
WEST VIRGINIA CODE CHAPTER 16
ARTICLE 9H

WV Legislature

§16-9H-1. Short title.

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

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§16-9H-2. Definitions.

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

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

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

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

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

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

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

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

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

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

"Tobacco-derived product" means any product containing, made or derived from tobacco, or containing nicotine derived from tobacco, that is intended for human consumption, whether

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

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

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

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

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

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

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

(b) Any person who, by himself or herself or through another, directly or indirectly, violates §16-9H-3(a) of this code shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000 and confined in jail for not more than one year.

§16-9H-4. Jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

(5) The applicant has provided a set of fingerprints and has completed and signed the statement provided for in §16-9H-5(e) of this code;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Declares that the applicant has not been convicted of a crime or, if the applicant has been convicted of a crime, contains a description of the crime and the particulars of the conviction. For the purposes of this section, an applicant has not been convicted of a crime if he or she was convicted of a non-moving motor vehicle violation or a speeding violation that does not arise in connection with a motor vehicle collision;

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

(4) Notifies the applicant of the applicant's rights under §16-9H-5(i) of this code.

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

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

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

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

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

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

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

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

(i) Each applicant who is the subject of a background check is entitled to a copy of his or her background investigation report, and has the right to challenge the accuracy and

completeness of any information contained in the report and to obtain a prompt determination as to the validity of the challenge before a final determination is made by the commissioner that would deny issuance of a license or renewal of a license.

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

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§16-9H-6. Annual license fee.

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

(b) The fee for any license issued following January 1 of any year that expires on June 30 of that year is one half of the annual license fee prescribed by §16-9H-6(a) of this code.

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

(d) Funds derived from the fees shall be remitted by the commissioner to the State Treasurer and divided as follows:

(1) Fifty percent shall be credited to the Agricultural Fees Fund established by the provisions of §19-1-4c of this code; and

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

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

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

(1) The commissioner shall perform the following duties:

(A) Receive and process all license applications;

(B) Endeavor to grant or deny the issuance of a vape or smoke shop license within 10 working days of receipt of a complete license application;

(C) Conduct investigations as necessary to determine compliance or conformance with or violation of this article;

(D) Abate any violation of this article;

(E) Seek the assistance of the office of the State Police, sheriff of the county, or the office of the prosecuting attorney of the county to abate or prosecute any violation of this article;

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

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

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

(I) Administer this article in all respects.

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

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

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

(b) Notwithstanding any provision of this code to the contrary, a violation of §16-9H-8(a) of this code shall constitute grounds for the immediate suspension of operations at the premises by the Alcohol Beverage Commissioner or a duly authorized agent thereof until the violation is remedied.

§16-9H-9. Violations.

(a) The regulated aspects of a vape or smoke retailer, manufacturer, or wholesaler subject to this article shall be subject to periodic inspections by the commissioner for the purpose of verifying compliance with the terms and conditions of this article.

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

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

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

(2) A statement indicating the nature of the violation and the specific section of this article that has been violated;

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

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

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

(d) The commissioner is authorized to take any of the following actions:

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

(2) Order the removal of any vapor products sold in this state in violation of the provisions of §16-9H-10(a) or §16-9H-14 of this code, or any illegal improvements or structures of illegal additions, alterations, or structural changes;

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

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

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

(6) Any other remedies provided by law, including, without limitation, injunction, or abatement by judicial proceeding in the magistrate or circuit court of appropriate jurisdiction. Nothing contained in this article shall be deemed to prevent the commissioner from pursuing other lawful actions to prevent or remedy violations of this article. The Attorney General shall, upon request, provide legal counsel and services to the commissioner in all administrative proceedings and in all proceedings in any circuit court and the West Virginia Supreme Court of Appeals without additional compensation.

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

§16-9H-10. Prohibition of sales of certain vapor products.

(a) Beginning March 1, 2027, a manufacturer of a vapor product may not sell, either directly or through a distributor or wholesaler, vape or smoke retailer, or similar intermediary or intermediaries, a vapor product in this state that uses, in the name of the product, the labeling of the product, the packaging of the product, or the marketing of the product and of the following terms or references:

- (1) "Candy", "candies", or variants in spelling such as "kandy" or "kandeez";
- (2) "Bubble gum", "cotton candy", "gummy bear", "gummy worm", "lollipop", or other variant of these terms;
- (3) Cartoons, cartoon characters, superheroes, television shows, video games, movies, or other similar characters or references;
- (4) References to or utilization of trade dress, trademarks, or other regulated imagery that imitate or replicate trade dress, trademarks, or other imagery of food brands or products that have been primarily marketed to minors such as brands of breakfast cereals, cookies, juice drinks, soft drinks, ice creams, and frozen pops; or
- (5) References to or utilization of trade dress, trademarks, or other related imagery that imitate or replicate trade dress, trademarks, or other imagery of school supplies such as USB drives or highlighters, smart phones or smart watches, headphones, any item of clothing, any toy, video game devices, or phone app integration features.

(b) Beginning July 1, 2027, a person, vape or smoke retailer, or other entity may not conduct advertising or promotional activities: *Provided*, That the person, vape, or smoke retailer may display a sign on the exterior of the establishment to identify the shop as a vape or smoke shop which sign is of uniform size and design, no greater than 18 inches by 18 inches: *Provided*, however, That the person, vape, or smoke retailer shall upon renewal of their license file a new application attesting to compliance with this subsection. The sign shall additionally conform to the following guidelines:

- (1) The sign shall be affixed in one location on the outside of the licensed retail location;
- (2) The sign can be double sided;
- (3) The font shall be Helvetica or Arial and said font cannot exceed three inches in height or width per character;
- (4) The sign can be illuminated but shall not have a flashing light or intermittent light.

