

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: Alcohol Beverage Control Commission TITLE NUMBER: 175

CITE AUTHORITY: W. Va. Code Section 16-9A-8 and section 29A-3-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

\_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 9

TITLE OF RULE BEING PROPOSED: Cigarette Vending Machines

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THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

*Thomas A. Keeloy*

Authorized Signature

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TITLE 175  
LEGISLATIVE RULE  
ALCOHOL BEVERAGE CONTROL COMMISSION

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 9  
CIGARETTE VENDING MACHINES

**§175-9-1. General.**

1. Scope. - This rule establishes policies and operating procedures for limiting access, location, or use of the sale of tobacco products in vending machines, criminal penalties, administrative penalties and hearing procedures.

1.2. Authority. - W. Va. Code §16-9A-8 and §29A-3-1 et seq.

1.3. Filing Date. -

1.4. Effective Date. -

**§175-9-2. Definitions.**

As used in this rule and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed herein, and apply in the singular and in the plural.

2.1. "ABCC," "Alcohol Beverage Control Commissioner," or "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner or his or her delegate.

2.2. "Adult" means a person who is at least eighteen (18) years of age.

2.3. "Cashier/Manager" means the person who collects payments for purchases.

2.4. "Child" means a person who has not attained the age of eighteen (18) years.

2.5. "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any ingredient, the wrapping or cover of which is made of paper or any substance or material, except tobacco; and any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packing and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.

2.6. "Tobacco products" means cigarettes, cigars, smokeless tobacco, pipe tobacco or roll-your-own tobacco.

2.7. "Vending machine operator" means any person engaged in this State in the business of operating one or more cigarette or tobacco products vending machines.

2.8. "Wholesaler" means any person engaged in this State in the business of purchasing unstamped cigarettes or tobacco products directly from a manufacturer or importer for resale.

### **§175-9-3. Tobacco Registration License Tax**

3.1. The license for selling cigarettes, other tobacco products, or wrappers is a part of the West Virginia Tax Department's Business Registration Certificate Application or the renewal application for same as provided for in W. Va. Code §11-12-4a and Legislative Rule, Title 110, Series 17 – Cigarette Excise Tax.

### **§175-9-4. Cigarette Vending Machine operators**

4.1. Vending machine operators are subject to the statutes and regulations of the West Virginia Tax Department in W.Va. Code § 11-17-1 and Legislative Rule, Title 110, Series 17. Any violations of the foregoing by a vending machine operator holding an ABC license will give rise to administrative sanctions pursuant to W. Va. Code §§ 11-16-1 et seq. and 60-7-1 et seq.

4.2. No cigarette vending machines shall be placed in operation within this State that is not so constructed as to display at least one package of cigarettes in each column. All cigarettes shall be placed in the machines in such a manner that the stamps affixed thereto shall be clearly visible.

### **175-9-5. Enforcement - Standards for location of vending machines.**

5.1. In order to comply with W.Va. Code § 16-9A-8 the vending machine(s) in an ABCC Class A licensed establishment must be in full view and control of the cashier/manager, i.e., the person who accepts payments for purchases in the establishment. If the vending machine is not within full view and control of the cashier/manager, the Commissioner and/or his inspector, agent, or employee shall have the authority to direct the cashier, manager, or licensee to move the machine to a suitable location. Refusal to do so will constitute interference or hindrance with an investigation and may subject the licensee to administrative sanctions for violation of 175 C.S.R. 2, 4.4.

5.2. Control of the vending machine is the responsibility of the cashier/manager and it is their responsibility to restrict access to the vending machines by any child.

**175-9-6. Enforcement of youth smoking laws; ABCC Class A license establishments; use of minors in inspections.**

6.1. The Commissioner may periodically conduct unannounced inspections at ABCC Licensed establishments and other establishments where tobacco products are sold or distributed to ensure compliance with the provisions of W.Va. Code § 16-9A-1 et seq. and this rule and in a manner that conforms to the applicable federal and state laws, rules and regulations. Persons under the age of eighteen years may be enlisted by the Commissioner to test compliance with this rule. The minors may be used to test compliance only if the testing is conducted under the direct supervision of the commissioner and written consent of the parent or guardian of such person is first obtained.

**175-9-7. Penalties, Exceptions**

7.1 Any violation of W.Va. Code § 16-9A-1 or this legislative rule by an ABC licensee constitutes a violation of W. Va. Code §§ 11-16-1 et seq. and/or 60-7-1 et seq. and shall give rise to the administrative penalties authorized by W. Va. Code §§ 11-16-23 and 60-7-13.

7.2. Any vending machine located or operated in a manner that violates applicable federal or state law, rule or regulation is contraband and may be seized, without warrant. The Tax Commissioner may at his or her discretion decide the disposition of the machines.

7.3. All of the tobacco products from the vending machine are considered contraband and will be seized without warrant, and upon conviction they will be disposed of at the discretion of the Tax Commissioner.

**§175-9-8. Hearing and Appeal Procedure.**

8.1 A person notified of a violation of W. Va. Code § 16-9A-1 et seq. or this legislative rule shall be entitled to a hearing before the Commissioner in accordance with W. Va. Code §§ 11-16-24 and 60-7-13a and Legislative Rule, Title 175, Series 10, Procedural Rule for Alcohol Beverage Control Commissioner.