
103 provision of §29A-3-1 et seq. of this code as may be necessary to carry out the purposes of this
104 article.

§16-9H-6. Annual license fee.

1 (a) The annual license fee for a license issued under the provisions of this article to operate
2 a vape or smoke shop is \$1,200.

3 (b) The fee for any license issued following January 1 of any year that expires on June 30
4 of that year is one half of the annual license fee prescribed by subsections (a) of this section.

5 (c) A licensee that fails to complete a renewal application and make payment of its annual
6 license fee in renewing its license on or before June 30 of any subsequent year, after initial
7 application, shall be charged an additional \$150 reactivation fee. The fee payment may not be
8 prorated or refunded, and the reactivation fee shall be paid prior to the processing of any renewal
9 application and payment of the applicable full year annual license fee. A licensee who continues to
10 operate upon the expiration of its license is subject to all fines, penalties, and sanctions available
11 in this article, all as determined by the commissioner.

12 (d) Funds derived from the fees shall be remitted by the commissioner to the state
13 treasurer and divided as follows:

14 (1) Fifty percent shall be credited to the Agricultural Fees Fund established by the

15 provisions of §19-1-4c of this code; and

16 (2) Fifty percent shall be credited to the Alcohol Beverage Control Enforcement Fund
17 established by the provisions of §60-7-13 of this code.

§16-9H-7. Administration and enforcement.

1 It shall be the duty of the commissioner to administer and enforce the provisions of the
2 article, except as otherwise provided in this article.

3 (a) The commissioner shall perform the following duties:

4 (1) Receive and process all license applications;

5 (2) Endeavor to grant or deny the issuance of a vape or smoke shop license within 10
6 working days of receipt of a complete license 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 West Virginia State Police, sheriff of the county
11 or the office of the prosecuting attorney of the county to abate or prosecute any violation of this
12 article;

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

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

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

16 (9) Administer this article in all respects.

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

21 (c) In administering this article, the standard rule of rounding numbers to the nearest whole
22 shall apply. When the unit of measurement results in a fraction less than one-half or less than .5,

23 the fraction shall be disregarded. When the unit of measurement results in a fraction of one-half or
24 more, or .5 or over, the number shall be rounded up to the next nearest whole number.

§16-9H-8. Prohibition on use of Vape or Smoke Shop as residence

1 (a) No person may use, occupy, or permit the use or occupancy of any vape or smoke shop
2 authorized for the retail sale of tobacco-derived products or vapor products as a residence,
3 dwelling place, or location for human habitation.

4 (b) Notwithstanding any provision of this code to the contrary, a violation of subsection (a)
5 of this section shall constitute grounds for the immediate suspension of operations at the premises
6 by the Alcohol Beverage Commissioner or a duly authorized agent thereof until the violation is
7 remedied.

§16-9H-9. Violations.

1 (a) The regulated aspects of a vape or smoke retailer, manufacturer, or wholesaler subject
2 to this article shall be subject to periodic inspections by the commissioner for the purpose of
3 verifying compliance with 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 commissioner shall properly record such complaints,
7 conduct appropriate investigation, and act thereon as this article provides.

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

24 (1) Order the discontinuance of illegal use of land or improvements;

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

27 (3) Order the discontinuance of any illegal work being done;

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

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

31 (6) Any other remedies provided by law, including, without limitation, injunction, or
32 abatement by judicial proceeding in the magistrate or circuit court of appropriate jurisdiction.

33 Nothing contained in this article shall be deemed to prevent the commissioner from pursuing other
34 lawful actions to prevent or remedy violations of this article. The Attorney General shall, upon
35 request, provide legal counsel and services to the commissioner in all administrative proceedings
36 and in all proceedings in any circuit court and the West Virginia Supreme Court of Appeals without
37 additional compensation.

38 (e) In addition to any other remedies set forth in this article, the commissioner may impose
39 a monetary fine of not less than \$100 nor more than \$500 against the manager or any person or
40 persons who violate this article, or any order or notice issued thereunder. Each day during which
41 any violation of this article continues constitutes a separate offense.

