



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Alcohol Beverage Control Commission TITLE-SERIES: 175-09
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 175-09 Tobacco Products in Vending Machines

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 16-9A-8, 29A-3-1 et seq.

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

rulemaking authority authorized

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/28/2024

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 6/30/2024

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

none

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

Edits related to HB 5084 in 2024 regular session related to Class A licensees with cigarette vending machines.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Edits related to HB 5084 in 2024 regular session related to Class A licensees with cigarette vending machines. WVABCA maintains regulation of the location and the line of sight for cigarette vending machines in Class A licensees to prevent underage access.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

Unaware.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

Unaware.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

Unaware.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2024 Increase/Decrease (use "-")	2025 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

None.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Anoop Bhasin -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 175
LEGISLATIVE RULE
ALCOHOL BEVERAGE CONTROL ~~COMMISSION~~ ADMINISTRATION

SERIES 9
CIGARETTE TOBACCO PRODUCTS IN VENDING MACHINES

175-9-1. General.

1.1. Scope. -- This rule establishes policies and operating procedures for the prohibition of the sale of cigarettes, electronic smoking devices, or tobacco products in vending machines, criminal penalties, administrative penalties and hearing procedures located in the Alcohol Beverage Control Administration Commissioner's Class A licensees.

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

1.3. Filing Date. -- ~~June 1, 2001.~~

1.4. Effective Date. -- ~~June 1, 2001.~~

1.5. Sunset Date. -- This rule shall terminate and have no further force effect upon August 1, 2034.

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~~ABCA," "Alcohol Beverage Control Administration Commissioner," or "Commissioner" means the West Virginia Alcohol Beverage Control Administration Commissioner or his or her delegate.

2.2. "Adult" means a person who is at least ~~eighteen (18)~~ 21 years of age.

2.3. "Cashier/Manager" means the person who collects retail payments for purchases in an ABCA Class A licensee.

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, or 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.

2.5. "Electronic smoking device" means any device that can be used to deliver any heated, aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, any e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component part, or accessory of the device, whether or not sold separately, and includes any substance intended to be heated, aerosolized, or vaporized during the use of the device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products approved by the United States Food, Drug,

and Cosmetic Act.

2.6. "Minor" means a person who has not attained the age of 21 years.

2.7. "Tobacco products" means cigarettes, cigars, smokeless tobacco, pipe tobacco, or roll-your-own tobacco any product containing, made, or derived from tobacco, or nicotine, that is intended for human consumption, whether absorbed, inhaled or ingested by any other means, including but not limited, to cigarettes, cigars, cigarillos, little cigars, pipe tobacco, snuff, snus, chewing tobacco, or other common tobacco-containing products. A tobacco product also includes electronic smoking devices and any accessory of a tobacco product or electronic smoking device, whether or not any of these contain tobacco or nicotine, including but not limited to, filters, rolling papers, blunt or hemp wraps, and pipes. Tobacco product does not include drugs, devices, or combination products that are regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act.

2.78. "Vending machine operator" means any person ABCA Class A licensee engaged in this State in the business of operating that operates one or more cigarette, electronic smoking device, or tobacco products vending machines.

2.89. "Wholesaler" means any person engaged in this State in the business of purchasing unstamped cigarettes, electronic smoking devices, 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, electronic smoking devices, or tobacco products ~~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~~ 110 CSR 17.

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 ~~et seq., and Legislative Rule, Title 110, Series 17~~ 110 CSR 17. Any violations of the foregoing by a vending machine operator holding an ~~ABCC~~ ABCA Class A license ~~will~~ may 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, electronic smoking devices, or tobacco products sold in a vending machine shall be placed in operation within this State that is not so constructed as to display at least one package of the cigarettes, electronic smoking devices, or tobacco products 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 ABCA Class A Licensees' Location of Vending Machines.

5.1. In order to comply with W. Va. Code §16-9A-8 the vending machine(s) in an ~~ABCC~~ ABCA Class A licensed establishment must be in full view and control of the cashier/manager, i.e., the person who accepts payments for the 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., 176 CSR 1 §6.1.k., and 175 CSR 4 §14.4.1.

5.2. Control of the vending machine is the responsibility of the cashier/manager as the representative of the ABCA Class A licensee and it is their responsibility to restrict access to the vending machines by any child minor.

175-9-6. Enforcement of ~~Youth Smoking Laws~~; ABCC at ABCA Class A License Establishments Licensees; ~~Use of Minors In Inspections~~.

6.1. The Commissioner may periodically conduct unannounced inspections at ~~ABCC~~ ABCA licensed establishments and other establishments where cigarettes, electronic smoking devices, or tobacco products are sold ~~or distributed~~ to ensure compliance with the provisions of W. Va. Code ~~§16-9A-1 et seq.~~ §16-9A-8 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 ABCA Class A Licensee convicted of a criminal violation of W. Va. Code §16-9A-1 ~~or this legislative rule by an ABCC 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 by the Tax Commissioner without warrant. The Tax Commissioner may at his or her discretion decide the disposition of the vending machines.

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

175-9-8. Hearing and Appeal Procedure.

8.1. ~~A person notified~~ An ABCA Class A licensee convicted of a criminal violation of W. Va. Code §16-9A-1 *et seq.*, ~~or this legislative rule~~ and penalized by the Commissioner shall be entitled to a hearing before the Commissioner in accordance with W. Va. Code §11-16-24, §60-7-13a and ~~Legislative Rule Title 175, Series 10, Procedural Rule for Alcohol Beverage Control Commissioner~~ and also any ABCA rules.

175-9-9. Education Classes, Diversion Programs, or Community Service.

9.1. Any ABCA Class A Licensee convicted of a criminal violation of W. Va. Code §16-9A-1 et seq. may participate in any court approved education class, diversion program, or community service, or any combination of the three programs, to mitigate the criminal penalties, however, the ABCA Class A Licensee will still be subject to the Commissioner's administrative penalties.