(c) The vape or smoke retailer shall be located at least 300 feet from a church, school, or daycare center. This distance is to be calculated by measuring a straight line from the entrance to the property line of the nearest place in question.

(d) Includes a product label inconsistent with the requirements set forth in this article or contains an inaccurate or misleading product label; or

(e) No person manufacturing, processing, distributing, offering for sale, or selling any vape or vapor products in this state shall sell, give, or furnish, or cause to be sold, given, or furnished, any vape product, in any form, to any person younger than 21 years of age, which shall be verified by a valid driver's license, state identification card, or any valid and unexpired federally issued identification card such as a passport or military identification card.

§16-9H-11. Violations, fees and penalties for violations.

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

(1) A distributor, wholesaler, or vape or smoke retailer, any other person or entity, who sells or offers for sale a vapor product in violation of this article shall be subject to a civil penalty of \$100 per day for each vapor product offered for sale in violation of this section until the offending vapor product is removed from the market;

(2) In addition, any manufacturer, distributor, wholesaler, or vape or smoke retailer that sells vapor products in this state in violation of the provisions of §16-9H-10(a) or §16-9H-14 of this code shall be guilty of a misdemeanor for each violation.

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

§16-9H-12. Service of process; required appointment of agent for service of process by foreign manufacturers.

(a) Any foreign manufacturer of vapor products must register as an out of state, or foreign, business with the Secretary of State. A foreign manufacturer of vapor products shall appoint and continually engage without interruption the services of an agent for service of process in West Virginia to serve as such in any action or proceeding against it concerning or arising out of the enforcement of this article and who may be served in any manner authorized by law. Service of process upon this agent shall constitute legal and valid service of process on the manufacturer of vapor products. The manufacturer of a vapor product shall provide the name, address, telephone number, and proof of the appointment of the agent for service of process to the State Tax Commissioner and the Alcohol Beverage Control Commissioner.

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

(c) Any manufacturer of a vapor product whose vapor products are sold in this state who has not appointed services of an agent for service of process, as required by this section, shall be deemed to have appointed the Secretary of State as its agent for service of process.

§16-9H-13. Reporting.

Beginning December 31, 2026, and annually thereafter, the Alcohol Beverage Control Commissioner shall file an annual report with the Joint Committee on Government and Finance regarding the status of the manufacturers of vapor products, revenue and expenditures related to administration of this article, and a detailed summary of enforcement activities undertaken pursuant to this article.

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§16-9H-14. Labeling.

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

- (1) A warning of the potential harmful effects of the vapor product;
- (2) The required age of an individual to legally purchase or attempt to purchase the vapor product;
- (3) The prohibition against selling or furnishing, by purchase, gift, or other means, the vapor product to a minor;
- (4) A warning to keep the vapor products away from minors;
- (5) A disclosure of the common or usual names of each ingredient used in the manufacture of such product, listed in descending order or predominance; and
- (6) The name, physical address, website, and principal mailing address of the manufacturer or the person responsible for distributing such product.

§16-9H-15. Criminal violations; penalties; and administrative sanctions.

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

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

(c) A retailer who commits an act in violation of §16-9H-10 of this code and the labeling requirements of this article shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than \$1,000 or confined in jail not more than one year: *Provided*, That a retailer who commits a second violation of §16-9H-10 of this code and the labeling requirements of this article, shall be guilty of a felony and, upon conviction thereof, be fined not less \$5,000 or confined in jail not more than two years: *Provided, however*: That a retailer who commits a third violation of §16-9H-10 of this code and the labeling requirements of this article, shall guilty of a felony and, upon conviction thereof, be fined not less \$10,000 or confined in jail not more than three years: *Provided further*, That upon each subsequent conviction after a third conviction, such individual shall be guilty of a felony and shall be imprisoned for not less than 10 years nor fined more than \$100,000.

(d) Administrative sanctions. —

(1) In the case of any person or entity holding a permit issued by the commissioner under this article charged with any criminal violation enumerated in this section, in addition to such criminal penalties imposed, the commissioner may impose administrative sanctions including, but not limited to, permanent revocation of any one or more permits held by the violator, revocation of one or more permits held by the violator for a period of time to be determined by the commissioner, suspension of any one or more permits held by the violator for a period of time to be determined by the commissioner, fine or fines to any one or more permits held by the violator not to exceed \$1,000 per each violation as determined by the commissioner, or non-issuance of a permit upon application of a violator. For purposes of this subsection, administrative sanctions may be imposed by the commissioner upon or against any alter ego, agent, representative, or person or entity acting on behalf of, or in the interest of, a violator.

(2) The commissioner may impose the administrative sanctions in §16-9H-15(d)(1) of this code upon any person or entity under indictment for any of the criminal violations during, and during the pendency of, a criminal trial therefor.

(e) Nothing in this article prohibits an authorized enforcement agent of the commissioner or a person who is at least 18 years of age from purchasing or possessing vapor product when he or she is acting upon the request of, or under the direction and control of any member of a state, federal, or local law-enforcement agency, or the commissioner while the agency is conducting an investigation or other activity relating to the criminal or administrative enforcement of this article.

WV Legislature

§16-9H-16. Appeals.

Any person who is aggrieved by any order, requirement, decision, or determination made by the commissioner may appeal the decision pursuant to §29A-5-1 *et seq.* of this code. The appeal shall be filed on forms prescribed by the commissioner. The appeal shall specify the reasons for the appeal and shall be filed within 30 calendar days of the original action in question.

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§16-9H-17. Applicability.

The provisions of this article do not apply to a cigar store as defined in legislative rule that does not sell vapor products.

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§16-9H-18. Rulemaking.

The commissioner may propose rules for legislative approval in accordance with the provisions of this article.

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