

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**MARION TOBACCO AND VAPE LLC;
WHITE HALL SMOKE SHOP LLC;
GALAXY SMOKES LLC; KIMO
TOBACCO VAPE LLC; ATLANTIC
VAPOR HUT LLC; MARTINSBURG
TOBACCO & CIGAR LLC; WILD STAR
LLC; WHEELING VAPOR PLUS LLC;
MORGANTOWN SMOKERS & VAPE LLC;
MR LE TOBACCO & VAPE LLC;
MORGANTOWN DREAM SMOKERS LLC;
HAPPY SMOKE VAPE LLC; HAPPY
SMOKE CIGAR LLC; SUPER SMOKE LLC;
TRI STATE SMOKE SHOP LLC; KING
SMOKERS LLC; SMOKE SHOP &
BEAUTY LLC; SMOKERS CLUB LLC;
MORGANTOWN TOBACCO & VAPE LLC;
LOVE SMOKER LLC; SMOKERS
FREEDOM LLC; SZ TOBACCO & VAPE LLC;
SHABIBI TOBACCO AND VAPE LLC; ZAK
TOBACCO AND VAPE LLC; PUFF CLOUD
LLC; SMOKERS MORE LLC; SELF SERVICE
SMOKE SHOP, LLC; GLASS LAB VIP, LLC;
PATRIOT SMOKE SHOP LLC; VAPORIZE
HOUSE LLC WV SMOKE SHOP LLC;
SALAH AHMED QASEM HASAN, an
individual; NASEEM HASAN, an individual;
OMAR LUTF, an individual; and PLANT
CRIBS LLC, DBA BLUE RIDGE EXTRACTIONS;**

Plaintiffs,

v.

Civil Action No. 2:26-cv-00438

**FREDRIC L. WOOTON, in his official
capacity as Commissioner of the West
Virginia Alcohol Beverage Control
Administration,**

Defendant.

COMPLAINT

Plaintiffs, by and through undersigned counsel, bring this civil action against Defendant Fredric L. Wooton, in his official capacity as Commissioner of the West Virginia Alcohol Beverage Control Administration, and allege as follows:

INTRODUCTION

1. This is a federal civil rights, constitutional, and federal preemption action challenging specific provisions and applications of West Virginia's Vape and Smoke Retailer Location and Operating Requirements Act, W. Va. Code § 16-9H-1 et seq. (the "Act"), which took effect on June 11, 2026.

2. Defendant Fredric Wooton, Commissioner of the West Virginia Alcohol Beverage Control Administration ("WVABCA") stated that the "goal is to help ensure businesses operate responsibly while protecting children, families, and consumers from unsafe or improperly marketed products." See Exhibit 1 (WVABCA Press Release).

3. Plaintiffs support the lawful and responsible sale of legal tobacco products, vapor products, and alternative nicotine products while protecting children, families, and consumers from unsafe or improperly marketed products. Plaintiffs do not challenge West Virginia's general authority to regulate such products through lawful, constitutional, and nondiscriminatory means, including through age restrictions, retail licensing, and inspections. Plaintiffs challenge only those provisions of the Act and related enforcement actions that violate federal law, and the United States Constitution.

4. Plaintiffs challenge provisions and applications of the Act that deny, restrict, or condition their ability to obtain licenses necessary to continue operating their existing West Virginia retail businesses; impose advertising, marketing, labeling, and product-display

restrictions that are preempted by federal law or otherwise unconstitutional; employ arbitrary and irrational definitions and classifications; and authorize enforcement actions that violate Plaintiffs' rights under federal law and the United States Constitution.

5. The most immediate disputes concern the Act's new licensing requirements and the WVABCA's implementation and enforcement of those requirements for the 2026–2027 license year, as well as the Act's vapor-product labeling requirements, which impose immediate compliance obligations and threaten ongoing business operations.

6. WVABCA has issued notices, guidance documents, application materials, and implementation directives advising Plaintiffs that, effective June 11, 2026, vapor products offered for sale in West Virginia must satisfy the Act's labeling requirements and that noncompliance may subject retailers and licensees to administrative sanctions, civil penalties, criminal penalties, or other enforcement action. See Exhibit 2 (WVABCA Warnings). WVABCA has further advised Plaintiffs that qualifying vape and smoke shops must obtain a license for the 2026–2027 license year no later than July 1, 2026. See Exhibit 3 (WVABCA Important Notice).

Labeling Requirements

7. W. Va. Code § 16-9H-14 directs the Commissioner to propose legislative rules establishing labeling standards¹ and sets forth minimum labeling requirements to be incorporated into the rules for vapor products sold, distributed, or offered for sale within West Virginia. Among other things, the Act requires that such legislative rules include minimum requirements concerning health- and age-related warnings, ingredient disclosures, and manufacturer or distributor identifying information.

¹ W. Va. Code § 16-9H-10(a) and W. Va. Code § 16-9H-10(b) also set forth labeling, marketing, and promotional restrictions and regulations, however, they are operative by the terms of the statute itself and do not depend upon the promulgation of legislative rules or further action by the Commissioner.

8. On June 22, 2026, WVABCA proposed emergency legislative rules relating to W. Va. Code § 16-9H-1 *et seq.* On June 23, 2026, the West Virginia Secretary of State approved the use of emergency legislative rules, which are codified at 175 C.S.R. 12.

9. W. Va. Code § 16-9H-11(a) provides that manufacturers, distributors, wholesalers, and vape or smoke retailers who sell or offer for sale vapor products in violation of the Act's marketing or labeling restrictions shall be subject to civil penalties of \$100 per day for each noncompliant product until the product is removed from the market, and that the sale of any such product that violates the marketing or labeling restrictions constitutes a misdemeanor offense.

10. W. Va. Code § 16-9H-15(c) establishes an escalating penalty structure for retailers who violate the Act's marketing or labeling requirements. A first violation constitutes a misdemeanor offense punishable by a fine of not less than \$1,000 or imprisonment for not more than one year. A second violation constitutes a felony offense punishable by increased fines and imprisonment. The penalties continue to increase for subsequent violations, and a fourth or subsequent violation constitutes a felony offense punishable by imprisonment for not less than ten years and fines of up to \$100,000.

11. W. Va. Code § 16-9H-14 directs the Commissioner to promulgate legislative rules establishing labeling standards. The WVABCA promulgated emergency legislative rules which were approved by the West Virginia Secretary of State on June 23, 2026. Although the Act permits promulgation of rules by the WVABCA, the emergency legislative rules codified by 175 C.S.R. 12 do not provide for additional labeling restrictions outside the requirements already enumerated by the Act.²

Licensing Requirements

² The emergency legislative Rules promulgated by the WVABCA far exceed the scope and authority granted to it by the Act.

12. The Act establishes licensing requirements for vape and smoke shops operating within West Virginia. Specifically, W. Va. Code § 16-9H-3(a) provides that “[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.”

13. W. Va. Code § 16-9H-2 defines “vape or smoke shop” as “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.”

14. WVABCA’s emergency legislative rule expands upon the Act’s 33 percent floor-space threshold by establishing a detailed calculation methodology not set forth in W. Va. Code § 16-9H-2. These emergency-rule provisions materially expand and supplement the Act’s definition of “vape or smoke shop,” which states only that a vape or smoke retailer is covered if it devotes at least 33 percent of its floor space to selling covered products and accessories.

15. Under the emergency rule, “total interior floor space” is calculated by measuring the proposed premises’ interior length times interior width, including retail space, office space, storage space, restrooms, limited video lottery areas, and other areas within the premises. The rule then permits deductions for spaces used solely for office functions, limited video lottery, restrooms, and empty space, thereby reducing the total interior floor space used as the denominator in the 33 percent calculation.

16. The emergency rule further provides that, in calculating the area dedicated as “vape or smoke shop floor space,” the Commissioner may count displays, counters, storage areas, restrooms, office space, shelving, and wall boards as part of the total vape or smoke shop floor space.

17. As a result, the emergency rule permits the same categories of space to be deducted from the total interior floor-space calculation while also being included in the vape or smoke shop floor-space calculation. This methodology gives the Commissioner substantial discretion to add or subtract the same types of areas in calculating whether a business meets the Act's 33 percent threshold.

18. The emergency rule further provides that empty space within the store is deducted from the total interior floor-space.

19. The emergency rule further provides that displays, counters, shelving, and wall boards containing covered products are measured by adding three feet to their length and width as part of the vape or smoke shop floor-space calculation. If a display, counter, shelving, or wall board is located within three feet of the premises' dimensions, the additional three feet is not added.

20. The emergency rule further provides that any lounge, vaping area, or smoking area shall be included in the vape or smoke shop floor-space calculation.

21. W. Va. Code §16-9H-3(b) indicates that anyone who directly or indirectly operates as a vape or smoke shop in or on any premises in the state without first obtaining a license issued by the commissioner is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$10,000, imprisoned for up to one year, or both.

22. W. Va. Code § 16-9H-5, titled "License application; information required; application to be accompanied by fees; bond" sets forth the required information, qualifications, and application criteria governing the issuance and renewal of vape or smoke shop licenses in West Virginia, the satisfaction of which is determined by the Commissioner.

23. Specifically, W. Va. Code § 16-9H-5(a)(1) provides that no vape or smoke shop license or renewal may be granted unless "[t]he applicant is a United States citizen and a person of good character, honesty, and integrity."

24. W. Va. Code § 16-9H-5(a)(4) requires applicants to disclose persons and entities associated with the applicant, including corporate affiliates, beneficial owners, persons possessing direct or indirect ownership interests, persons capable of controlling the applicant, and key personnel who exercise significant influence over the applicant's business operations. Such persons are subject to the qualifications imposed by the Act and any additional qualifications required by the Commissioner.

25. W. Va. Code § 16-9H-5(a)(6) further requires applicants and licensees to designate a manager on each license and renewal application and requires that the designated manager satisfy all qualifications and requirements applicable to licensure.

26. WVABCA's application materials require disclosure of citizenship status for each listed owner, officer, director, partner, member, manager, and other person associated with the applicant. The application materials also state: "IF NATURALIZED U.S. CITIZEN, MUST SUBMIT COPY OF NATURALIZATION DOCUMENTS. ALL APPLICANTS MUST BE US CITIZENS." See Exhibit 4 (WVABCA Application and Instruction Material).

27. W. Va. Code §§ 16-9H-5(f)(1), 16-9H-5(j), 16-9H-14, 16-9H-17, and 16-9H-18 contemplate, require, or rely upon legislative rules to be proposed or promulgated by the Commissioner.

28. WVABCA's emergency legislative rule implements additional licensing requirements and restrictions not expressly set forth in the Act, including a requirement that applicants demonstrate compliance with applicable zoning requirements.

29. The emergency legislative rules also impose minimum age requirements applicable to applicants, owners, officers, directors, partners, members, persons in control, key personnel, beneficiaries, trustees, interested persons, and managers.

30. The emergency legislative rules further prohibit the issuance of a license to any applicant whose license has been revoked under the alcoholic liquor laws, nonintoxicating beer laws, applicable rules or regulations, or whose business registration has been revoked by the West Virginia Tax Division or any state or federal authority within the five years preceding the application.

Operational Restrictions

31. W. Va. Code § 16-9H-10(c) provides that a vape or smoke retailer must be located at least 300 feet from a church, school, or daycare center, with the distance measured in a straight line from the retailer's entrance to the property line of the nearest such location.

32. The emergency legislative rules add restrictions not expressly set forth in the Act, including a prohibition against issuing a license to any vape or smoke shop located on the campus of a college, state university, or any branch thereof.

33. The emergency legislative rules further provide that, if a vape or smoke shop licensee is determined by law to constitute a public nuisance under local law to any church, school, hospital, public institution, or otherwise, the license may be revoked or suspended, at the Commissioner's discretion.

34. The WVABCA's notice to Plaintiffs states that compliance with the Act's distance requirements is "as determined by the WVABCA." See Exhibit 5 (WVABCA Vape and Smoke Shop Summary Notice).

35. Although W. Va. Code § 16-9H-10(c) references only churches, schools, and daycare centers, WVABCA's application materials require disclosure of the distance between the business location and the nearest church, school, daycare center, residence, government office, and vape store. The application further states that the applicant "*MUST BE LOCATED AT LEAST 300 FEET FROM A CHURCH, SCHOOL OR DAYCARE, CALCULATED BY MEASURING A STRAIGHT LINE FROM THE VAPE AND SMOKE SHOP ENTRANCE TO THE PROPERTY LINE OF LOCATIONS 'A' THROUGH 'C' LISTED ABOVE.*" See Exhibit 4 (WVABCA Application and Instruction Material).

36. WVABCA's initial notice material advised Plaintiffs that licensed vape and smoke shops may operate only between the hours of 8:00 a.m. and 12:00 a.m.; that employees and staff may be present on the premises beginning at 7:30 a.m. and must vacate the premises by 12:30 a.m.; and that licensed premises "shall be closed on Sunday, Easter Sunday, and Christmas Day." See Exhibit 5 (WVABCA Vape or Smoke Shop Summary).

37. The WVABCA issued a revised notice on their website that is consistent with the emergency legislative rules, that removed some of the previously noted operating restrictions but maintained restrictions on the hours of operation and sales. See Exhibit 6. (Vape and Smoke Shop Summary (Revised)).

Packaging, Labeling, Marketing, Advertising, and Promotional Restrictions

38. W. Va. Code § 16-9H-10 establishes various operational and sales restrictions applicable to manufacturers and vape and smoke retailers, including restrictions governing the labeling, packaging, marketing, and sale of covered products that become effective on March 1, 2027, and restrictions governing advertising and promotional activities that become effective on July 1, 2027.

39. W. Va. Code § 16-9H-10(a) provides that, beginning March 1, 2027, vapor products may not be sold in West Virginia if the name of the product, the labeling or packaging of the product, or the marketing of the product contains certain specified terms, references, trademarks, trade dress, or imagery.

40. The Act specifically prohibits, among other things: (a) references to "candy," "candies," or spelling variants thereof, including "kandy" and "kandeez"; (b) references to "bubble gum," "cotton candy," "gummy bear," "gummy worm," "lollipop," and similar terms; (c) cartoons, cartoon characters, superheroes, television shows, video games, movies, and similar characters or references; (d) trade dress, trademarks, or imagery that imitate or replicate food brands or products marketed primarily to minors, including breakfast cereals, cookies, juice drinks, soft drinks, ice creams, and frozen pops; and (e) trade dress, trademarks, or imagery that imitate or replicate school supplies, electronic devices, toys, clothing, video game devices, or phone application integration features. W. Va. Code § 16-9H-10(a)(1) - (5).

41. W. Va. Code § 16-9H-10(b) provides that, beginning July 1, 2027, "a person, vape or smoke retailer, or other entity may not conduct advertising or promotional activities."

42. The Act provides a limited exception to its prohibition on advertising and promotional activities. Specifically, a person, vape retailer, or smoke retailer may display a single exterior sign identifying the establishment as a vape or smoke shop. The Act requires that the sign be of a uniform design, no larger than 18 inches by 18 inches, and affixed in a single location on the exterior of the licensed premises. The Act further requires that the sign utilize either Helvetica or Arial font and that no character exceed three inches in height or width. The Act permits the sign to be illuminated but prohibits flashing or intermittent lighting. The Act further requires licensees

to certify compliance with these requirements upon renewal of their licenses. See W. Va. Code § 16-9H-10(b).

