

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

House Bill 5437

By Delegates McCormick, Maynor, Kyle, Akers, Clark,
Fehrenbacher, Heckert, Drennan, Worrell, and Pinson
[Originating in the Committee on Health and Human
Resources; Reported on February 23, 2026]

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, §16-9H-10, §16-9H-11, §16-9H-12, §16-9H-13, §16-9H-14, §16-9H-15, §16-9H-16, §16-9H-17, §16-9H-18, §16-9H-19, §16-9H-20, and §16-9H-21, relating to regulating vape or smoke shop retailers; defining terms; regulating locations; establishing advertising standards, prohibiting certain locations; establishing operating requirements; establishing property standards; creating license requirements retailers; creating requirements for manufacturers; establishing a product directory; prohibiting certain products; establishing requirements for wholesalers; creating license fees; creating civil penalties; creating criminal penalties; providing for appeals; providing for rulemaking; providing regulatory authority; providing 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 vapor product directory
10 established in §16-9H-13 of this code.

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

13 "Drug paraphernalia" means as that term is defined in §47-19-3 of this code.

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

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

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

25 "Premises" means a tract or tracts of land, whether containing existing or proposed
26 improvements, within the territorial limits that are identified as a parcel or parcels on a tax district
27 map or maps.

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

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

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

38 "Vape or smoke retailer" means a retail establishment that sells tobacco products and
39 accessories, as well as tobacco-derived and alternative nicotine products or vapor products and
40 accessories. These retailers may cater to individuals who use electronic cigarettes or other vaping
41 products.

42 "Vape or smoke shop" means a vape or smoke retailer that devotes at least 33 percent of
43 its floor space to selling drug paraphernalia, tobacco products and accessories, as well as
44 tobacco-derived and alternative nicotine products or vapor products and accessories.

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

§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 and shall comply with
5 all federal, state, and local laws relating to the sales of tobacco, tobacco-derived products, and
6 vapor products.

7 (c) A person licensed under this article is deemed approved to be registered as a hemp
8 product retailer and a kratom retailer.

9 (d) Any person who, by himself or herself or through another, directly or indirectly, violates
10 subsection (a) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall
11 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;

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

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

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

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

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

16 (A) Each person associated with a corporate applicant, including any corporate holding

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

66 (2) Declares that the applicant has not been convicted of a crime or, if the applicant has
67 been convicted of a crime, contains a description of the crime and the particulars of the conviction.

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

69 convicted of a non-moving motor vehicle violation or a speeding violation that does not arise in
70 connection with a motor vehicle collision;

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

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

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

75 (1) Ensures that timely background investigations are conducted on applicants for a
76 license to operate a vape or smoke shop, current licensees, and other persons required to be
77 investigated by the commissioner in accordance with the provisions of this article or by legislative
78 rules promulgated pursuant to this article;

79 (2) Provides for review and oversight of applicants, current licensees, and other persons
80 on an ongoing basis;

81 (3) Provides that upon receipt of a background check report lacking disposition data,
82 further research will be conducted in whatever state and local recordkeeping systems are
83 available in order to obtain complete data;

84 (4) Provides for prompt notification to the commissioner of the results of background
85 investigations before the issuance or renewal of any license; and

86 (5) Clearly defines a standard whereby a person's prior activities, criminal record, if any, or
87 reputation, habits and associations are such as to pose a threat to the public interest or to the
88 effective regulation of vape or smoke shops, or create or enhance the dangers of unsuitable,
89 unfair, or illegal practices and methods and activities in the conduct of vape or smoke shop
90 operations, thereby rendering that person ineligible for licensing.

91 (g) The license required by this section may not be transferred from one person to another
92 or from one premises to another. A new license is required when a vape or smoke shop has a
93 change in ownership.

94 (h) The license required by this section shall be in addition to, and not in lieu of, any other

95 requirements set forth in federal, state, or local laws.

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

101 (j) The commissioner may propose rules for legislative approval in accordance with the
102 provision of §29A-3-1 et seq. of this code as may be necessary to carry out the purposes of this
103 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 a minimum of \$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. Land use regulations.

18 (a) No person shall locate or operate a vape or smoke shop except in compliance or
19 conformance with this article.