§16-9H-10. Establishment of the Vapor Product Directory; requirements; fees; notice of action; and removal of product from directory.

1 (a) By July 1, 2026, and annually thereafter, every manufacturer of vapor products that are
2 sold in the state shall submit a certification to the State Tax Commissioner and the Alcohol
3 Beverage Control Commissioner that separately lists each vapor product that is sold in this state.

4 (b) Every manufacturer of vapor products that are sold in this state, whether directly or
5 through a distributor, wholesaler, retailer, or similar intermediary or intermediaries, shall certify,
6 under penalty of perjury on a form and in the manner prescribed by the commissioners, that the
7 manufacturer agrees to comply with this article and that:

8 (1) The manufacturer has received a marketing authorization or similar order for the vapor
9 product from the United States Food and Drug Administration pursuant to 21 U.S.C. Section 387j;
10 or

11 (2) The vapor product was marketed in the United States as of August 8, 2016, the
12 manufacturer submitted a premarket tobacco product application for the vapor product to the
13 United States Food and Drug Administration pursuant to 21 U.S.C. Section 387j on or before
14 September 9, 2020, and the application either remains under review by the United States Food
15 and Drug Administration or a final decision on the application has not otherwise taken effect.

16 (c) Each annual certification form required by subsections (a) and (b) of this section shall
17 be accompanied by:

18 (1) A copy of the marketing authorization or other order for the vapor product issued by the
19 United States Food and Drug Administration pursuant to 21 U.S.C. Section 387j, or evidence that
20 the premarket tobacco product application for the vapor product was submitted to the United
21 States Food and Drug Administration and a final authorization or order has not yet taken effect;
22 and

23 (2) A payment of \$100 for each vapor product the first time a manufacturer submits a
24 certification form for that vapor product and a payment of \$100 annually thereafter for each
25 vapor product.

26 (d) A manufacturer required to submit a certification form pursuant to subsections (a)
27 and (b) of this section shall notify the State Tax Commissioner and the Alcohol Beverage
28 Control Commissioner within 30 days of any material change to the certification form, including
29 the issuance or denial of a marketing authorization or other order by the United States Food
30 and Drug Administration pursuant to 21 U.S.C. Section 387j, or any other order or action by the
31 United States Food and Drug Administration or a court of competent jurisdiction that affects
32 the ability of the vapor product to be introduced or delivered into interstate commerce for
33 commercial distribution in the United States.

34 (e) Beginning September 1, 2026, the State Tax Commissioner and the Alcohol
35 Beverage Control Commissioner shall maintain and make publicly available on either
36 commissioner's website a directory that lists all vapor product manufacturers and the vapor
37 products for which certification forms have been submitted and shall update the directory at
38 least monthly to ensure accuracy.

39 (f) The State Tax Commissioner and the Alcohol Beverage Control Commissioner shall
40 provide a manufacturer of vapor products a notice and an opportunity to cure deficiencies
41 before removing the manufacturer's vapor products from the directory.

42 (1) The State Tax Commissioner and the Alcohol Beverage Control Commissioner may
43 not remove the manufacturer of a vapor product or its vapor products from the directory until at
44 least 15 days after the manufacturer has been given notice of an intended action. Notice shall
45 be sufficient and be deemed immediately received by a manufacturer if the notice is sent either
46 electronically to an electronic mail address or by facsimile to a facsimile number, as provided
47 by the manufacturer in its most recent certification filed under subsections (a) and (b) of this
48 section.

49 (2) The manufacturer of a vapor product shall have 15 business days from the date of
50 receipt of the notice of the State Tax Commissioner and the Alcohol Beverage Control
51 Commissioner's intended action to establish that the manufacturer of a vapor product or its
52 vapor products should be included in the directory.

53 (g) If a vapor product is removed from the directory, each retailer, distributor, and
54 wholesaler shall have 21 days from the date such product is removed from the directory to
55 remove the product from its inventory and return the product to the manufacturer for disposal.
56 Subsequent to 21 days following removal from the directory, a vapor product of a manufacturer
57 identified in the notice of removal that has not been removed from a retailer, distributor, or
58 wholesaler's inventory are considered contraband and are subject to seizure, forfeiture, and
59 destruction, and may not be purchased or sold in the state. The cost of such seizure,
60 forfeiture, and destruction shall be borne by the person or entity from whom the products are
61 confiscated.