43. The emergency rules contained within 175 CSR 12 include additional restrictions, including requiring that the illuminated sign provided for in W. Va. Code § 16-9H-10(b)(4) be turned off when the location is closed.

JURISDICTION

44. This action arises under the First, Fifth, and Fourteenth Amendments to the United States Constitution; the Supremacy Clause of the United States Constitution; the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., as amended by the Family Smoking Prevention and Tobacco Control Act; 42 U.S.C. § 1983; and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

45. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States.

46. This Court has jurisdiction pursuant to 28 U.S.C. § 1343(a)(3) and (a)(4) because Plaintiffs seek redress for the deprivation, under color of state law, of rights secured by the Constitution and laws of the United States.

47. Plaintiffs seek prospective declaratory and injunctive relief against Defendant in his official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908), to prevent ongoing and threatened violations of federal law.

48. This Court has authority to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

49. This Court has authority to grant temporary, preliminary, and permanent injunctive relief pursuant to Federal Rule of Civil Procedure 65, 28 U.S.C. § 2202, *Ex parte Young*, and the Court's equitable authority.

50. Plaintiffs seek an award of reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988 for claims brought under 42 U.S.C. § 1983.

51. An actual and justiciable controversy exists between the parties within the meaning of 28 U.S.C. § 2201.

VENUE

52. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events, omissions, and threatened enforcement actions giving rise to Plaintiffs' claims occurred, are occurring, or will occur within this District.

53. Defendant performs the official acts challenged in this Complaint from Charleston, Kanawha County, West Virginia. WVABCA administers the challenged licensing program from Charleston, including receiving, reviewing, granting, denying, renewing, suspending, and revoking vape and smoke shop licenses.

54. WVABCA's application materials direct applicants to submit completed applications, fees, and supporting documentation to WVABCA's Licensing Division at 900 Pennsylvania Avenue, 4th Floor, Charleston, West Virginia.

55. The Act further provides that, by obtaining a license, a licensee agrees and consents to the jurisdiction of the Commissioner, located in Charleston, West Virginia, and the Circuit Court of Kanawha County concerning enforcement of the Act and related laws or rules. See W. Va. Code § 16-9H-4.

56. Venue in the Charleston Division is therefore proper.

PARTIES

Plaintiffs

57. Plaintiffs consist of existing West Virginia businesses and individuals associated with those businesses who are subject to, and adversely affected by, the Act and WVABCA's implementation and enforcement of the Act. Plaintiffs have suffered, and continue to suffer, actual and imminent injuries arising from the Act's licensing, labeling, operational, advertising, and enforcement provisions.

58. The business entities identified in Paragraphs 59 through 89 are referred to collectively herein as the "Shop Plaintiffs." Each Shop Plaintiff operates a retail establishment in West Virginia, is classified under West Virginia business purpose code 4539³, and is subject to, or affected by, the provisions of W. Va. Code § 16-9H-1 et seq. and WVABCA's implementation and enforcement thereof.

59. Plaintiff Marion Tobacco and Vape LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 2600 Middletown Commons, Suite 123, White Hall, West Virginia. Plaintiff Marion Tobacco and Vape LLC is managed by Plaintiff Naseem Hasan, who is not a citizen of the United States but is lawfully present in the United States and authorized to reside and work in the United States. As a result, Plaintiff Marion Tobacco and Vape LLC and Plaintiff Naseem Hasan are subject to and adversely affected by the Act's citizenship-based licensing requirements, which threaten Plaintiff Marion Tobacco and Vape LLC's ability to obtain, maintain, or renew a license while retaining Plaintiff Naseem Hasan as its manager. In addition, Plaintiff Marion Tobacco and Vape LLC operates pursuant to a commercial lease containing restrictive-use provisions that limit the use of

³ Retail Trade - Miscellaneous Store Retailers - Other Miscellaneous Store Retailers Including Mobile Home Dealers (pet, art, tobacco)

the premises for other business purposes, such that the loss of licensure or inability to continue operating its business as presently conducted threatens the value and beneficial use of its leasehold interest.

60. Plaintiff White Hall Smoke Shop LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 2669 White Hall Blvd., Fairmont, West Virginia. Plaintiff White Hall Smoke Shop LLC is managed by Plaintiff Naseem Hasan, who is not a citizen of the United States but is lawfully present in the United States and authorized by the federal government to reside and work in the United States. As a result, Plaintiff White Hall Smoke Shop LLC is subject to and adversely affected by the Act's citizenship-based licensing requirements, which threaten its ability to obtain, maintain, or renew a license while retaining Plaintiff Naseem Hasan as its manager.

61. Plaintiff Kimo Tobacco Vape LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 484 Suncrest Town Center Drive, Morgantown, West Virginia.

62. Plaintiff Atlantic Vapor Hut LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 5010 Mid Atlantic Drive, Morgantown, West Virginia.

63. Plaintiff Martinsburg Tobacco & Cigar LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 305 N Queen St., Martinsburg, West Virginia.

64. Plaintiff Wild Star LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 262 Three Springs Drive, Weirton, West Virginia.

65. Plaintiff Galaxy Smokes LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 460 Cabela Drive, Triadelphia, West Virginia.

66. Plaintiff Wheeling Vapor Plus LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 8 Elm Grove Crossing, Unit 8D, Wheeling, West Virginia. Plaintiff Wheeling Vapor Plus LLC operates pursuant to a commercial lease containing restrictive-use provisions that limit the use of the premises for other business purposes, such that the loss of licensure or inability to continue operating its business as presently conducted threatens the value and beneficial use of its leasehold interest.

67. Plaintiff Morgantown Smokers & Vape LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 312 High Street, Morgantown, West Virginia. Upon information and belief, Plaintiff Morgantown Smokers & Vape LLC operates within 300 feet of several churches, as measured under W. Va. Code § 16-9H-10(c), and is therefore subject to denial, nonrenewal, suspension, revocation, or other adverse licensing consequences under the Act's location restrictions.

68. Plaintiff Mr Le Tobacco & Vape LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 418 High Street, Morgantown, West Virginia. Upon information and belief, Plaintiff Mr Le Tobacco & Vape LLC operates within 300 feet of several churches, as measured under W. Va. Code § 16-9H-10(c), and is therefore subject to denial, nonrenewal, suspension, revocation, or other adverse licensing consequences under the Act's location restrictions.

69. Plaintiff Morgantown Dream Smokers LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 8 Commerce Drive, Westover, West Virginia.

70. Plaintiff Happy Smoke Vape LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 803 Chestnut Ridge Road, Morgantown, West Virginia. Plaintiff Happy Smoke Vape LLC operates pursuant to a commercial lease containing restrictive-use provisions that limit the use of the premises for other business purposes, such that the loss of licensure or inability to continue operating its business as presently conducted threatens the value and beneficial use of its leasehold interest.

71. Plaintiff Happy Smoke Cigar LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 521 Emily Drive, Clarksburg, West Virginia. Upon information and belief, Plaintiff Happy Smoke Cigar LLC is located within a commercial plaza that also contains a church within the same building. As a result, Plaintiff Happy Smoke Cigar LLC may fall within the Act's 300-foot location restriction as measured under W. Va. Code § 16-9H-10(c) and is therefore subject to denial, nonrenewal, suspension, revocation, or other adverse licensing consequences under the Act.

72. Plaintiff Super Smoke LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 200 Fort Pierpont Drive, Suite 109, Morgantown, West Virginia. Upon information and belief, Plaintiff Super Smoke LLC falls within the Act's 300-foot location restriction because the property on which it operates and the property of a nearby daycare center or early childhood education facility are owned by the same commercial developer and form part of the same commercial plaza. Although the businesses are located in separate units and their respective buildings and entrances are situated more than

300 feet apart, the Act measures distance from the retailer's entrance to the property line of the nearby use. As a result, Plaintiff Super Smoke LLC is subject to denial, nonrenewal, suspension, revocation, or other adverse licensing consequences under the Act's location restrictions. In addition, Plaintiff Super Smoke LLC operates pursuant to a commercial lease containing restrictive-use provisions that limit the use of the premises for other business purposes, such that the loss of licensure or inability to continue operating its business as presently conducted threatens the value and beneficial use of its leasehold interest.

73. Plaintiff Tri State Smoke Shop LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 525 Granville Square, Suite 101, Morgantown, West Virginia.

74. Plaintiff King Smokers LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 1228 Country Club Road, Fairmont, West Virginia.

75. Plaintiff Smoke Shop & Beauty LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 1112 Fairmont Avenue, Fairmont, West Virginia. Upon information and belief, Plaintiff Smoke Shop & Beauty LLC operates within 300 feet of a daycare or early education center, as measured under W. Va. Code § 16-9H-10(c), and is therefore subject to denial, nonrenewal, suspension, revocation, or other adverse licensing consequences under the Act's location restrictions.

76. Plaintiff Smokers Club LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 323 Fairmont Avenue, Fairmont, West Virginia.

77. Plaintiff Morgantown Tobacco & Vape LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 1031 Target Way, Morgantown, West Virginia. Plaintiff Morgantown Tobacco & Vape LLC operates pursuant to a commercial lease containing restrictive-use provisions that limit the use of the premises for other business purposes, such that the loss of licensure or inability to continue operating its business as presently conducted threatens the value and beneficial use of its leasehold interest.

78. Plaintiff Glass Lab VIP LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 2005 University Ave, Morgantown, West Virginia.

79. Plaintiff Love Smoker LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 5407 University Town Centre Drive, Suite 3, Morgantown, West Virginia.

80. Plaintiff Smokers Freedom LLC is a limited liability company duly authorized to conduct business in the State of West Virginia and maintains its principal place of business at 1816 Sturgiss Avenue, Morgantown, West Virginia.

81. Plaintiff SZ Tobacco & Vape LLC is a limited liability company duly authorized to conduct business in the State of West Virginia and maintains its principal place of business at 22268 Northwestern Pike, Suite 4, Romney, West Virginia.

82. Plaintiff Shabibi Tobacco and Vape LLC is a limited liability company duly authorized to conduct business in the State of West Virginia and maintains its principal place of business at 869 Venture Dr., Morgantown, West Virginia.

83. Plaintiff Zak Tobacco and Vape LLC is a limited liability company duly authorized to conduct business in the State of West Virginia and maintains its principal place of business at 187 Holland Avenue, Morgantown, West Virginia.

84. Plaintiff Puff Cloud LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 241 Three Springs Dr., Weirton, West Virginia.

85. Plaintiff Smokers More LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 3578 Pennsylvania Ave., Weirton, West Virginia. Upon information and belief, Plaintiff Smokers More LLC operates within 300 feet of a church as measured under W. Va. Code § 16-9H-10(c) and is therefore subject to denial, nonrenewal, suspension, revocation, or other adverse licensing consequences under the Act's location restrictions. Plaintiff Smokers More LLC operates pursuant to a commercial lease containing restrictive-use provisions that limit the use of the premises for other business purposes, such that the loss of licensure or inability to continue operating its business as presently conducted threatens the value and beneficial use of its leasehold interest.

86. Plaintiff Self Service Smoke Shop, LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 310 Marion Sq., Fairmont, West Virginia. Plaintiff Self Service Smoke Shop, LLC is managed by Plaintiff Naseem Hasan, who is not a citizen of the United States but is lawfully present in the United States and authorized to reside and work in the United States. As a result, Plaintiff Self Service Smoke Shop, LLC and Plaintiff Naseem Hasan are subject to and adversely affected by the Act's citizenship-based licensing requirements, which threaten Plaintiff Self Service Smoke Shop, LLC's ability to obtain, maintain, or renew a license while owned by and retaining Plaintiff

Naseem Hasan as its manager. Upon information and belief, Self Service Smoke Shop, LLC operates within 300 feet of a church as measured under W. Va. Code § 16-9H-10(c) and is therefore subject to denial, nonrenewal, suspension, revocation, or other adverse licensing consequences under the Act's location restrictions.

87. Plaintiff Patriots Smoke Shop LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 6 Patriots Lane, Parkersburg, West Virginia.

88. Plaintiff Vaporize House LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 112 Lee Street W., Charleston, West Virginia.

89. Plaintiff WV Smoke Shop LLC is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 1902 7th Avenue, Charleston, West Virginia.

Individual Plaintiffs

90. Plaintiff Naseem Hasan is the owner and registered member of Plaintiff King Smokers LLC and Self Service Smoke Shop, LLC. Plaintiff Naseem Hasan is not a citizen of the United States but is lawfully present in the United States and is authorized by the federal government to reside and work in the United States. As an owner and member of Plaintiff King Smokers LLC and Self Service Smoke Shop, LLC, Plaintiff Naseem Hasan is subject to and adversely affected by the Act's citizenship-based licensing requirements. The challenged citizenship requirement also adversely affects Plaintiff King Smokers LLC and Self Service Smoke Shop, LLC by threatening its ability to obtain, maintain, or renew a license while retaining Plaintiff Naseem Hasan as an owner and member.

91. Plaintiff Naseem Hasan also serves as the manager of Plaintiff Marion Tobacco and Vape LLC and Plaintiff White Hall Smoke Shop LLC. Because Plaintiff Naseem Hasan serves in a managerial capacity for those businesses, the challenged citizenship requirement likewise adversely affects Plaintiff Marion Tobacco and Vape LLC, Plaintiff White Hall Smoke Shop LLC, and their owner, Plaintiff Salah Ahmed Qasem Hasan, by threatening the businesses' ability to obtain, maintain, or renew licenses while retaining Plaintiff Naseem Hasan as manager.

92. Plaintiff Omar Lutf is the owner and registered member of Plaintiff Super Smoke LLC. Plaintiff Omar Lutf is not a citizen of the United States but is lawfully present in the United States and is authorized by the federal government to reside and work in the United States. As an owner of a shop, Plaintiff is an anticipated applicant for a license, and therefore potentially subject to the Act. As such, Plaintiff Omar Lutf would be subject to, and adversely affected by, the Act's citizenship-based licensing requirements.

Manufacturer Plaintiff

93. Plaintiff Plant Cribs LLC, doing business as Blue Ridge Extractions (hereinafter "Blue Ridge Extractions"), is a limited liability company duly authorized to conduct business in West Virginia and maintains its principal place of business at 710 Wonderbar Road, Clarksburg, Harrison County, West Virginia.

94. Plaintiff Blue Ridge Extractions is a veteran-owned, family-operated manufacturer and distributor of vaporizer devices, vapor products, accessories, and related products. As a manufacturer and distributor of vapor products, Blue Ridge Extractions is subject to, and adversely affected by, the Act's product-labeling requirements, packaging restrictions, marketing restrictions, sales prohibitions, advertising restrictions, potential licensing applicability, and related civil and criminal enforcement provisions. Blue Ridge Extractions faces actual and imminent injury arising

from the Act's regulation of manufacturing, distribution, marketing, labeling, and sale of vapor products within West Virginia.

Defendant

95. Defendant Fredric L. Wooton is the Commissioner of the West Virginia Alcohol Beverage Control Administration ("WVABCA"). He is sued solely in his official capacity.

96. As Commissioner, Defendant is responsible for administering, implementing, and enforcing the Act, including receiving, reviewing, granting, denying, renewing, suspending, and revoking vape and smoke shop licenses and determining whether applicants and persons associated with applicants satisfy the Act's qualifications, including the citizenship requirement.

97. Defendant acts under color of state law and has a direct connection to the administration and enforcement of the challenged provisions of the Act. Plaintiffs seek only prospective declaratory and injunctive relief against Defendant pursuant to *Ex parte Young* and related authority.