20 (b) This article does not prohibit the continuance of the existing use of any tract of land or
21 improvement for the purpose for which such tract of land or improvement is used on the effective
22 date. This article does not prohibit the alteration or replacement of any improvement for the
23 purpose for which such Improvement is used on the effective date, except that the use shall not be
24 expanded or enlarged unless it shall conform to this article.

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

§16-9H-8. Location.

1 (a) No public entrance to a vape or smoke shop shall be located within 300 feet of any
2 property on which is situated any of the following:

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

5 (2) A public or private institution of higher education;

6 (3) A public or private business school or college;

7 (4) A public park or recreational facility; including but not limited to a park, a playground,
8 nature trail, swimming pool, athletic field, basketball court, tennis court, or wilderness area;

9 (5) A public library;

10 (6) A building used as a place of religious worship or instruction;

11 (7) A federal, state, county, or municipal office building;

12 (8) Another vape or smoke shop;

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

14 (10) A residence.

15 (b) Each of the prescribed distances to a public entrance of a vape or smoke shop shall be
16 measured along a straight line from the nearest property line of the tract from which the
17 measurement is to be made.

§16-9H-9. Signs.

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

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

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

17 (d) After a sign is constructed or installed based on the application, the applicant shall
18 provide a letter to the commissioner certifying that the sign was designed, fabricated, sized,
19 constructed, and installed according to the application as approved.

20 (e) Any sign promoting a vape or smoke shop shall be flat and mounted to the wall of the
21 improvement in which the vape or smoke shop is located and shall be mounted so that no part of

22 the sign extends beyond the height of the improvement on which it is displayed.

23 (f) No merchandise or depictions of merchandise including images of marijuana or
24 marijuana paraphernalia shall be displayed on any sign, exterior Improvement or fence advertising
25 or promoting a vape or smoke shop or otherwise nor in any windows or any other area that may be
26 viewed from a public street, alley, sidewalk, or public way.

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

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

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

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

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

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

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

47 (6) A sign that makes use of such words as "stop", "look", "danger" or other similar words,

48 phrases, symbols, or characters in such a manner as to imply the need or requirement of stopping
49 or the existence of danger.

50 (7) A sign that obstructs free ingress or egress from a door, window, fire escape or other
51 exit way.

52 (8) A sign that no longer advertises a bona fide business, activity, campaign, service, or
53 product; or

54 (9) A sign advertising or promoting a business that has been abandoned.

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

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

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

62 (l) The commissioner shall inspect the sign after it is completed and, upon a demonstration
63 that the sign complies or conforms with this article, may issue a permit to the applicant. If the
64 commissioner determines that the sign does not comply or conform with this article, the
65 commissioner shall issue a written denial of the application therefore and shall include a written
66 statement of the reasons for denial.

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

72 (n) If a sign promoting a vape or smoke shop is abandoned, the sign shall be deemed a
73 nuisance misleading the public and affecting or endangering surrounding property values and

74 shall be deemed detrimental to the public health, safety and general welfare of the community and
75 shall be removed or abated immediately.

§16-9H-10. Administration and enforcement.

1 (a) 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 (b) 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 (c) 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 (d) 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-11. 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 commissioner thereof until the violation is remedied.

§16-9H-12.

Violations.

1 (a) A vape or smoke retailer, manufacturer, or wholesaler subject to this article shall be
2 subject to periodic inspections by the commissioner 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 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-13. Establishment of the Vapor Product Directory; requirements; fees; notice of
action; and removal of product from directory.

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

4 (b) A 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
6 certify, under penalty of perjury on a form and in the manner prescribed by the
7 commissioners, that the manufacturer agrees to comply with this article and that:

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

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

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

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

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

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

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

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

44 (1) The State Tax Commissioner and the Alcohol Beverage Control
45 Commissioner may not remove the manufacturer of a vapor product or its vapor

46 products from the directory until at least 15 days after the manufacturer has been
47 given notice of an intended action. Notice shall be sufficient and be deemed
48 immediately received by a manufacturer if the notice is sent either electronically to an
49 electronic mail address or by facsimile to a facsimile number, as provided by the
50 manufacturer in its most recent certification filed under subsections (a) and (b) of this
51 section.

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

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

§16-9H-14. Prohibition of sales of certain vapor products.