§16-9H-11. Prohibition of sales of vapor products that are not included in the vapor product directory.

1 Beginning September 1, 2026, a person, vape or smoke retailer, or other entity may not
2 sell or offer for sale a vapor product in this state that is not included in the vapor product
3 directory established by §16-9H-10, and a manufacturer of a vapor product may not sell, either
4 directly or through a distributor or wholesaler, vape or smoke retailer, or similar intermediary or
5 intermediaries, a vapor product in this state that is not included in the vapor product directory
6 required by §16-9H-10 of this code.

§16-9H-12. Violations, fees and penalties for violations relating to the vapor product directory.

1 (a) The following fees and penalties apply to violations of this article:

2 (1) A distributor, wholesaler, or vape or smoke retailer, any other person or entity, who
3 sells or offers for sale a vapor product in this state that is not included in the directory shall be

4 subject to a civil penalty of \$100 per day for each vapor product offered for sale in violation of
5 this section until the offending vapor product is removed from the market or until the offending
6 vapor product is properly listed on the directory;

7 (2) A manufacturer of a vapor product whose vapor product is not listed in the directory
8 and are sold in this state, whether directly or through a distributor, wholesaler, vape or smoke
9 retailer, or similar intermediary or intermediaries, is subject to a civil penalty of \$100 per day for
10 each vapor product offered for sale in violation of this section until the offending vapor product
11 is removed from the market or until the offending vapor product is properly listed on the
12 directory; or

13 (3) In addition, any manufacturer that falsely represents any of the information required
14 by §16-9H-11(a) and §16-9H-11(b) of this code shall be guilty of a misdemeanor for each false
15 representation.

16 (b) All fees and penalties collected by the State Tax Commissioner and the Alcohol
17 Beverage Control Commissioner pursuant to this section shall be used for administration and
18 enforcement of this section.

§16-9H-13. Enforcement of the provisions of the vapor product directory; rule-making.

1 (a) All requirements and provisions of the vapor product directory shall be enforced by
2 the State Tax Commissioner and the Alcohol Beverage Control Commissioner.

3 (b) To enforce the provisions of the vapor products directory, the State Tax
4 Commissioner and the Alcohol Beverage Control Commissioner may examine all books,
5 papers, invoices, or other records of any person or retailer in possession, control, or
6 occupancy of any retail establishment or vape or smoke shop where vapor products are
7 placed, stored, sold, or offered for sale, as well as the stock of vapor products on the premises.
8 Every person or retailer in the possession, control, or occupancy of any premises where vapor
9 products are placed, sold, or offered for sale shall give the State Tax Commissioner and the

10 Alcohol Beverage Control Commissioner access to their facilities, and shall submit to all
11 examinations authorized by this section.

12 (c) Each retail establishment, vape or smoke shop, or wholesaler that sells or
13 distributes vapor products in this state may be subject to unannounced compliance checks for
14 purposes of enforcing this section. At least 33 percent of vape or smoke shops and
15 wholesalers operating in West Virginia each year shall be subject to compliance checks at
16 least one time each year.

17 (d) Unannounced follow-up compliance checks of all noncompliant retail
18 establishments, vape or smoke shops, or wholesalers shall be conducted within 30 days after
19 any violation of this article. The State Tax Commissioner and the Alcohol Beverage Control
20 Commissioner shall publish all violations of the requirements of the vapor product directory
21 including the results of all compliance checks at least annually and shall make the results
22 available to the public on request.

23 (d) The State Tax Commissioner and the Alcohol Beverage Control Commissioner
24 may, pursuant to §29A-3-1 et seq., promulgate such separate or joint legislative rules,
25 including emergency rules, as are necessary to effectuate the purposes of the vapor product
26 directory.