PLAINTIFFS' INJURIES AND THREATENED ENFORCEMENT

98. The Shop Plaintiffs presently operate retail businesses in West Virginia that WVABCA has identified as potentially subject to the Act and its licensing requirements. Through notices, guidance materials, and application instructions, WVABCA has advised the Shop Plaintiffs that they may be required to obtain licenses for the 2026-2027 licensing period by July 1, 2026, and has threatened administrative, civil, and criminal penalties for noncompliance.

99. Certain Individual Plaintiffs are not citizens of the United States but are lawfully present in the United States and authorized by the federal government to reside and work in the United States. WVABCA's interpretation and implementation of the Act's citizenship requirement

threatens to exclude such Plaintiffs from eligibility for licensure and participation in businesses that WVABCA contends are subject to the Act.

100. The Individual Plaintiffs' inability to satisfy the Act's citizenship requirement directly affects the corresponding Shop Plaintiffs' ability to obtain, maintain, or renew licenses required to continue operating their businesses in West Virginia.

101. The Shop Plaintiffs currently offer for sale products that WVABCA contends are subject to the Act's labeling, packaging, marketing, advertising, and sales restrictions.

102. Manufacturer Plaintiff Blue Ridge Extractions manufactures and distributes vapor products and related products that WVABCA contends are subject to the Act's labeling, packaging, marketing, advertising, and sales restrictions.

103. Plaintiffs have received notices, application materials, guidance documents, warnings, and implementation directives from WVABCA concerning the Act and face a credible threat of administrative, civil, and criminal enforcement.

104. As a result of WVABCA's implementation and threatened enforcement of the Act, Plaintiffs have suffered and continue to suffer actual and imminent injuries, including compliance costs, business uncertainty, threatened loss of licensing eligibility, threatened civil and criminal penalties, and interference with existing business operations.

COUNT I—VIOLATION OF THE EQUAL PROTECTION CLAUSE
(U.S. Const. amend. XIV; 42 U.S.C. § 1983)
(Alienage Discrimination)
(Individual Plaintiffs and Affected Shop Plaintiffs)

105. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 104 as if fully set forth herein.

106. The Equal Protection Clause of the Fourteenth Amendment provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

107. The individual lawful permanent resident Plaintiffs are “persons” within the meaning of the Fourteenth Amendment to the United States Constitution and are entitled to the equal protection of the laws. As lawful permanent residents, the individual Plaintiffs are protected from unlawful discrimination by state actors, including discrimination based on their alienage or immigration status.

108. 42 U.S.C. § 1983 provides a cause of action against any person who, under color of state law, deprives another of rights secured by the Constitution and laws of the United States. Defendant acts under color of state law in administering, implementing, and enforcing the Act.

109. W. Va. Code § 16-9H-5 provides that no vape or smoke shop license may be issued or renewed unless the applicant, owner, member, managers, key personnel, and other persons associated with an applicant are United States citizens.

110. The Act classifies persons on the basis of alienage and treats lawfully present noncitizens differently from similarly situated United States citizens.

111. The Individual Plaintiffs are lawfully present in the United States and are authorized by the federal government to reside and work in the United States.

112. As a result of the challenged citizenship requirement, the Individual Plaintiffs and the Shop Plaintiffs with which they are associated face exclusion from licensure, denial of licensing eligibility, impairment of business operations, loss of employment, loss of ownership and management opportunities, and other adverse consequences.

113. The Individual Plaintiffs remain legally authorized to reside and work in the United States and may lawfully own, manage, or work for numerous other businesses, including retailers that sell tobacco products, vapor products, or alternative nicotine products. The Act nevertheless prohibits their participation in a business solely because it falls within the Act's categorically

defined "vape or smoke shop" classification, thereby drawing a citizenship-based distinction among otherwise similarly situated participants in the retail marketplace.

114. The challenged citizenship requirement is not narrowly tailored to serve a compelling governmental interest. Any legitimate public-safety, regulatory, or character-related interests asserted by the State are adequately addressed through the Act's background-check requirements, criminal-history restrictions, disclosure requirements, licensing qualifications, and ongoing regulatory oversight.

115. By administering, implementing, and enforcing the challenged citizenship requirement, Defendant has deprived and continues to deprive Plaintiffs of rights secured by the Equal Protection Clause of the Fourteenth Amendment.

116. Unless enjoined by this Court, Defendant will continue to administer and enforce the challenged citizenship requirement, causing Plaintiffs immediate, ongoing, and irreparable injury for which there is no adequate remedy at law.

COUNT II—VIOLATION OF THE EQUAL PROTECTION CLAUSE
(U.S. Const. amend. XIV; 42 U.S.C. § 1983)
(Disparate Treatment of Vape and Smoke Shops)
(Shop Plaintiffs)

117. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 116 as if fully set forth herein.

118. The Equal Protection Clause prohibits states from treating similarly situated persons differently without a constitutionally sufficient basis.

119. The Act creates a separate regulatory classification for businesses designated as "vape or smoke shops."

120. The Act defines a "vape or smoke shop" based primarily upon the percentage of floor space devoted to certain products. As a result, retailers selling identical or substantially

similar tobacco products, vapor products, alternative nicotine products, and related accessories may be treated differently under the Act based solely upon the amount of floor space devoted to such products.

121. The Act's reliance on floor-space allocation as the basis for imposing substantially different regulatory obligations upon otherwise similarly situated retailers is arbitrary and irrational and does not bear a rational relationship to a legitimate governmental interest.

122. A retailer that devotes less than the statutory threshold of floor space to such products is not subject to the Act's licensing, operational, advertising, location, and other restrictions, while a retailer that exceeds that threshold is subject to the Act's extensive regulatory burdens. Businesses classified as vape or smoke shops are subject to licensing requirements, operational restrictions, location restrictions, advertising restrictions, marketing restrictions, and other burdens not imposed upon similarly situated retailers.

123. Other retailers within West Virginia, including convenience stores, grocery stores, gas stations, pharmacies, liquor retailers, and other businesses that sell tobacco products, nicotine products, vapor products, or related products, are not subject to the same restrictions imposed upon the Shop Plaintiffs by the Act.

124. Upon information and belief, WVABCA has directed its implementation and enforcement efforts toward the Shop Plaintiffs while failing to undertake comparable efforts to identify, notify, license, or enforce the Act against other retailers that satisfy, or potentially satisfy, the Act's definition of a vape or smoke shop.

125. Upon information and belief, WVABCA has not provided such retailers with the notices, application materials, implementation directives, warnings, or compliance demands that it has directed to the Shop Plaintiffs.

126. The emergency legislative rule codified at 175 C.S.R. 12 further increases the disparate treatment imposed upon vape and smoke shops by adding licensing, zoning, floor-space calculation, campus-location, nuisance, disclosure, lease, and operational requirements applicable only to businesses classified as vape or smoke shops.

127. The rule also expands the methodology for determining whether a business falls within that classification by permitting calculations that count mixed-use areas, artificial square footage, and areas not actually devoted to the sale of covered products.

128. The emergency legislative rule defines "vape or smoke retailer" differently from the Act. W. Va. Code § 16-9H-2 defines a "vape or smoke retailer" as a retail establishment that sells tobacco products and accessories, tobacco-derived and alternative nicotine products, or vapor products and accessories. By contrast, 175 C.S.R. 12 defines "vape or smoke retailer" as a retail establishment selling those products where such products constitute less than 33 percent of the retailer's floor space. This differing definition creates uncertainty regarding which retailers are subject to the Act and further supports the arbitrary and inconsistent treatment of vape and smoke shops as compared to other retailers selling similar products.

129. The emergency legislative rule further authorizes the Commissioner to determine whether a retailer satisfies the 33 percent threshold through a methodology that permits the inclusion and exclusion of the same categories of space, the addition of artificial square footage surrounding displays and fixtures, and the inclusion of areas not devoted to the sale of covered products. As a result, similarly situated retailers may be classified differently based upon discretionary calculations rather than their actual retail operations.

130. The Act's classification of vape and smoke shops subjects the Shop Plaintiffs to disparate treatment as compared to similarly situated retailers that may sell many of the same products but are not classified, notified, licensed, or regulated in the same manner.

131. The Act further exempts "a cigar store as defined in legislative rule that does not sell vapor products" from its coverage. W. Va. Code § 16-9H-17. The Act does not define "cigar store," leaving similarly situated retailers selling tobacco-related products to different treatment based upon classification left to subsequent rulemaking.

132. The emergency legislative rule separately defines a "cigar shop" as a retailer that primarily sells or offers for sale cigars and cigar accessories in at least 50 percent of its floor space and may possess, sell, or offer for sale tobacco products and accessories, but may not possess, sell, or offer for sale e-cigarettes, cigarettes, vapes, vapor products, or vapor product accessories. The rule further provides that a cigar shop may maintain a connected cigar lounge where otherwise permitted by law.

133. The emergency legislative rule also contains internally contradictory definitions. It permits a cigar shop to sell "tobacco products and accessories" while prohibiting it from selling cigarettes, even though the same rule defines "tobacco product" to mean "any cigarette or any other tobacco or nicotine-based product." The rule likewise prohibits a cigar shop from selling e-cigarettes, vapes, and vapor products while defining "tobacco-derived product" to include "electronic cigarettes or similar devices, alternative nicotine products, and vapor products." These internally contradictory definitions create uncertainty regarding the classification of retailers and the requirements applicable to them.

134. The Act's 300-foot location restriction applies only to "vape or smoke retailers" and prohibits such retailers from operating within 300 feet of a church, school, or daycare center. The

Act does not impose comparable location restrictions upon other retailers that sell tobacco products, nicotine products, cigarettes, cigars, vapor products, or related accessories. Consequently, retailers engaged in substantially similar commercial activity are treated differently under the Act, as only vape or smoke retailers are prohibited from locating within 300 feet of a church, school, or daycare center and are subject to licensure restrictions and enforcement consequences based upon that proximity.

135. The emergency legislative rule adds further location-based restrictions applicable only to vape and smoke shops. Specifically, the rule provides that no license shall be issued to any vape or smoke shop applicant located on any college campus, state university campus, or branch thereof. This additional location restriction is not imposed upon other similarly situated retailers that sell tobacco products, nicotine products, cigarettes, cigars, vapor products, or related accessories.

136. The emergency legislative rule also prohibits the issuance of a license where the applicant involves individuals who are less than 21 years of age, including owners, officers, directors, partners, members, persons in control of the applicant, key personnel, beneficiaries, trustees, interested persons, and managers. This restriction is imposed only upon vape and smoke shop applicants and is not imposed upon other similarly situated retailers that sell tobacco products, nicotine products, cigarettes, cigars, vapor products, or related accessories.

137. The Act and WVABCA guidance material impose restrictions on the advertising and promotional activities of only those individuals, entities, and retailers subject to the licensing requirements of the Act, while other retailers may continue to advertise, promote, market, and display many of the same tobacco, nicotine, and related products without being subject to comparable restrictions.

138. The emergency legislative rule also restricts exterior signage by limiting when illuminated signs may be displayed or illuminated. This signage restriction applies only to vape and smoke shops and is not imposed upon other similarly situated retailers that sell tobacco products, nicotine products, cigarettes, cigars, vapor products, or related accessories.

139. The emergency legislative rule further limits the hours of operation of vape and smoke shops. These limitations apply based upon the retailer's classification as a vape or smoke shop, not based upon the products being sold. As a result, a retailer with less than 33 percent of its floor space devoted to covered products may continue selling the same or substantially similar products without being subject to the same hours-of-operation restrictions.

140. The Act's distinctions between vape and smoke shops and other similarly situated retailers are arbitrary and irrational, impose substantial burdens on the Shop Plaintiffs while exempting retailers engaged in substantially similar commercial activities, and do not bear a rational relationship to a legitimate governmental interest.

141. By administering, implementing, and enforcing these classifications and restrictions, Defendant has deprived and continues to deprive the Shop Plaintiffs of the equal protection of the laws guaranteed by the Fourteenth Amendment.

142. Unless enjoined by this Court, Defendant will continue to enforce the challenged classifications and restrictions, causing the Shop Plaintiffs immediate, ongoing, and irreparable injury for which there is no adequate remedy at law.

COUNT III—VIOLATION OF THE DUE PROCESS CLAUSE
(U.S. Const. amend. XIV; 42 U.S.C. § 1983)
(Vagueness, Arbitrary Enforcement, Lack of Standards, and Unbridled Discretion)
(All Plaintiffs)

143. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 142 as if fully set forth herein.

144. The Due Process Clause of the Fourteenth Amendment prohibits the deprivation of liberty and property without due process of law.

145. Due process requires that laws provide persons of ordinary intelligence a reasonable opportunity to understand what conduct is prohibited and establish standards sufficient to prevent arbitrary and discriminatory enforcement.

146. The Act imposes significant civil, administrative, licensing, and criminal consequences upon persons and businesses that fail to comply with its requirements.

147. The Act applies licensing and regulatory requirements to retailers that devote at least thirty-three percent of their floor space to selling tobacco products and accessories, tobacco-derived products, alternative nicotine products, vapor products, and related accessories. W. Va. Code § 16-9H-2.

148. W. Va. Code § 16-9H-2 defines a "vape or smoke retailer" as a retail establishment that sells covered products, and separately defines a "vape or smoke shop" as a vape or smoke retailer that devotes at least 33 percent of its floor space to selling covered products.

149. The emergency legislative rule, however, defines a "vape or smoke retailer" as a retail establishment selling covered products that are less than 33 percent of the retailer's floor space and authorizes the Commissioner to conduct floor-space calculations to verify that such retailers are not vape or smoke shops.

150. Neither the Act nor WVABCA's implementation materials specify how the thirty-three percent threshold is to be measured. The Act merely references "33 percent of its floor space" without providing any standards or methodology for calculating that percentage.

151. The emergency legislative rule, however, establishes a detailed methodology for calculating the thirty-three percent floor-space threshold that is not contained in the Act. Under the

rule, "total interior floor space" is determined by measuring the proposed premises' interior dimensions but then permits deductions for office space, limited video lottery space, restroom space, and certain empty space, thereby reducing the total interior floor space used as the denominator in the thirty-three percent calculation.

152. The emergency legislative rule simultaneously expands the numerator used in the calculation by permitting the Commissioner to include mixed-product areas, displays, counters, storage areas, office space, restrooms, shelving, wall boards, lounges, vaping areas, smoking areas, and additional artificial square footage surrounding displays, counters, shelving, and wall boards as vape or smoke shop floor space.

153. The rule therefore allows the same or similar areas of a retailer's premises to be added to the vape or smoke shop floor-space calculation while being deducted or otherwise excluded from the total interior floor-space calculation, materially increasing the likelihood that a retailer will satisfy the thirty-three percent threshold and become subject to the Act's licensing and regulatory requirements.

154. The uncertainty created by the emergency rule's calculation methodology is compounded by the rule's expanded and overlapping product definitions, because the products and accessories counted in the numerator determine whether a retailer meets the thirty-three percent threshold.

155. The emergency legislative rule separately defines "vapor product accessories" to include numerous components, parts, and add-ons allegedly intended for use in electronic smoking devices or to enhance the vaping experience, including vape devices, batteries, chargers, coils, atomizers, mouthpieces, airflow-control valves, carrying cases, skins, lanyards, tweezers, tank

openers, knives, custom drip tips, airflow rings, glass tubes, vape wire, specialized tools and kits, refillable cartridges, pods, e-juice bottles, and tanks.