1 (a) A person, vape or smoke retailer, or other entity may not sell or offer for sale
2 a vapor product in this state that is not included in the vapor product directory, and a
3 manufacturer of a vapor product may not sell, either directly or through a distributor or

4 wholesaler, vape or smoke retailer, or similar intermediary or intermediaries, a vapor
5 product in this state that is not included in the vapor product directory required by §16-
6 9H-13 of this code.

7 (b) A manufacturer of a vapor product or a vape or smoke shop may not sell,
8 either directly or through a distributor or wholesaler, vape or smoke retailer, or similar
9 intermediary or intermediaries, a vapor product in this state that uses, in the name of
10 the product, the labeling of the product, the packaging of the product, or the marketing
11 of the product:

12 (1) The terms “candy,” “candies,” or variants in spelling such as “kandy” or
13 “kandeez”;

14 (2) The terms “bubble gum,” “cotton candy,” “gummy bear,” “gummy worm,”
15 “lollipop,” or other variant of these terms;

16 (3) References to cartoons, cartoon characters, superheroes, television shows,
17 video games, movies, or other similar characters or references;

18 (4) References to or utilization of trade dress, trademarks, or other regulated
19 imagery that imitate or replicate trade dress, trademarks, or other imagery of food
20 brands or products that have been primarily marketed to minors such as brands of
21 breakfast cereals, cookies, juice drinks, soft drinks, ice creams, and frozen pops; or

22 (5) References to or utilization of trade dress, trademarks, or other related
23 imagery that imitate or replicate trade dress, trademarks, or other imagery of school
24 supplies such as USB drives or highlighters, smart phones or smart watches,
25 headphones, any item of clothing, any toy, video game devices or phone app
26 integration features.

§16-9H-15. 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
3 entity, who sells or offers for sale a vapor product in this state that is not included in the
4 directory shall be subject to a civil penalty of \$100 per day for each vapor product
5 offered for sale in violation of this section until the offending vapor product is removed
6 from the market or until the offending vapor product is properly listed on the directory;

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

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

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

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

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

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

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

19 (d) Unannounced follow-up compliance checks of all noncompliant retail
20 establishments, vape or smoke shops, or wholesalers shall be conducted within 30
21 days after any violation of this article. The State Tax Commissioner and the Alcohol
22 Beverage Control Commissioner shall publish all violations of the requirements of the

23 vapor product directory including the results of all compliance checks at least annually
24 and shall make the results available to the public on request.

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

**§16-9H-17. 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,
2 or foreign, business with the Secretary of State. As a condition precedent to being
3 included as a manufacturer in the vapor product directory, the foreign manufacturer of
4 vapor products shall appoint and continually engage without interruption the services
5 of an agent for service of process in West Virginia to serve as such in any action or
6 proceeding against it concerning or arising out of the enforcement of article and who
7 may be served in any manner authorized by law. Service of process upon this agent
8 shall constitute legal and valid service of process on the manufacturer of vapor
9 products. The manufacturer of a vapor product shall provide the name, address,
10 telephone number, and proof of the appointment the agent for service of process to the
11 State Tax Commissioner and the Alcohol Beverage Control Commissioner.

12 (b) The manufacturer of a vapor product shall provide notice to the State Tax
13 Commissioner and the Alcohol Beverage Control Commissioner 30 calendar days
14 prior to termination of the appointment of an agent for service of process and shall
15 further provide proof to the satisfaction of the commissioners of the appointment of a

16 new agent for service of process no less than five calendar days prior to the
17 termination of an existing agent for service of process appointment. If an agent for
18 service of process terminates an agency appointment, the manufacturer of vapor
19 product shall notify the commissioners of the termination within five calendar days and
20 shall include proof to the satisfaction of the commissioners of the appointment of a
21 new agent for service of process.

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

§16-9H-18.

Reporting.

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

§16-9H-19.

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-20. **Penalties.**

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

§16-9H-21 **Appeals.**

1 A person who is aggrieved by any order, requirement, decision, or determination made by
2 the commissioner may appeal the decision pursuant to §29A-5-1 et seq. of this code. The appeal
3 shall be filed on forms prescribed by the commissioner. The appeal shall specify the reasons for
4 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.