

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4493**

BY DELEGATES ROHRBACH, PYLES AND MANDT

[Introduced January 23, 2020; Referred to the  
Committee on Prevention and Treatment of  
Substance Abuse then Health and Human  
Resources]

1 A BILL to amend and reenact §16-9E-1, §16-9E-2, and §16-9E-3 of the Code of West Virginia,  
 2 1931, as amended, relating to age verification requirements for delivery sales of tobacco,  
 3 tobacco products, alternative nicotine products, or vapor products.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 9E. DELIVERY SALES OF TOBACCO.**

### **§16-9E-1. Definitions.**

1 For purposes of this article:

2 ~~(a)~~ "Adult" means a person who is at least the legal minimum purchase age, as defined  
 3 by §16-9A-2 of this code.

4 "Alternative nicotine product" means the same as prescribed in §16-9A-2 of this code.

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

7 ~~(c)~~ "Delivery sale" means any sale of ~~cigarettes~~ tobacco, tobacco products, alternative  
 8 nicotine products, or vapor products to a consumer in this state where either: (1) The purchaser  
 9 submits the order for such sale by means of a telephonic or other method of voice transmission,  
 10 the mails or any other delivery service, or the Internet or other online service; or (2) the ~~cigarettes~~  
 11 tobacco, tobacco products, alternative nicotine products, or vapor products are delivered by use  
 12 of the mails or a delivery service. A sale of ~~cigarettes~~ tobacco, tobacco products, alternative  
 13 nicotine products, or vapor products shall be a delivery sale regardless of whether or not the seller  
 14 is located within this state. A sale of ~~cigarettes~~ tobacco, tobacco products, alternative nicotine  
 15 products, or vapor products not for personal consumption to a person who holds a business  
 16 registration certificate as a wholesale dealer or a retail dealer shall not be a delivery sale.

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

19 ~~(e)~~ "Department" means the State Tax Department.

20 ~~(f)~~ "Legal minimum purchase age" is at least 18 years of age as defined by §16-9A-2 of

21 this code for the purchase of ~~cigarettes~~ tobacco, tobacco products, alternative nicotine products,  
22 or vapor products in this state.

23 (g) "Mails" or "mailing" means the shipment of ~~cigarettes~~ tobacco, tobacco products,  
24 alternative nicotine products, or vapor products through the United States postal service or other  
25 delivery service as defined in this section.

26 (h) "Shipping container" means a container in which ~~cigarettes~~ tobacco, tobacco products,  
27 alternative nicotine products, or vapor products are shipped in connection with a delivery sale.

28 (i) "Shipping documents" means bills of lading, airbills, or any other documents used to  
29 evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

30 "Tobacco product" and "tobacco-derived product" means the same as prescribed in §16-  
31 9A-2 of this code.

32 "Vapor product" means the same prescribed in §16-9A-2 of this code.

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

1 (a) No person shall make a delivery sale of ~~cigarettes~~ tobacco, tobacco products,  
2 alternative nicotine products, or vapor products to any individual who is under the legal minimum  
3 purchase age in this state.

4 (b) Each person accepting a purchase order for a delivery sale shall comply with:

5 (1) The age verification requirements set forth in section three of this article;

6 (2) The disclosure requirements set forth in §16-9E-3(a)(3) of this code;

7 (3) The shipping requirements set forth in section four of this article;

8 (4) The registration and reporting requirements set forth in section five of this article;

9 (5) The tax collection requirements set forth in section six of this article; and

10 (6) All other laws of this state generally applicable to sales of cigarettes that occur entirely  
11 within this state, including, but not limited to, those laws imposing: (i) Excise taxes; (ii) sales taxes;  
12 (iii) license and revenue-stamping requirements; and (iv) escrow or other payment obligations.

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

1 (a) No person shall mail, ship, or otherwise deliver ~~cigarettes~~ tobacco, tobacco products,  
2 alternative nicotine products, or vapor products in connection with a delivery sale unless prior to  
3 the first delivery sale to a consumer, the person:

4 (1) Obtains from the prospective consumer a certification that includes a reliable  
5 confirmation that the consumer is at least the legal minimum purchase age and a statement  
6 signed by the prospective consumer in writing that certifies the prospective consumer's address  
7 and that the consumer is at least 18 years of age. The statement shall also confirm: (i) That the  
8 prospective consumer understands that it is illegal to sign another person's name to the  
9 certification; (ii) that the sale of ~~cigarettes~~ tobacco, tobacco products, alternative nicotine  
10 products, or vapor products to individuals under the legal minimum purchase age is illegal; and  
11 (iii) that the purchase of cigarettes by individuals under the legal minimum purchase age is illegal  
12 under the laws of this state;

13 (2) Verifies the information contained in the certification provided by the prospective  
14 consumer against an appropriate database of government records available to the distributor or  
15 seller, or obtains simultaneous with the certificate as provided for in subdivision (1), a photocopy  
16 or other image of the valid, government-issued identification stating the date of birth or age of the  
17 individual placing the order;

18 (3) Sends to the prospective consumer, via e-mail or other means, a notice that contains:  
19 (A) A prominent and clearly legible statement that ~~cigarettes~~ tobacco, tobacco products,  
20 alternative nicotine products, or vapor products sales to a consumer below the legal minimum  
21 purchase age is illegal; (B) a prominent and clearly legible statement that consists of one of the  
22 warnings set forth in section 4(a)(1) of the federal Cigarette Labeling and Advertising Act, 15  
23 U.S.C. §1333(a)(1), rotated on a quarterly basis; (C) a prominent and clearly legible statement  
24 that sales of ~~cigarettes~~ tobacco, tobacco products, alternative nicotine products, or vapor products  
25 are restricted to those consumers who provide verifiable proof of age in accordance with section  
26 three of this article; and (D) a prominent and clearly legible statement that ~~cigarettes~~ tobacco,

27 tobacco products, alternative nicotine products, or vapor products sales are subject to excise and  
28 sales taxes in this state, and an explanation of how such taxes have been, or are to be, paid with  
29 respect to the delivery sale.

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

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

36 (c) A delivery for tobacco, tobacco products, alternative nicotine products, or vapor  
37 products transported by a delivery service shall certify that the customer is above the legal  
38 minimum purchase age in this state. This shall be certified by checking the customer's state-  
39 issued photo identification.

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NOTE: The purpose of this bill is to mandate that mail carriers check photo identification when delivering tobacco, tobacco related products, alternative nicotine products, or vapor products.

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