156. The emergency legislative rule also defines "tobacco products and accessories" to include items such as ashtrays, rolling papers, rolling tips, matches, lighters, butane, electronic lighters, charging cables and power blocks, glass pipes, pipes, bongs, hookahs, e-hookahs, candles, aerosols, knives, and drug paraphernalia as defined in W. Va. Code § 47-19-3.

157. The emergency legislative rule further expands the statutory definition of "vapor product" by including vapable hemp products and kratom products, which are not included within the definition provided by W. Va. Code § 16-9H-2.

158. In addition, the WVABCA's guidance material further identifies numerous products that may be counted toward the thirty-three percent floor-space threshold that are not identified in the Act, including ashtrays, rolling paper, rolling tips, matches, lighters, butane, candles, aerosols, knives, and drug paraphernalia, while expressly stating that the list is "not all-inclusive."

159. Read together, the Act, the WVABCA material, and the emergency legislative rule employ overlapping, conflicting, and expanded definitions of covered products and accessories.

160. Numerous products, devices, and accessories are identified in the emergency legislative rule but are not identified in the Act.

161. These internally contradictory definitions leave retailers unable to determine which products may lawfully be sold or which products are included within each regulatory category.

162. Whether a retailer is required to obtain a license, and whether it is subject to civil, administrative, licensing, or criminal penalties, turns upon definitions and calculations that are materially altered and expanded by the emergency legislative rule and WVABCA's implementation materials rather than by the Act itself. The absence of consistent, objective, and ascertainable

standards deprives persons of ordinary intelligence of fair notice regarding the Act's applicability and invites arbitrary and discriminatory enforcement.

163. The uncertainty regarding which retailers are covered by the Act is further compounded by the exemption for a "cigar store as defined in legislative rule that does not sell vapor products." W. Va. Code § 16-9H-17.

164. The emergency legislative rule's definition of "cigar shop" permits these retailers to possess, sell, or offer for sale "tobacco products and accessories" while simultaneously prohibiting cigar shops from possessing, selling, or offering for sale cigarettes, e-cigarettes, vapor products, and vapor product accessories, notwithstanding that the same rule defines cigarettes as "tobacco products" and defines electronic cigarettes and vapor products as "tobacco-derived products."

165. These internally contradictory definitions leave retailers unable to determine which products may lawfully be sold or which products are included within each regulatory category.

166. WVABCA has also issued notices and guidance materials imposing operational restrictions not expressly contained in the Act. For example, WVABCA initially advised that vape and smoke shops could not operate on Sundays, Easter Sunday, or Christmas Day and limited employee access to licensed premises to 30 minutes before opening and 30 minutes after closing. WVABCA later removed or revised those restrictions without identifying any statutory amendment, legislative rule, formal standard, or explanation for the change. See Exhibit 6. (Vape and Smoke Shop Summary (Revised)).

167. The issuance and subsequent removal of operational restrictions not found in the Act further demonstrates the arbitrary and shifting nature of WVABCA's implementation and leaves regulated businesses uncertain as to which requirements govern compliance.

168. The Act vests substantial discretion in the Commissioner to determine licensing eligibility, applicant qualifications, compliance obligations, and enforcement actions without adequate standards governing the exercise of that discretion.

169. The Act broadly prohibits the operation of a vape or smoke shop within 300 feet of a church, school, or daycare center. However, the Act fails to define the terms "church," "school," or "daycare center," provides no grandfathering protection for businesses lawfully established before the Act's enactment, and provides no standards governing circumstances in which a church, school, or daycare center is established after a vape or smoke shop has lawfully commenced operations.

170. The Act further provides no mechanism for continued operation, compliance, relocation, variance, exemption, or other relief for businesses that become subject to the location restriction. As a result, retailers cannot reasonably determine their rights and obligations and remain subject to arbitrary enforcement and potential loss of licensure based upon circumstances beyond their control.

171. Several Affected Shop Plaintiffs are located within commercial plazas that contain churches, schools, or daycare facilities, or on properties that directly abut properties containing such facilities. As a result, those Plaintiffs may be deemed noncompliant with the Act's 300-foot location restriction despite the fact that their business entrances are located more than 300 feet from the entrances of the affected facilities. Instead, the Act's measurement methodology may subject such businesses to the location restriction based upon property boundaries, common ownership, adjoining parcels, or shared commercial developments rather than actual proximity between the retailer and the church, school, or daycare facility.

172. The emergency legislative rule also prohibits licensure for vape or smoke shops located on a college campus, state university campus, or branch thereof, but does not define "college campus," "state university campus," "branch," or what it means for a business to be located "on" such a campus.

173. Upon information and belief, certain Affected Shop Plaintiffs operate near or within areas that may be characterized as college, university, or branch-campus areas, creating uncertainty as to whether those Plaintiffs may be denied licensure, renewal, or continued operation under the emergency rule.

174. Nothing in the Act permits a vape or smoke shop lawfully established before the Act's enactment to continue operating as a lawful nonconforming use if it is located within the Act's 300-foot location restriction. Nor does the Act provide any mechanism by which an existing business may preserve its vested rights, obtain relief, or continue operations after becoming subject to the restriction.

175. The Act's treatment of the 300-foot location restriction, as compared to the delayed product-naming, packaging, advertising, marketing, and promotional restrictions, is arbitrary and irrational.

176. The Act provides future compliance deadlines for restrictions that may be addressed through ordinary business modifications, thereby affording notice and an opportunity to comply. By contrast, the Act imposes immediate consequences upon businesses affected by the 300-foot location restriction, notwithstanding that compliance may be impossible as a practical matter without relocation or cessation of operations.

177. The absence of any grandfathering provision, nonconforming-use protection, amortization period, variance procedure, relocation mechanism, or other means of protecting

vested rights renders the challenged location restriction arbitrary and violative of substantive due process.

178. In addition, the Act's penalty provisions are internally inconsistent and fail to provide fair notice regarding who may be subject to civil, criminal, or licensing liability.

179. Various provisions impose liability upon a "person," "firm," "corporation," "manufacturer," "distributor," "wholesaler," "vape or smoke retailer," "retailer," or "other person or entity," yet the Act does not clearly define the scope of those categories, explain whether they overlap, or identify which individuals or entities may be prosecuted, fined, imprisoned, or subjected to licensing sanctions for particular violations.

180. The uncertainty is further compounded by conflicting terminology and definitions in the Act and the emergency legislative rule.

181. W. Va. Code § 16-9H-11(a)(2) provides that manufacturers, distributors, wholesalers, and vape or smoke retailers that sell vapor products in violation of W. Va. Code §§ 16-9H-10(a) or 16-9H-14 are subject to misdemeanor penalties. W. Va. Code § 16-9H-15(c), however, separately imposes escalating and different criminal penalties, including felony penalties, upon a "retailer" that violates § 16-9H-10 and the Act's labeling requirements.

182. The Act does not define the term "retailer" as used in W. Va. Code § 16-9H-15(c), nor does it clearly explain the relationship between the penalty provisions set forth in W. Va. Code §§ 16-9H-11 and 16-9H-15.

183. The Act's criminal penalty provisions employ inconsistent terminology and fail to identify with reasonable certainty who may be subject to prosecution. For example, W. Va. Code § 16-9H-15(c) imposes escalating misdemeanor and felony penalties upon a "retailer" but, in describing subsequent offenses, refers to convictions of an "individual."

184. The Act does not explain whether a retailer includes a business entity, owner, member, manager, employee, applicant, licensee, or other associated person, nor does it clarify the relationship between a "retailer" and an "individual" for purposes of criminal prosecution and enhanced penalties.

185. The Act further creates uncertainty by imposing overlapping and potentially conflicting penalties for the same conduct. W. Va. Code §§ 16-9H-3, 16-9H-11, and 16-9H-15 each establish separate civil and criminal penalties without clearly identifying when a particular penalty applies, whether penalties may be imposed cumulatively, or which provision controls when the same conduct falls within multiple sections.

186. W. Va. Code §§ 16-9H-3(b) and 16-9H-15(a) impose criminal liability upon any person who acts "through another" or "directly or indirectly." The Act does not define the scope of conduct encompassed by those phrases, identify the degree of participation required for criminal liability, or provide objective standards limiting their reach. The absence of limiting principles leaves owners, managers, employees, investors, landlords, and other associated persons without fair notice as to whether they may be subject to criminal prosecution.

187. The Act also contains internal inconsistencies and ambiguities concerning its enforcement framework, including references to permits and permit holders despite otherwise establishing a licensing regime.

188. WVABCA's implementation materials impose or request information concerning matters not expressly contained within the statutory requirements, including distance measurements relating to residences, government offices, and vape stores, notwithstanding that the statutory location restriction references only churches, schools, and daycare centers.

189. WVABCA's application materials also require applicants to identify the "OWNER OF PREMISES TO BE LICENSED (PROPERTY OWNER'S NAME)" and, where the applicant is not the property owner, provide that the applicant "MUST HOLD A VALID LEASE" and attach a copy of the lease.

190. Neither W. Va. Code § 16-9H-5 nor any other provision of the Act requires disclosure of the property owner or conditions licensure upon possession of a "valid lease."

191. By requiring applicants to submit leases and possess a "valid lease," WVABCA has assumed authority to determine the validity and sufficiency of private lease agreements without statutory authorization, defined standards, or criteria governing such determinations. As a result, applicants are left to guess whether lease terms, landlord relationships, property ownership, or other matters outside the Act may affect licensure.

192. WVABCA's application materials further state that "[a]ll areas under control or lease of the applicant must be licensed." Neither W. Va. Code § 16-9H-5 nor any other provision of the Act contains such a requirement.

193. The Act does not define what it means for an area to be "under control" of an applicant, identify what areas must be licensed, or establish standards governing the scope of such a requirement. As a result, applicants are left to guess whether storage areas, offices, adjoining suites, common areas, warehouses, or other leased or controlled premises are subject to licensure, thereby further vesting WVABCA with unbridled discretion in administering and enforcing the Act.

194. WVABCA's application materials and emergency legislative rule further require applicants to obtain zoning certifications from local governmental entities.

195. For establishments located outside a municipality, WVABCA requires a letter from the applicable County Commission stating that the establishment is "zoned properly." For establishments located within a municipality, WVABCA requires municipal authorities to certify that the proposed vape or smoke shop location is consistent with applicable zoning ordinances as either a permitted or conditional use.

196. Neither W. Va. Code § 16-9H-5 nor any other provision of the Act requires such certifications, conditions licensure upon local zoning approval, or establishes standards governing the form, content, sufficiency, or legal effect of such determinations.

197. WVABCA's application materials and emergency legislative rule require county commissions and municipal officials to make legal and factual determinations concerning zoning classifications, permitted uses, conditional uses, property boundaries, and compliance with local land-use regulations.

198. The Act does not delegate such authority, identify standards governing those determinations, or explain how they affect eligibility for licensure. As a result, applicants are left to guess whether local zoning interpretations, boundary determinations, or other matters not identified in the Act may affect their ability to obtain or maintain a license.

199. The emergency legislative rule, 175 C.S.R. 12, was approved by the Secretary of State on June 23, 2026, and WVABCA indicated that applicable retailers were required to obtain a license by July 1, 2026.

200. The emergency legislative rule and WVABCA application materials require applicants to file a notice of intent with the clerk or recorder of the applicable municipality at least 10 calendar days before filing an application for a vape or smoke shop license with WVABCA.

201. The Act does not require zoning compliance, municipal notice, county notice, or a 10-day pre-application notice period as a condition of licensure.

202. Because 175 C.S.R. 12 was approved only eight days before the July 1, 2026 licensing deadline, WVABCA did not provide applicable retailers sufficient time to comply with the additional zoning, notice, and application requirements imposed by the emergency legislative rule before the licensing deadline.

203. WVABCA has also issued implementation materials purporting to regulate hours of operation and employee access to licensed premises before opening and after closing, notwithstanding the absence of any such requirements in the Act.

204. WVABCA revised its notice regarding hours of operation and removed the holiday-closure and employee-access restrictions contained in its earlier notice, but continued to assert hours-of-operation restrictions applicable to vape and smoke shops.

205. The emergency legislative rule provides that no licensee may sell tobacco products and accessories, tobacco-derived products, alternative nicotine products, vapor products, or related accessories on any licensed premises, or in any room directly connected therewith, between midnight and 8:00 a.m.

206. The legislative rule further provides that any licensee holding a West Virginia Lottery limited video lottery license or other WVABCA license may operate those functions during the hours authorized by the West Virginia Lottery or WVABCA, but that vape or smoke shop operations must comply with the vape or smoke shop hours-of-operation restriction.

207. The Act does not contain any comparable hours-of-operation restriction.

208. The emergency legislative rule imposes the hours-of-operation restriction only upon businesses classified as vape or smoke shops, and not upon other retailers that sell tobacco

products, tobacco-derived products, alternative nicotine products, vapor products, or related accessories.

209. The hours-of-operation restriction is not rationally related to the Act's stated purpose of preventing youth access to covered products, particularly where other retailers may continue selling the same or substantially similar products outside the restricted hours and where existing curfew laws already restrict minors' presence in public places during overnight hours.

210. The Act and WVABCA's implementation materials require regulated parties to guess at the scope of the Act's coverage, the standards governing compliance, and the conduct that may subject them to civil, administrative, licensing, and criminal penalties.

211. Whether a retailer is required to obtain a license, and whether it is subject to civil, administrative, and criminal penalties, turns upon definitions and calculations that are materially altered and expanded by the emergency legislative rule and WVABCA's guidance rather than by the Act itself.

212. As a result of the foregoing, the challenged provisions of W. Va. Code § 16-9H-1 *et seq.*, together with Defendant's implementation and enforcement thereof, fail to provide fair notice of the conduct they regulate, invite arbitrary and discriminatory enforcement, and vest Defendant with unbridled discretion in violation of the Due Process Clause of the Fourteenth Amendment.

213. By administering, implementing, and enforcing the Act under these circumstances, Defendant has deprived and continues to deprive Plaintiffs of rights secured by the Due Process Clause of the Fourteenth Amendment.

214. Unless enjoined by this Court, Defendant will continue to implement and enforce the challenged provisions, causing Plaintiffs immediate, ongoing, and irreparable injury for which there is no adequate remedy at law.

**COUNT IV—VIOLATION OF THE FIRST AMENDMENT
(U.S. Const. amend. I and XIV; 42 U.S.C. § 1983)
(Labeling, Marketing, Advertising, and Signage Restrictions)
(All Plaintiffs)**

215. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 214 as if fully set forth herein.

216. The First Amendment to the United States Constitution, applicable to the States through the Fourteenth Amendment, prohibits laws abridging the freedom of speech.

217. Commercial speech, including truthful and non-misleading advertising, marketing, labeling, branding, and product information, is protected by the First Amendment.

218. The Act contains a general prohibition on any "person, vape or smoke retailer, or other entity" conducting advertising or promotional activities, effective July 1, 2027. W. Va. Code § 16-9H-10(b).

219. The Act defines "person" broadly to include "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." W. Va. Code § 16-9H-2.

220. As a result, the Act's prohibition on advertising and promotional activities applies broadly to individuals and business entities engaged in the manufacture, distribution, marketing, promotion, and sale of lawful products.