§16-9H-14. Service of Process; required appointment of agent for service of process by
foreign _____ **manufacturers.**

1 (a) Any foreign manufacturer of vapor products must register as an out of state, or
2 foreign, business with the Secretary of State. As a condition precedent to being included as a
3 manufacturer in the vapor product directory, the foreign manufacturer of vapor products shall
4 appoint and continually engage without interruption the services of an agent for service of
5 process in West Virginia to serve as such in any action or proceeding against it concerning or
6 arising out of the enforcement of article and who may be served in any manner authorized by
7 law. Service of process upon this agent shall constitute legal and valid service of process on

8 the manufacturer of vapor products. The manufacturer of a vapor product shall provide the
9 name, address, telephone number, and proof of the appointment the agent for service of
10 process to the State Tax Commissioner and the Alcohol Beverage Control Commissioner.

11 (b) The manufacturer of a vapor product shall provide notice to the State Tax
12 Commissioner and the Alcohol Beverage Control Commissioner 30 calendar days prior to
13 termination of the appointment of an agent for service of process and shall further provide
14 proof to the satisfaction of the commissioners of the appointment of a new agent for service of
15 process no less than five calendar days prior to the termination of an existing agent for service
16 of process appointment. If an agent for service of process terminates an agency appointment,
17 the manufacturer of vapor product shall notify the commissioners of the termination within five
18 calendar days and shall include proof to the satisfaction of the commissioners of the
19 appointment of a new agent for service of process.

20 (c) Any manufacturer of a vapor product whose vapor products are sold in this state
21 who has not appointed services of an agent for service of process, as required by this section,
22 shall be deemed to have appointed the Secretary of State as its agent for service of process.
23 The appointment of the Secretary of State as agent shall not satisfy the condition precedent
24 required in subsection (a) of this section for a manufacturer of a vapor product to be include in
25 the directory of vapor products.

§16-9H-15. **Reporting.**

1 Beginning December 31, 2026, and annually thereafter, the State Tax Commissioner and
2 the Alcohol Beverage Control Commissioner shall file an annual report with the Joint Committee
3 on Government and Finance regarding the status of the directory, manufacturers of vapor
4 products and vapor products included in the directory, revenue and expenditures related to
5 administration of the Vapor Product Directory, and a detailed summary of enforcement activities
6 undertaken pursuant to this article.

§16-9H-16. **Labeling.**

1 (a) The commissioner shall propose legislative rules for promulgation in accordance with
2 the provisions of §29A-3-1 et seq. of this code developing labeling standards for vapor products to
3 include, at a minimum:

4 (1) A warning of the potential harmful effects of the vapor product;

5 (2) The required age of an individual to legally purchase or attempt to purchase the vapor
6 product;

7 (3) The prohibition against selling or furnishing, by purchase, gift, or other means, the
8 vapor product to a minor;

9 (4) A warning to keep the vapor products away from minors;

10 (5) A disclosure of the common or usual names of each ingredient used in the manufacture
11 of such product, listed in descending order or predominance; and

12 (6) The name, physical address, website, and principal mailing address of the
13 manufacturer or the person responsible for distributing such product.

§16-9H-17.

Penalties.

1 (a) Any person who, by himself or herself or acting through another, directly or indirectly,
2 violates any of the provisions of this article for which no other penalty is provided, shall, for the first
3 offense, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than
4 \$2,500 or confined in jail for not more than 30 days, or both fined and confined.

5 (b) Any person who, by himself or herself or acting through another, directly or indirectly,
6 and for the second and each subsequent violation of any of the provisions of this article for which
7 no other penalty is provided, he or she shall be guilty of a misdemeanor and, upon conviction
8 thereof, shall be fined not more than \$5,000 or confined in jail for not more than six months, or both
9 fined and confined. The penalties provided for in this subsection shall be in addition to the
10 revocation of the offender's license.

§16-9H-18.

Appeals.

1 (a) Any person who is aggrieved by any order, requirement, decision, or determination

- 2 made by the commissioner may appeal the decision pursuant to §29A-5-1 et seq. of this code. The
- 3 appeal shall be filed on forms prescribed by the commissioner. The appeal shall specify the
- 4 reasons for the appeal and shall be filed within 30 calendar days of the original action in question.

NOTE: The purpose of this bill is to create the "Vape Safety Act."

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