221. The Act does not define the terms "advertising" or "promotional activities" and provides no standards identifying the conduct prohibited by those terms. As written, the prohibition

is broad enough to encompass a wide range of lawful commercial speech and expressive activities, including websites, social media communications, sponsorships, charitable donations, promotional events, customer loyalty programs, discounts, product displays, informational materials, and other forms of communication concerning lawful products and businesses.

222. Because the Act broadly prohibits "advertising or promotional activities" without meaningful limitation or definition, Plaintiffs must either refrain from engaging in substantial amounts of lawful commercial speech or risk civil, administrative, and criminal penalties.

223. The Act permits only a single exterior sign identifying a vape or smoke shop and imposes restrictions on the sign's size, placement, font, character dimensions, and illumination.

224. The emergency legislative rule imposes an additional restriction on the hours of use of any illuminated sign.

225. The Act also prohibits the use of numerous words, phrases, references, images, trademarks, trade dress, and other expressive content in the naming, labeling, packaging, and marketing of vapor products. W. Va. Code § 16-9H-10(a).

226. Those prohibited names, labels, packaging, and marketing references include terms such as "Candy," "Bubble gum," "Cotton candy," "Gummy bear," "Gummy worm," and "Lollipop," as well as cartoons, characters, superheroes, television shows, video games, movies, and similar references, variations, or imagery. W. Va. Code § 16-9H-10(a)(1)-(3).

227. The Act further prohibits the use of trade dress, trademarks, or other imagery that imitates or replicates food brands or products that have been marketed to minors, including brands associated with breakfast cereals, cookies, juice drinks, soft drinks, ice creams, and frozen pops.

228. The Act additionally prohibits the use of trade dress, trademarks, or other imagery that imitates or replicates school supplies, consumer products, or electronic devices, including

USB drives, highlighters, smart phones, smart watches, headphones, clothing, toys, video game devices, and phone application integration features.

229. The Act's prohibition on imagery or trade dress associated with certain consumer products, including "USB drives," is particularly broad and creates substantial uncertainty regarding the products, packaging, and marketing materials subject to regulation. Many lawful vapor products utilize compact designs, charging features, shapes, or product configurations that resemble or incorporate USB-based technology or charging devices commonly used in the marketplace.

230. As a result, manufacturers, distributors, and retailers cannot reasonably determine what product designs, product depictions, packaging, branding, or marketing materials may be deemed prohibited under the Act, creating a substantial risk that lawful and truthful commercial speech will be suppressed based upon subjective enforcement determinations.

231. Plaintiffs currently sell, distribute, market, or display products bearing names, flavor descriptors, branding, trade dress, imagery, packaging, or other expressive content that may be prohibited by the Act.

232. The challenged labeling, packaging, and marketing restrictions prohibit broad categories of words, images, references, characters, trademarks, trade dress, and other expressive content without regard to whether the speech is truthful, non-misleading, directed to adults, or associated with lawful products sold to adult consumers.

233. The challenged restrictions impose an overbroad burden on protected commercial speech, particularly where the Act prohibits Plaintiffs from using words, imagery, trade dress, branding, and marketing themes that remain lawful and commonly available to alcohol companies and other regulated businesses selling age-restricted products.

234. This disparate treatment underscores that the challenged provisions burden substantially more speech than necessary to advance any asserted interest in preventing youth access or misleading advertising.

235. The challenged provisions restrict speech based upon its content by prohibiting specific words, images, symbols, references, trademarks, trade dress, and other expressive elements.

236. The Act prohibits the use of certain words and imagery regardless of context, audience, medium, or whether the product is marketed exclusively to adults.

237. Plaintiffs currently use, display, distribute, or intend to use truthful and non-misleading commercial speech concerning lawful products sold to adult consumers, including product names, product descriptions, labels, packaging, trade dress, branding, exterior signage, websites, social media content, in-store displays, price information, advertising, and promotional materials.

238. The challenged provisions restrict truthful and non-misleading commercial speech concerning lawful products sold to adults and burden Plaintiffs' ability to communicate truthful information regarding their products, businesses, brands, services, and commercial offerings.

239. Restrictions on truthful and non-misleading commercial speech concerning lawful products must directly and materially advance a substantial governmental interest and may not be more extensive than necessary to serve that interest.

240. The challenged provisions are more extensive than necessary to advance any substantial governmental interest, prohibit a substantial amount of protected speech, and are not narrowly tailored to serve a substantial or compelling governmental interest.

241. By administering, implementing, and enforcing the challenged restrictions, Defendant has deprived and continues to deprive Plaintiffs of rights secured by the First Amendment.

242. Unless enjoined by this Court, Defendant will continue to enforce the challenged restrictions, causing Plaintiffs immediate, ongoing, and irreparable injury, including the loss of constitutional freedoms, for which there is no adequate remedy at law.

COUNT V—VIOLATION OF THE TAKINGS CLAUSE
(U.S. Const. amend. V; 42 U.S.C. § 1983)
(Regulatory Taking)
(Affected Shop Plaintiffs and Manufacturer Plaintiff)

243. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 243 as if fully set forth herein.

244. The Takings Clause of the Fifth Amendment, made applicable to the States through the Fourteenth Amendment, prohibits the taking of private property for public use without just compensation.

245. The Affected Shop Plaintiffs lawfully acquired, leased, developed, improved, and operate their respective business locations in West Virginia and have invested substantial capital, labor, goodwill, inventory, fixtures, leasehold interests, and other property interests in those locations.

246. W. Va. Code § 16-9H-10(c) provides that a vape or smoke retailer must be located at least 300 feet from a church, school, or daycare center.

247. Upon information and belief, certain Affected Shop Plaintiffs operate at locations that may be located within 300 feet of a church, school, or daycare center as measured under W. Va. Code § 16-9H-10(c). As a result, the Act's 300-foot location restriction threatens to deprive such Plaintiffs of the continued beneficial use of their existing leased premises and business

locations, notwithstanding that those businesses were lawfully established and operated prior to the Act's implementation.

248. The emergency legislative rule further prohibits licensure for any vape or smoke shop located on a college campus, state university campus, or branch thereof.

249. Upon information and belief, certain Affected Shop Plaintiffs may operate in locations that could be deemed subject to this restriction, thereby threatening their continued use and enjoyment of existing business locations and leasehold interests.

250. The Act and emergency legislative rule do not contain a grandfather provision or other mechanism allowing existing businesses lawfully established and operating before the Act's implementation to continue operating notwithstanding the newly imposed licensing, location, operational, advertising, and related restrictions.

251. The Act delays compliance with curable requirements but immediately burdens existing businesses subject to the location restriction, thereby frustrating settled investment-backed expectations and substantially impairing existing leasehold interests, goodwill, and ongoing business operations.

252. Many of the Affected Shop Plaintiffs operate pursuant to long-term commercial leases that require the leased premises to be used for their existing retail business operations and restrict or prohibit alternative uses of the premises.

253. The Affected Shop Plaintiffs entered into such leases, invested substantial capital in leasehold improvements, fixtures, inventory, branding, and goodwill, and established their businesses in reliance upon their ability to continue operating lawfully at their leased locations.

254. For certain Affected Shop Plaintiffs, compliance with the Act and the emergency legislative rule may require the cessation of existing business operations notwithstanding

continuing obligations under their leases. Because the applicable leases restrict or prohibit alternative uses of the premises, the inability to continue operating the permitted business may constitute a lease default, result in termination of the leasehold interest, or otherwise deprive Plaintiffs of the beneficial use and value of their leased premises.

255. In addition, premature termination of a leasehold interest may result in the loss of leasehold value, tenant improvements, business goodwill associated with the location, and other investments made in reliance upon the continued lawful operation of the business.

256. By conditioning continued operation upon compliance with newly imposed licensing, citizenship, operational, location, advertising, and other restrictions, the Act substantially interferes with the Plaintiffs' leasehold interests, inventory and other personal property interests, use and enjoyment of property, business goodwill, and reasonable investment-backed expectations.

257. The Shop Plaintiffs and Manufacturer Plaintiff own inventory, products, packaging, labeling materials, displays, fixtures, and other business assets that constitute personal property under West Virginia law and are subject to taxation as business personal property.

258. The Manufacturer Plaintiff and Shop Plaintiffs have invested substantial capital in the acquisition, manufacture, distribution, marketing, storage, and sale of such products and related business assets.

259. The Act prohibits or restricts the sale, marketing, labeling, packaging, and display of certain products based upon their names, branding, trade dress, imagery, packaging, or other characteristics. As a result, products lawfully acquired, manufactured, distributed, or offered for sale by Plaintiffs may become unsaleable, substantially impaired in value, or subject to removal from the marketplace.

260. The challenged restrictions substantially diminish the value, utility, marketability, and beneficial use of Plaintiffs' inventory and related business assets, thereby interfering with Plaintiffs' vested property interests and investment-backed expectations.

261. As implemented and enforced by WVABCA, the Act threatens to prohibit certain Affected Shop Plaintiffs from continuing to operate at their existing locations despite their lawful establishment and operation prior to enforcement of the challenged restrictions.

262. The economic burden of the challenged restrictions falls disproportionately upon a discrete class of existing businesses and property owners whose investments were made before the Act's enactment and implementation.

263. Neither the Act nor the emergency legislative rule provide any mechanism for compensating Plaintiffs for the loss in value, use, marketability, or enjoyment of their affected property interests.

264. By substantially impairing Plaintiffs' protected property interests without providing just compensation, Defendant has effected and threatens to effect an unconstitutional regulatory taking in violation of the Fifth and Fourteenth Amendments.

265. Unless enjoined by this Court, Defendant will continue to implement and enforce the challenged provisions, causing Plaintiffs immediate, ongoing, and irreparable injury.

COUNT VI—VIOLATION OF THE SUPREMACY CLAUSE
Federal Preemption of State Alienage Restrictions
(U.S. Const. art. VI; 42 U.S.C. § 1983)
(Individual Plaintiffs and Affected Shop Plaintiffs)

266. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 265 as if fully set forth herein.

267. The Supremacy Clause of Article VI of the United States Constitution provides that the Constitution and laws of the United States are the supreme law of the land.

268. Congress has established a comprehensive federal scheme governing immigration, alien registration, lawful presence, employment authorization, and the rights and obligations of noncitizens lawfully present in the United States.

269. Pursuant to federal law, the Individual Plaintiffs are lawfully present in the United States and are authorized by the federal government to reside and work within the United States.

270. The determination of immigration status, lawful presence, and authorization to reside and work in the United States is committed to the federal government and is governed by federal law.

271. W. Va. Code § 16-9H-5 prohibits the issuance or renewal of a vape or smoke shop license unless the applicant, owner, member, manager, key personnel, and other persons associated with the applicant are citizens of the United States.

272. By conditioning licensure upon United States citizenship, the Act imposes a state-law citizenship qualification that excludes categories of lawfully present noncitizens whom Congress has authorized to reside and work in the United States.

273. The challenged citizenship requirement does not regulate the qualifications of public employees, governmental officers, or persons performing governmental functions. Rather, it regulates participation in private-sector business enterprises by prohibiting lawfully present noncitizens from owning, managing, operating, or otherwise participating in businesses subject to the Act.

274. The challenged citizenship requirement effectively disqualifies federally authorized noncitizens from private-sector employment, ownership, management, and business opportunities solely because of their alienage, notwithstanding federal authorization to reside and work in the United States.

275. The challenged citizenship requirement conflicts with federal immigration classifications and federal determinations concerning which noncitizens may lawfully reside, work, own businesses, manage businesses, and otherwise participate in the national economy.

276. By imposing an additional state-law citizenship requirement on participation in private-sector businesses, the Act stands as an obstacle to the accomplishment and execution of Congress's objectives in establishing a uniform federal system governing immigration, lawful presence, and employment authorization.

277. The challenged citizenship requirement impermissibly intrudes upon a field occupied by federal law and imposes state-law disabilities based upon alienage that are inconsistent with federal immigration policy.

278. The challenged citizenship requirement is preempted by federal law and therefore violates the Supremacy Clause of the United States Constitution.

279. By administering, implementing, and enforcing the challenged citizenship requirement, Defendant has deprived and continues to deprive Plaintiffs of rights secured by the Constitution and laws of the United States.

280. Unless enjoined by this Court, Defendant will continue to administer and enforce the challenged citizenship requirement, causing Plaintiffs immediate, ongoing, and irreparable injury for which there is no adequate remedy at law.

COUNT VII—VIOLATION OF THE SUPREMACY CLAUSE
Federal Preemption
(U.S. Const. art. VI; FDCA; Tobacco Control Act; FCLAA)
(All Plaintiffs OR Affected Shop Plaintiffs and Manufacturer Plaintiffs)

281. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 280 as if fully set forth herein.

282. Congress enacted the Federal Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. § 301 et seq., as amended by the Family Smoking Prevention and Tobacco Control Act ("TCA"), establishing a comprehensive federal framework governing tobacco products and tobacco-product labeling, marketing, authorization, and distribution.

283. The TCA expressly limits state regulatory authority by prohibiting States from establishing or enforcing requirements concerning tobacco products that are "different from, or in addition to" federal requirements relating to tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing practices, and modified-risk tobacco products. 21 U.S.C. § 387p(a)(2)(A). Accordingly, while Congress preserved certain state authority over the sale, distribution, access to, and promotion of tobacco products, it expressly preempted state requirements regulating matters entrusted to FDA under the federal tobacco regulatory scheme.

284. Pursuant to the FDCA and TCA, FDA regulates tobacco products, including electronic nicotine delivery systems, vapor products, and related products, and determines whether such products may be lawfully marketed in interstate commerce.

285. The Act imposes state-law restrictions governing product names, labels, packaging, trade dress, imagery, branding, marketing, advertising, promotional content, and product presentation that apply to products regulated by FDA under the FDCA and TCA.

286. By prohibiting the use of specified words, phrases, references, imagery, trademarks, trade dress, packaging characteristics, and product-identifying features, the Act imposes requirements relating to labeling, misbranding, packaging, and the presentation of federally regulated tobacco products.

287. The penalty provisions of the Act also conflict with federal regulations governing retailer responsibility for tobacco-product labeling and health-warning requirements. Federal law expressly provides that a retailer "will not be in violation" of the applicable tobacco health-warning requirements where the product packaging contains the required warning, is supplied by a properly licensed manufacturer, importer, or distributor, and has not been materially altered by the retailer. 21 C.F.R. § 1143.3(a)(3).

288. In contrast, W. Va. Code § 16-9H-1 et seq. imposes civil, criminal, and licensing liability upon retailers for alleged labeling deficiencies, packaging deficiencies, marketing violations, and other product characteristics that are outside the retailer's control and attributable to the manufacturer, importer, distributor, or product packaging supplied to the retailer.

289. By imposing civil penalties, criminal liability, license suspension, license revocation, and other enforcement consequences upon retailers in circumstances where federal law expressly provides that retailers will not be in violation, the challenged provisions establish requirements and penalties that are different from, and in addition to, federal requirements. The challenged provisions are therefore inconsistent with the federal regulatory scheme, stand as an obstacle to the accomplishment and execution of Congress's objectives, and are preempted by federal law.

290. To the extent the Act imposes requirements relating to tobacco product standards, premarket review, adulteration, misbranding, labeling, packaging, product presentation, or modified-risk tobacco products that are different from, or in addition to, federal requirements, such provisions are expressly preempted by 21 U.S.C. § 387p(a)(2)(A).

291. Congress also enacted the Federal Cigarette Labeling and Advertising Act ("FCLAA"), 15 U.S.C. § 1331 et seq., which establishes a comprehensive federal framework

governing cigarette labeling, advertising, and health warnings. The FCLAA prescribes the warnings that must appear on cigarette packaging and in cigarette advertising and reflects Congress's determination that cigarette labeling and advertising should be governed by uniform federal standards.

292. The FCLAA expressly provides that "[n]o requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with" federal law. 15 U.S.C. § 1334(b).

293. The Act states "a person, vape or smoke retailer, or other entity may not conduct advertising or promotional activities." W. Va. Code § 16-9H-10(b).

294. The Act's advertising and promotional restrictions apply to "vape or smoke retailers," a category that includes retail establishments that sell tobacco products and accessories in addition to tobacco-derived and alternative nicotine products and vapor products. The Act does not limit the advertising and promotional restrictions to vapor products or otherwise exclude applicability to cigarettes and other tobacco products subject to the FCLAA. Accordingly, to the extent the Act prohibits, restricts, or regulates the advertising, promotion, marketing, branding, display, or presentation of cigarettes, it imposes requirements or prohibitions preempted by 15 U.S.C. § 1334(b).

295. By implementing and enforcing such restrictions against retailers and products subject to the FCLAA, Defendant imposes state-law requirements and prohibitions that Congress has expressly preempted. The challenged provisions are therefore invalid under the Supremacy Clause of the United States Constitution.

296. Defendant's implementation and enforcement of the challenged provisions constitutes enforcement of state-law requirements preempted by the FDCA, the TCA, and the FCLAA in violation of the Supremacy Clause of the United States Constitution.

297. Unless enjoined by this Court, Defendant will continue to implement and enforce the challenged provisions, causing Plaintiffs immediate, ongoing, and irreparable injury for which there is no adequate remedy at law.

**COUNT VIII—DECLARATORY AND INJUNCTIVE RELIEF
(28 U.S.C. §§ 2201-2202)**

298. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 298 as if fully set forth herein.

299. An actual, concrete, and justiciable controversy exists between Plaintiffs and Defendant concerning the constitutionality, validity, enforceability, implementation, and application of the challenged provisions of W. Va. Code § 16-9H-1 *et seq.*, both facially and as applied to Plaintiffs.

300. Plaintiffs contend that the challenged provisions of W. Va. Code § 16-9H-1 *et seq.*, and Defendant's implementation and enforcement thereof, violate the United States Constitution and are preempted by federal law for the reasons alleged herein.

301. Defendant is charged with administering, implementing, and enforcing the Act. Defendant has already undertaken concrete actions to implement and enforce the challenged provisions through WVABCA application materials, public notices, warning materials, summaries of requirements, licensing instructions, implementation directives, and threatened civil, criminal, administrative, and licensing consequences for noncompliance.

302. Because the Act is presently in effect and Defendant has commenced implementation and enforcement activities, Plaintiffs face immediate and ongoing obligations,

compliance costs, business decisions, licensing consequences, and enforcement risks arising from the challenged provisions.

303. Plaintiffs are presently subject to, and face a credible threat of, civil, administrative, licensing, and criminal consequences arising from the Act and Defendant's implementation and enforcement thereof.

304. A judicial declaration concerning the parties' respective rights, duties, and legal obligations is necessary and appropriate to resolve the controversy.

305. Plaintiffs have no adequate remedy at law and will suffer immediate, ongoing, and irreparable injury absent declaratory and injunctive relief.

306. Pursuant to 28 U.S.C. §§ 2201 and 2202, Plaintiffs are entitled to declarations that the challenged provisions of W. Va. Code § 16-9H-1 et seq. are unconstitutional, invalid, unenforceable, and/or preempted by federal law to the extent alleged herein, and to preliminary and permanent injunctive relief prohibiting Defendant from implementing, enforcing, or otherwise giving effect to such provisions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendant and grant the following relief:

A. Assume jurisdiction over this action and retain jurisdiction until final resolution of all matters in controversy;

B. Declare, pursuant to 28 U.S.C. §§ 2201 and 2202, that the challenged provisions of W. Va. Code § 16-9H-1 et seq., and Defendant's implementation and enforcement thereof, violate the United States Constitution and are otherwise preempted by federal law;

a. Declare that the citizenship requirements contained in W. Va. Code § 16-9H-5 violate the Equal Protection Clause of the Fourteenth Amendment and are preempted by federal law;

b. Declare that the classifications and restrictions imposed upon vape and smoke shops violate the Equal Protection Clause of the Fourteenth Amendment;

c. Declare that the challenged provisions are unconstitutionally vague, permit arbitrary and discriminatory enforcement, and violate the Due Process Clause of the Fourteenth Amendment;

d. Declare that the challenged labeling, marketing, advertising, promotional, and signage restrictions violate the First and Fourteenth Amendments;

e. Declare that the challenged provisions effect an unconstitutional taking of Plaintiffs' property without just compensation in violation of the Fifth and Fourteenth Amendments;

f. Declare that the citizenship requirements are preempted by federal immigration law and violate the Supremacy Clause of the United States Constitution;

g. Declare that the challenged labeling, packaging, branding, trade-dress, marketing, and related restrictions are preempted by the Federal Food, Drug, and Cosmetic Act, the Family Smoking Prevention and Tobacco Control Act, and the Federal Cigarette Labeling and Advertising Act, and therefore violate the Supremacy Clause of the United States Constitution;

h. Declare that the challenged provisions are invalid, unconstitutional, unenforceable, and of no force or effect to the extent alleged herein;

i. Declare that the emergency legislative rule codified at 175 C.S.R. 12, and Defendant's implementation and enforcement thereof, is unconstitutional, invalid, and unenforceable to the extent it exceeds the Act, imposes requirements not authorized by W. Va. Code § 16-9H-1 et seq., lacks clear standards, permits arbitrary enforcement, violates Plaintiffs' constitutional rights, or is preempted by federal law;

C. Issue preliminary and permanent injunctive relief prohibiting Defendant, his officers, agents, employees, successors, and all persons acting in concert with him from administering, implementing, enforcing, or otherwise giving effect to the challenged provisions of W. Va. Code § 16-9H-1 et seq. to the extent such provisions are determined to be unconstitutional, invalid, or preempted by federal law;

D. Issue preliminary and permanent injunctive relief prohibiting Defendant from denying, withholding, conditioning, suspending, revoking, or refusing to issue or renew any license based upon the participation of any lawful permanent resident or other lawfully present noncitizen in the ownership, management, operation, employment, or governance of a business subject to W. Va. Code § 16-9H-1 et seq.;

E. Issue preliminary and permanent injunctive relief prohibiting Defendant from imposing or threatening to impose any civil, criminal, administrative, licensing, suspension, revocation, or other penalties against Plaintiffs where the sole basis for the alleged violation is the challenged citizenship requirement, Defendant's refusal to process, approve, issue, or renew a license because of that requirement, or Plaintiffs' refusal to alter, divest, restructure, terminate, or otherwise modify lawful ownership interests, management interests, employment relationships, beneficial interests, proprietary interests, or other lawful business participation to comply with that requirement;

F. Enjoin Defendant from enforcing the citizenship requirements contained in W. Va. Code § 16-9H-5 against any Plaintiff or similarly situated person;

G. Issue a preliminary injunction, and after final judgment a permanent injunction, prohibiting Defendant and all persons acting in concert with him from denying, refusing to process, refusing to issue, refusing to renew, suspending, revoking, conditioning, penalizing, prosecuting, or otherwise taking adverse action against any license or license application of an existing business that was lawfully established and operating before the effective date of W. Va. Code § 16-9H-1 et seq. based solely upon the Act's 300-foot location restriction;

H. Issue a preliminary injunction, and after final judgment a permanent injunction, prohibiting Defendant and all persons acting in concert with him from enforcing licensing, labeling, product-classification, or compliance requirements for which the Act provides no clear standards and for which WVABCA has not promulgated duly authorized legislative rules or other binding standards sufficient to provide fair notice of the conduct required or prohibited;

I. Issue preliminary and permanent injunctive relief prohibiting Defendant, his officers, agents, employees, successors, and all persons acting in concert with him from administering, implementing, enforcing, or otherwise giving effect to 175 C.S.R. 12, or any emergency legislative rule, application material, guidance document, notice, summary, directive, or informal enforcement standard, to the extent it imposes licensing, zoning, location, floor-space, product-classification, lease, ownership-disclosure, hours-of-operation, signage, nuisance, campus-location, labeling, marketing, advertising, promotional, or other requirements not authorized by the Act, not adopted through lawful rulemaking, unsupported by clear standards, unconstitutional, invalid, or preempted by federal law;

J. Issue a preliminary injunction, and after final judgment a permanent injunction, prohibiting Defendant and all persons acting in concert with him from implementing, administering, enforcing, or otherwise giving effect to any state-law labeling, packaging, product-standard, premarket-review, product-authorization, adulteration, misbranding, registration, good-manufacturing-practice, modified-risk, advertising, promotional, branding, trade-dress, or related requirement that is preempted by the Federal Food, Drug, and Cosmetic Act, the Family Smoking Prevention and Tobacco Control Act, the Federal Cigarette Labeling and Advertising Act, or any other applicable federal law;

K. Issue a preliminary injunction, and after final judgment a permanent injunction, prohibiting Defendant and all persons acting in concert with him from enforcing W. Va. Code § 16-9H-10(a), or any related provision, to the extent it imposes requirements concerning labeling, packaging, misbranding, product naming, trademarks, trade dress, product presentation, or other matters preempted by federal tobacco law;

L. Issue a preliminary injunction, and after final judgment a permanent injunction, prohibiting Defendant and all persons acting in concert with him from enforcing any product-name, packaging, labeling, marketing, advertising, promotional, branding, trade-dress, or signage restriction that prohibits, restricts, burdens, or chills truthful and non-misleading commercial speech concerning lawful products sold to adult consumers in violation of the First and Fourteenth Amendments;

M. Enter an order severing any unconstitutional, invalid, or preempted provision of W. Va. Code § 16-9H-1 et seq., including the challenged citizenship requirement, to the maximum extent permitted by law while preserving any remaining lawful, constitutional, and non-preempted provisions;

N. Award Plaintiffs their reasonable attorneys' fees, expenses, and costs pursuant to 42 U.S.C. § 1988 and any other applicable provision of law;

O. Award Plaintiffs their taxable costs and disbursements incurred in this action;

P. Grant such other and further legal, equitable, declaratory, injunctive, supplemental, compensatory, nominal, or other relief as the Court deems just, proper, and appropriate.

JURY DEMAND

Plaintiffs' claims seek declaratory and injunctive relief that is equitable in nature. To the extent any claim, factual issue, or remedy in this action is triable to a jury, Plaintiffs demand a trial by jury on all such issues.

Respectfully submitted,

By Counsel,

/s/ Alonzo D. Washington

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Smoke Shop LLC; Love Smoker LLC; Smokers Freedom LLC; Sz Tobacco & Vape LLC; Shabibi Tobacco and Vape LLC; Zak Tobacco And Vape LLC; Puff Cloud LLC; Smokers More LLC; Self Service Smoke Shop, LLC; Glass Lab VIP, LLC; Salah Ahmed Qasem Hasan; Naseem Hasan; and Omar Lutf.

/s/ William J. Ihlenfeld

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WEST VIRGINIA

ALCOHOL BEVERAGE CONTROL ADMINISTRATION

FREDRIC L. WOOTON, COMMISSIONER

PRESS RELEASE

May 26, 2026
FOR IMMEDIATE RELEASE

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WVABCA Expands Enforcement Efforts Under New Vape Safety Act

CHARLESTON, W.Va. - The West Virginia Alcohol Beverage Control Administration (WVABCA) is expanding its public safety and enforcement responsibilities following passage of House Bill 5437, known as the "Vape Safety Act," which provides the agency with new authority to regulate, license, and enforce operating requirements for qualifying vape and smoke shops across the state.

"The Vape Safety Act provides important tools to strengthen accountability and improve oversight of products being sold in communities across West Virginia," said WVABCA Commissioner Fred Wooton. "Our goal is to help ensure businesses operate responsibly while protecting children, families, and consumers from unsafe or improperly marketed products."

The legislation comes as vape and smoke shop businesses continue to expand rapidly throughout West Virginia, raising growing concerns among educators, medical professionals, law enforcement, and community leaders regarding mislabeled, unregulated, and youth-marketed products.

The law builds upon Senate Bill 679, passed in 2023, which expanded regulatory oversight of products including Delta 8, hemp, and kratom. Since that time, the WVABCA has worked alongside the State Tax Division and other state and local agencies to strengthen enforcement efforts and improve compliance across the industry.

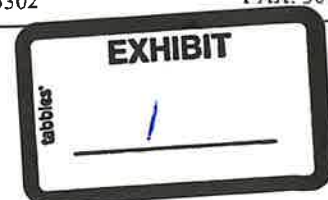
Under the Vape Safety Act, the WVABCA will oversee licensing, compliance, and enforcement requirements for qualifying vape and smoke shops operating within the state. Agency officials say the expanded authority will help improve consistency, accountability, and compliance with West Virginia law.

For more information about the Vape Safety Act and WVABCA enforcement responsibilities, visit [WVABCA](#)

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About WVABCA:

The West Virginia Legislature created the West Virginia Alcohol Beverage Control Administration in 1935. The WVABCA was organized to give effect to the mandate of the people expressed in the repeal of the state prohibition amendment and to assure the greatest degree of freedom that is consistent with the health, safety, and good morals of the people of West Virginia. The Mission of the WVABCA is to regulate, enforce, and control the sales and distribution, transportation, storage, and consumption of alcoholic liquors and nonintoxicating beer as mandated by the West Virginia Liquor Control and Nonintoxicating Beer Act.



WARNING!!

Effective June 11, 2026, vapor products (see definitions) labeling shall 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 (21 years of age or older);
- (3) The prohibition against selling or furnishing, by purchase, gift, or other means, the vapor product to a minor (person under 21 years of age);
- (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.

Failure to meet advertising and promotional requirements and labeling requirements may result in administrative sanctions for licensees and/or civil penalties or criminal penalties.

WARNING!!

On March 1, 2027, a vape or smoke retailer or vape or smoke shop licensee (manufacturer of a vapor product or a distributor or wholesaler) may not sell or offer for sale 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 any 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.

Failure to meet advertising and promotional requirements and labeling requirements may result in administrative sanctions for licensees and/or civil penalties or criminal penalties.

WARNING!!

Beginning July 1, 2027, a person, vape or smoke retailer, or other entity (vape or smoke shop licensee) may not conduct advertising or promotional activities.

However, a person, vape or smoke retailer, or vape or smoke shop licensee may display a sign on the exterior of the establishment to identify the retail location as having vape or smoke products which sign is of uniform size and design, no greater than 18 inches by 18 inches.

The sign shall additionally conform to the following guidelines:

- (1) The sign shall be affixed in one location on the outside of a 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.





WEST VIRGINIA

ALCOHOL BEVERAGE CONTROL ADMINISTRATION
FREDRIC L. WOOTON, COMMISSIONER

-IMPORTANT NOTICE-

New West Virginia Vape Safety Act Compliance Requirements

To All West Virginia Vape or Smoke Retailers:

The West Virginia Legislature recently passed House Bill 5437 (the "Vape Safety Act") which introduced major regulatory changes for vape and smoke retailers in our state. The West Virginia Alcohol Beverage Control Administration ("WVABCA") has been tasked with licensing, regulating and enforcing compliance with W.Va. Code §16-9H-1, *et seq.*, which goes into effect on June 11, 2026.

Pursuant to the Vape Safety Act, a "*Vape or Smoke Shop*" means a vape or smoke retailer that devotes at least 33% of its floor space (as determined by the WVABCA Commissioner), to selling tobacco products and accessories, as well as tobacco-derived and alternative nicotine products or vapor products and accessories. **You have been identified as potentially qualifying as a *Vape or Smoke Shop* as defined by this Act.**

Vape or smoke retailers who may meet this 33% threshold, qualifying them as a *Vape or Smoke Shop*, **must apply** for an annual license with the WVABCA, who is now accepting applications for a *Vape or Smoke Shop* license. Applications can be found on the WVABCA website, <https://abca.wv.gov>. **All applicants must meet the licensing requirements set forth in the Vape Safety Act and 175 CSR 12.**

Qualifying *Vape or Smoke Shops* must be licensed before July 1, 2026, for the 2026-2027 license period. We strongly encourage you to complete your application and submit it (along with the \$1200 license fee and any required documentation) to the WVABCA prior to July 1, 2026, to ensure WVABCA staff have adequate time to process your application and identify any potential issues.

Any *Vape or Smoke Shop* operating without a license after July 1, 2026, will be subject to criminal and civil penalties.

Please refer to HB 5437 (the Vape Safety Act), W. Va. Code §16-9H-1, *et seq.*, and 175 CSR 12, for all applicant, premises, product, labeling and marketing requirements, restrictions, and prohibitions. Links to these resources can be found on the WVABCA website, <https://abca.wv.gov>.



**STATE OF WEST VIRGINIA
DEPARTMENT OF REVENUE
ALCOHOL BEVERAGE CONTROL ADMINISTRATION
900 Pennsylvania Avenue, 4th Floor
Charleston, WV 25302**

**INSTRUCTIONS FOR COMPLETING APPLICATION FOR
VAPE AND SMOKE SHOP LOCATION**

PLEASE READ ALL THE INSTRUCTIONS CAREFULLY. ALL QUESTIONS ARE TO BE ANSWERED IN FULL. APPLICANT'S ACCURACY AND THOROUGHNESS IN COMPLETING THE APPLICATION FORM WILL ASSIST THIS OFFICE IN PROCESSING THE APPLICATION AND PREVENT UNNECESSARY DELAYS.

APPLICANTS MUST TYPE OR PRINT, IN INK, ALL ANSWERS ON FORMS.

Please find enclosed:

- 1.) Application for Vape and Smoke Shop Location (ABCA – VSA1)
- 2.) Release of Information & Waiver of Confidentiality of Records (ABCA-Lic. RIWCR.2)
- 3.) Floor Plan (ABCA-Lic.FP3), give dimensions of the entire floor space for the licensed premises. The floor plan must indicate where electronic cigarettes, tobacco products and accessories, tobacco derived products and alternative nicotine products or vapor products and accessories are located or stored.
- 4.) Zoning Form (ABCA-Lic.Z.2)

INSTRUCTIONS

All questions and/or descriptions must be answered. The application must be signed and notarized. If any questions/description cannot be completed in the available space on the application, please submit additional pages as needed. Each additional page submitted must include entity name, DBA name, and indicate which question applicant is answering.

Applications must be completed correctly, and all necessary documents included when mailed to the WVABCA. Failure to do so will result in the application being delayed and/or returned to the applicant for the necessary corrections.

LEASE – Applicants must provide a copy of a valid lease if not the property owner.

LICENSE FEES – License fees must be paid by Certified Check, Cashier's Check, Business Checks, Money Order, Personal Checks or Credit Card. Cash will not be accepted. Make checks payable to the WVABCA.

The Vape and Smoke Shop license is valid from the issue date to June 30th of the current licensing period. If applying for a license to be issued after January 1st, the license will be prorated to half the initial fee.

LIVE SCAN FINGERPRINTING – All applicants must complete a Live Scan Fingerprint in order to obtain a valid license. IdentoGO by MorphoTrust will provide fingerprinting services for all WVABCA license applicants. Contact IdentoGo at 855-766-7746 or online at <https://uenroll.identogo.com> for information on fingerprinting, locations, scheduling appointments, and fee requirements.

Fingerprint result reports **MUST** be sent to WVABCA directly from IdentoGo by Morpho Trust.



Please contact the WVABCA Licensing Department at 304-356-5500 to obtain the proper service code for the Live Scan Fingerprinting process.

NO REPORTS WILL BE ACCEPTED DIRECTLY FROM LICENSE APPLICANTS.

WV SECRETARY OF STATE – All Associations, Corporations, Limited Liability Companies, Limited Partnership, Trusts, and Estates must be duly certified and registered with the WV Secretary of State.

INSTRUCTIONS FOR SIGNING:

- a.) If an individual, by the owner.
- b.) If a partnership, by each member of the partnership (Copy of Partnership Agreement to be submitted to WVABCA).
- c.) If an association, by each member of the governing board.
- d.) If a corporation, by all officers
- e.) If a trust, all trustees or members
- f.) If a limited liability company, by all members.
- g.) Manager(s) must be listed and sign the application.

BUSINESS CLOSURE

If issued, the license may not be abandoned, rented, leased, given, loaned, or sold to another. Upon sale or closure of the applicant's business, the license must be returned to the WVABCA Licensing Division. Please include reason for closure, date business closed, and signature on back of license. The license may not be transferred to another person or location.

MAIL COMPLETED APPLICATION, FEES, AND REQUIRED ACCOMPANYING FORMS TO:

West Virginia Alcohol Beverage Control Administration
ATTN: Licensing Division
900 Pennsylvania Avenue, 4th Floor
Charleston, WV 25302

You should review W. Va. Code §16-9H-1 et seq., prior to completing this application.

See the **Warning Page** for appropriate labeled and marketed products (beginning March 1, 2027), advertising restrictions (beginning July 1, 2027), and required label warnings (starting immediately).

IF YOU HAVE ANY QUESTIONS OR NEED ASSISTANCE, PLEASE CALL THE ADMINISTRATION AT 1-800-642-8208 OR (304) 356-5500 AND ASK FOR THE LICENSING DIVISION.

CHECKLIST OF FORMS/DOCUMENTS TO RETURN TO THE WVABCA, LICENSING DIVISION:

- ☐ Application Form
- ☐ Release of Information & Waiver of Confidentiality of Records
- ☐ Copy of Valid Lease (if not owner)
- ☐ License Fee(s)
- ☐ Floor Plan
- ☐ Zoning Form completed by applicant & municipality if within city limits or, Zoning Form completed by applicant & letter from County Commission, if outside city limits
- ☐ Naturalization papers (if applicable)
- ☐ Partnership agreement or corporate resolution, if applicable

ABCA – VSA-1

6/01/2026

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

APPLICATION FOR RETAIL LICENSE

VAPE AND SMOKE SHOP LOCATION

FOR FISCAL YEAR _____ TO _____

COUNTY: _____

PLEASE CHECK ALL APPROPRIATE BOXES BELOW. BE SURE TO CHECK THE BOX(ES) BESIDE EACH (ALL) OF THE LICENSES
FOR WHICH YOU ARE APPLYING.

A. APPLICATION	B. APPLYING AS: (CHECK ONE)
☐ Vape and Smoke Shop..... \$1,200	☐ Individual ☐ Partnership ☐ Limited Partnership ☐ Corporation ☐ Association ☐ Limited Liability Company ☐ Trusts ☐ Estates

EMAIL (REQUIRED): _____ FAX NUMBER: _____ WV TAX I.D./FEIN: _____

1) APPLICANT/ENTITY NAME: _____

2) DOING BUSINESS AS (DBA) NAME: _____

3) BUSINESS ADDRESS: _____

(STREET)

(CITY) (STATE) (ZIP CODE) (TELEPHONE)

4) MAILING ADDRESS (REQUIRED): _____

(STREET)

(CITY) (STATE) (ZIP CODE) (TELEPHONE)

5) SUPPLY THE FOLLOWING INFORMATION ABOUT OWNER(S) AND/OR OFFICER(S) AND MANAGER(S).
ALL APPLICANTS MUST LIST A MANAGER. ALL PERSONS WITH CONTROL OF THE APPLICANT MUST
BE LISTED.

U.S. Citizen**

Title	Name	Residence Address, City, State and Zip Code	% Ownership	Y/N
	_____ Date of Birth	_____ Social Security Number	_____ Telephone Number	_____ Years Resident of WV

Title	Name	Residence Address, City, State and Zip Code	% Ownership	Y/N
	_____ Date of Birth	_____ Social Security Number	_____ Telephone Number	_____ Years Resident of WV

Title _____	Name _____	Residence Address, City, State and Zip Code _____	% Ownership _____	Y/N _____
Date of Birth _____	Social Security Number _____	Telephone Number _____	Years Resident of WV _____	

Title _____	Name _____	Residence Address, City, State and Zip Code _____	% Ownership _____	Y/N _____
Date of Birth _____	Social Security Number _____	Telephone Number _____	Years Resident of WV _____	

Title _____	Name _____	Residence Address, City, State and Zip Code _____	% Ownership _____	Y/N _____
Date of Birth _____	Social Security Number _____	Telephone Number _____	Years Resident of WV _____	

Title _____	Name _____	Residence Address, City, State and Zip Code _____	% Ownership _____	Y/N _____
Date of Birth _____	Social Security Number _____	Telephone Number _____	Years Resident of WV _____	

Title _____	Name _____	Residence Address, City, State and Zip Code _____	% Ownership _____	Y/N _____
Date of Birth _____	Social Security Number _____	Telephone Number _____	Years Resident of WV _____	

**** IF NATURALIZED U.S. CITIZEN, MUST SUBMIT COPY OF NATURALIZATION DOCUMENTS. ALL APPLICANTS MUST BE US CITIZENS.**

TITLE REFERS TO CORPORATE OFFICERS, PRESIDENT, VICE PRESIDENT, SECRETARY, TREASURER, MANAGER, OR MEMBER.

- 6) CRIMINAL HISTORY- THE FOLLOWING IS A RECORD OF **ALL CONVICTED ARRESTS** OF THE OWNERS, PARTNERS, OFFICERS, DIRECTORS, MEMBERS, KEY PERSONNEL, MANAGERS, AND/OR PERSONS IN CONTROL. ATTACH ADDITIONAL PAGES IF NECESSARY. **IF THERE HAVE BEEN NO ARRESTS INSERT THE WORD "NONE"**.

NAME	DATE OF ARREST	CHARGE	DISPOSITION OF ARREST	LOCATION OF COURT (COUNTY & STATE)

- 7) STATE NAME AND ADDRESS OF ALL PERSONS HAVING INTEREST IN THE APPLICANTS' CORPORATION, ASSOCIATION, PARTNERSHIP, LIMITED PARTNERSHIP, TRUSTS, ESTATE, AND/OR LIMITED LIABILITY COMPANY. STATE THE EXACT PERCENTAGE OF OWNERSHIP INTEREST FOR EACH PERSON LISTED.

NAME	ADDRESS	SOC.SEC. #	%OWNERSHIP

- 8) HAS ANY OFFICER, MANAGER, PERSON OR PERSON IN CONTROL OF THE APPLICANT EVER HELD OR CURRENTLY HOLD A WVABCA LICENSE?

YES ☐ NO ☐ IF YES, WHO? _____

DBA NAME? _____

WAS THE LICENSE: REVOKED _____ DATE _____

SUSPENDED _____ DATE _____

SANCTIONED _____ DATE _____

- 9) OWNER OF PREMISES TO BE LICENSED. (PROPERTY OWNER'S NAME) _____
IF NOT PROPERTY OWNER, APPLICANT MUST HOLD A VALID LEASE. (ATTACH COPY OF THE LEASE.)

- 10) DOES THIS LOCATION CURRENTLY HAVE A WVABCA LICENSE? ☐ YES ☐ NO
IF YES, NAME OF LICENSED ESTABLISHMENT: _____

LICENSE #: _____

- 11) DOES THIS LOCATION CURRENTLY HAVE A WV REGISTRATION OF HEMP RETAILERS AND DISTRIBUTORS FROM THE WV DEPARTMENT OF AGRICULTURE?

☐ YES ☐ NO

- 12) DOES THIS LOCATION CURRENTLY HAVE A WV REGISTRATION OF KRATOM RETAILERS AND DISTRIBUTORS FROM THE WV DEPARTMENT OF AGRICULTURE?

☐ YES ☐ NO

13) DOES THIS LOCATION CURRENTLY HAVE A DRUG PARAPHERNALIA LICENSE FROM THE WV TAX DIVISION?

☐ YES ☐ NO

14) LIST THE DISTANCE TO THE NEAREST:

A.) CHURCH _____ *

B.) SCHOOL _____ *

C.) DAYCARE _____ *

D.) RESIDENCE _____

E.) GOVERNMENT OFFICE _____

F.) VAPE STORE _____

*MUST BE LOCATED AT LEAST 300 FEET FROM A CHURCH, SCHOOL OR DAYCARE, CALCULATED BY MEASURING A STRAIGHT LINE FROM THE VAPE AND SMOKE SHOP ENTRANCE TO THE PROPERTY LINE OF LOCATIONS "A" THROUGH "C" LISTED ABOVE.

15) DOES ANY PERSON RESIDE WITHIN THE PROPOSED PREMISES OR IN A CONNECTED OR ACCESSIBLE ROOM?

YES ☐ NO ☐

16) IS THE APPLICANT'S LOCATION READY FOR AN INITIAL INSPECTION?

YES ☐ NO ☐

IF NO, WHAT IS THE PROJECTED DATE FOR THE INITIAL INSPECTION? _____

The undersigned agree, if a license is issued as herein applied for, to comply at all times and observe all the provisions of West Virginia §§16-9H-1 et seq. and all Federal and State Statutes and all other laws of this State and the rules and regulations promulgated by the Alcohol Beverage Control Administration. I or we certify under penalty of law and disqualification of licensure that all statements are true and complete. I or we release the State of West Virginia and any agent acting on its behalf from any and all liability due to the request for such information.

The undersigned hereby verify that we are all officers and all members of the board of directors on the application and that the statements and answers made in the foregoing application are true and the said writing is the act and deed of said Corporation, Limited Liability Company, Association, Individual, Partnership, Limited Partnership, Trust, or Estate. **OFFICERS, INDIVIDUAL, OR MEMBER(S) SIGNATURES MUST BE NOTARIZED! MUST MATCH OFFICERS LISTED WITH THE SECRETARY OF STATE. MANAGERS MUST ALSO SIGN.**

PRINT CLEARLY/ WRITTEN SIGNATURES REQUIRED

NAME: _____	TITLE: _____
SIGNATURE: _____	DATE OF SIGNATURE: _____
NAME: _____	TITLE: _____
SIGNATURE: _____	DATE OF SIGNATURE: _____
NAME: _____	TITLE: _____
SIGNATURE: _____	DATE OF SIGNATURE: _____
NAME: _____	TITLE: _____
SIGNATURE: _____	DATE OF SIGNATURE: _____
NAME: _____	TITLE: _____
SIGNATURE: _____	DATE OF SIGNATURE: _____

State of West Virginia, _____ County, To-Wit: _____, being first duly sworn according to law, deposes and says that he/she is _____ of the _____ President, Individual or Controlling Member(s) _____, authorized by law to do business in the State of West Virginia, and that the _____ Business Entity statements and answers made in the foregoing application are true and acknowledged the said writing to be the act and deed of said corporation.

(Applicant Signature) _____

STATE OF WEST VIRGINIA,

COUNTY OF _____, to wit:

Sworn to before me and subscribed in my presence this _____ day of _____.

NOTARY PUBLIC

My Commission Expires: _____



SEAL OF NOTARY

Applicant/Entity Name:

Doing Business As (DBA) Name:

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL
ADMINISTRATION

RELEASE OF INFORMATION AND WAIVER OF CONFIDENTIALITY OF RECORDS

I or we, having made application with the West Virginia Alcohol Beverage Control Administration for issuance of a license to sell electronic cigarettes, tobacco-derived products, vapor products, and accessories within the State of West Virginia, hereby waive the benefit of any municipal, county, state, or federal statute, rule, ordinance, regulation or other law prescribing the confidentiality of any records or documents, whether formal or informal, pending or closed, maintained by any public or private agency or organization as those records or documents pertain to residency, business location, business activities, education and/or training, employment, criminal history, civil litigation, or law enforcement investigation.

I or we hereby authorize and request every public or private agency, organization, or person maintaining such records to furnish to the West Virginia Alcohol Beverage Control Administration, or their agents or representatives, any information contained therein and to permit them to inspect and make copies of such records and documents.

I or we hereby authorize the West Virginia Alcohol Beverage Control Administration to disclose any information pertaining to the licensure to any municipal, county, state, federal or private agency or organization that has any interest in the licensing of said applicant.

I or we hereby release the West Virginia Alcohol Beverage Control Administration, their agents and representatives, and any agency, organization, or person furnishing information from all liability arising out of any investigation concerning the applicant. I or we further agree that a copy of this Release and Waiver shall function as an original.

I or we hereby acknowledge that it is understood that a background check will be completed by both the West Virginia State Police and the Federal Bureau of Investigation. It is further understood that if I or we dispute an FBI submission under Title 28, C.F.R., 16.34, I or we have the right to challenge the completeness or accuracy of the criminal history record by contacting the Federal Bureau of Investigation directly.

I or we acknowledge that by affixing a signature(s) below gives this document full force, and upon this date all aforementioned information may be received and shared as prescribed.

Name: Must include owner's, officer's, member's and manager's printed and written signature(s).	Title	Date

West Virginia Alcohol Beverage Control Administration

Floor Plan

License Period: _____ to _____

Applicant Entity Name: _____

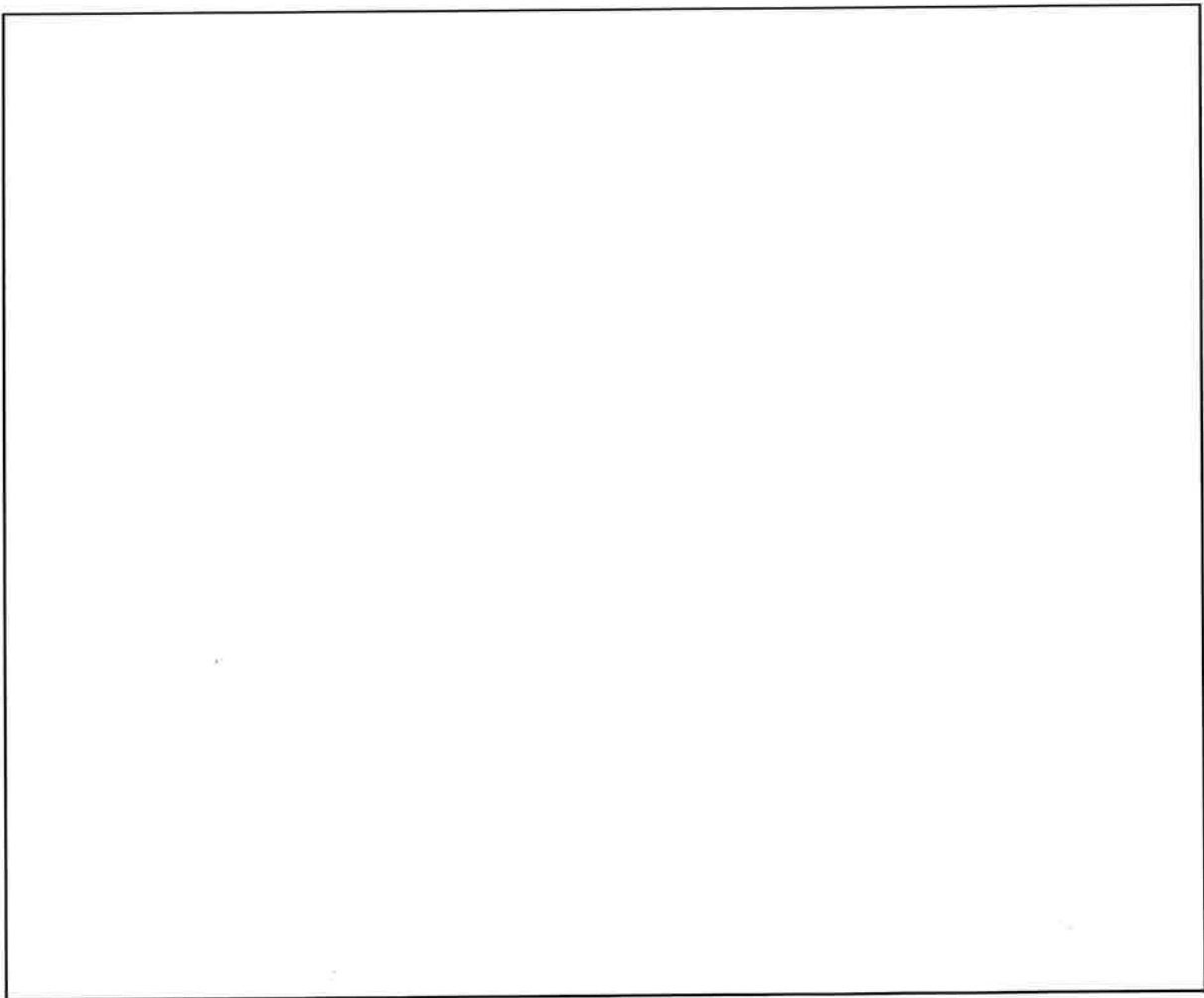
Doing Business As (DBA) Name: _____

County: _____

Floor plan **must** include **all areas under the control or lease of the applicant** on the floor space where electronic cigarettes, tobacco products and accessories, tobacco derived products and alternative nicotine products or vapor products and accessories are to be stored or sold. All areas under control or lease of the applicant must be licensed.

SUBMIT (1) COPY TO WVABCA. MUST GIVE DIMENSIONS.

KEEP (1) COPY AT LICENSED PREMISES.



*If there are attached drawings please check: ☐

(Additional drawings must include entity & DBA name and must be signed and dated.)

Indicate where on the floor space (entire floor space) electronic cigarettes, tobacco products and accessories, tobacco derived products and alternative nicotine products or vapor products and accessories are or will be located.

Rooms (Length and Width) (Example: 24' X 36')	Located on What Floor	Location (Counter, Cash Register, Storage, etc...)

I or we hereby certify that the floor plan above and/or attached is the only area where electronic cigarettes, tobacco-derived products, and vapor products will be sold, dispensed, and/or stored. And, I or we further understand that any violation of this provision will mean immediate revocation or suspension of my license.

Print: _____ Signature: _____ Title: _____ Date: _____

Print: _____ Signature: _____ Title: _____ Date: _____

Print: _____ Signature: _____ Title: _____ Date: _____

Print: _____ Signature: _____ Title: _____ Date: _____

Print: _____ Signature: _____ Title: _____ Date: _____

Zoning Form

Note: If an establishment's location is not situated within a municipality, this office will need a letter from the County Commission stating that the establishment location is zoned properly. All applicants must complete the front portion of the form.

To: Municipal Clerk or Recorder

Under the requirements set forth in W.Va. Code §16-9H-1 *et seq.*, a person intending to apply for a license to operate a WVABCA licensed Vape or Smoke Shop must meet licensure requirements. The WVABCA requires that any Vape or Smoke Shop applying to operate at any location within a municipality **must file a notice of such intention with the Clerk or Recorder of such municipality at least ten (10) days prior** to filing an application for such license with the WVABCA. Pursuant to this requirement, **notice** is herein given that the following intends to apply to the WVABCA for a license to operate a Vape or Smoke Shop pursuant to the provisions of W.Va. Code §16-9H-1 *et seq.* and 175 CSR 12.

Entity Name: _____

DBA (Doing Business As): _____

Address of Establishment: _____
(Street/Route) (City) (State) (Zip Code)

Applicant's
Name(s): _____
(Last) (First) (Middle)

(Last) (First) (Middle)

*Use additional sheet for signatures if needed.

General Description of Premises: _____

This Notice has been filed with the Clerk or Recorder of the City/Town of

on this _____ day of _____,

Applicant's Signature(s): _____ Date: _____

Date: _____

(Municipality is to fill out the reverse side of the form)

(For Use by Municipal Authorities Only)

1. Is the proposed location for the Vape or Smoke Shop described consistent with the zoning ordinances of your Municipality as either a permitted use or a conditional use of such premises?

Yes ____ No ____

2. If the answer to the first question was "No" does your Municipality provide within its zoning requirements suitable alternative locations for a Vape or Smoke Shop?

Yes ____ No ____

3. Additional comments to the WV Alcohol Beverage Control Administration:

Approved By: Authorized Official Signature and Title

City/Town

Date: _____

Return Original To: WVABCA
Licensing Division
900 Pennsylvania Avenue, 4th Floor
Charleston, WV 25302

Vape and Smoke Shop

"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.

- Vape and Smoke Shop licenses are required if related retail items (see below) make up 33% of the establishment's floor space.
- Commonly seen Vape and Smoke Shop products: Products such as: vape products, nicotine products, "electronic cigarettes", "e-cigar", "e-pipe", "e-hookah", "vape pen", electronic cigarillo, "tobacco derived product" (including but not limited to, cigarettes, pipe tobacco, snuff, snus, chewing tobacco, etc.), tobacco products and accessories (ashtrays, rolling paper, rolling tips, matches, lighters, butane, candles, aerosols, knives and drug paraphernalia as defined in W.Va. Code §47-19-3), alternative tobacco products and accessories, vapor accessories, and other related items. **This is not an all-inclusive list.**
- Establishments must be at least 300' from the front door of the establishment to the property line of a school, daycare or church (as determined by the WVABCA).
- There may not be anyone residing on the proposed premises of the establishment.
- The applicant must be a US citizen.
- All owners, officers, directors, partners, members, persons in control of the applicant, key personnel, beneficiaries, trustees, interested persons, and managers must all be listed on the application and meet licensure requirements.
- The applicant or a licensee must pay an annual license fee of \$1,200 for the 2026 – 2027 license period.
- If the applicant is selling hemp, kratom, or drug paraphernalia, then the valid licenses must be posted.
- Vape and tobacco products may not be provided to anyone younger than 21 years of age.
- See **Warning Page** for appropriate labeling & marketing (starts March 1, 2027), advertising restrictions (starts July 1, 2027), & required labeling (starts June 11, 2026).
- Certain signage will be required to be posted in all locations.
- Hours of operation for licensees are:
 - 8:00 am until midnight (12:00 am).
 - Employees and staff may be on the premises 30 minutes prior to opening for business (7:30 am).
 - Employees and staff must be clear of the premises 30 minutes after closure of the business (12:30 am).
- The premises shall be closed on Sunday, Easter Sunday, and Christmas day.

This is a summary; the complete legislation and Rule can be found at abca.wv.gov.

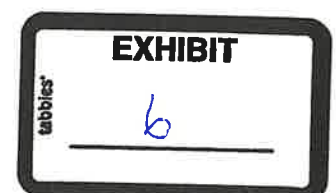


Vape or Smoke Shop

"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.

- Vape or Smoke Shop licenses are required if related retail items (see below) make up 33% of the establishment's floor space.
- Commonly seen Vape or Smoke Shop products: Products such as: vape products, nicotine products, "electronic cigarettes", "e-cigar", "e-pipe", "e-hookah", "vape pen", electronic cigarillo, "tobacco derived product" (including but not limited to, cigarettes, pipe tobacco, snuff, snus, chewing tobacco, etc.), tobacco products and accessories (ashtrays, rolling paper, rolling tips, matches, lighters, butane, candles, aerosols, knives and drug paraphernalia as defined in W.Va. Code §47-19-3), alternative tobacco products and accessories, vapor accessories, and other related items. **This is not an all-inclusive list.**
- Establishments must be at least 300' from the front door of the establishment to the property line of a school, daycare or church (as determined by the WVABCA).
- There may not be anyone residing on the proposed premises of the establishment.
- The applicant must be a US citizen.
- All owners, officers, directors, partners, members, persons in control of the applicant, key personnel, beneficiaries, trustees, interested persons, and managers must all be listed on the application and meet licensure requirements.
- The applicant or a licensee must pay an annual license fee of \$1,200 for the 2026 – 2027 license period.
- If the applicant is selling alcohol, lottery, hemp, kratom, or drug paraphernalia, then the valid licenses must be posted.
- Vape and tobacco products may not be provided to anyone younger than 21 years of age.
- See **Warning Page** for appropriate labeling & marketing (starts March 1, 2027), advertising restrictions (starts July 1, 2027), & required labeling (starts June 11, 2026).
- Certain signage will be required to be posted in all locations.
- Hours of operation for licensees are:
 - 8:00 am until midnight (12:00 am).

This is a summary; the complete legislation can be found at abca.wv.gov.
The proposed rule is going through the rule making process.



CIVIL COVER SHEET

JS 44 (Rev 03/24)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

MARION TOBACCO AND VAPE LLC;
WHITE HALL SMOKE SHOP LLC;
GALAXY SMOKES LLC; KIMO
TOBACCO VAPE LLC; ATLANTIC
VAPOR HUT LLC; MARTINSBURG
TOBACCO & CIGAR LLC; WILD STAR
LLC; WHEELING VAPOR PLUS LLC;
MORGANTOWN SMOKERS & VAPE LLC;
MR LE TOBACCO & VAPE LLC;
MORGANTOWN DREAM SMOKERS LLC;
HAPPY SMOKE VAPE LLC; HAPPY
SMOKE CIGAR LLC; SUPER SMOKE LLC;
TRI STATE SMOKE SHOP LLC; KING
SMOKERS LLC; SMOKE SHOP &
BEAUTY LLC; SMOKERS CLUB LLC;
MORGANTOWN TOBACCO & VAPE LLC;
LOVE SMOKER LLC; SMOKER
FREEDOM LLC; SZ TOBACCO & VAPE LLC;
SHABIBI TOBACCO AND VAPE LLC; ZAK
TOBACCO AND VAPE LLC; PUFF CLOUD
LLC; SMOKERS MORE LLC; SELF SERVICE
SMOKE SHOP, LLC; GLASS LAB VIP, LLC;
PATRIOT SMOKE SHOP LLC; VAPORIZE
HOUSE LLC WV SMOKE SHOP LLC;
SALAH AHMED QASEM HASAN, an
individual; NASEEM HASAN, an individual;
OMAR LUTE, an individual; and PLANT
CRIBS LLC, DBA BLUE RIDGE
EXTRACTIONS;

(b) County of Residence of First Listed Plaintiff

(c) Attorneys

Alonzo D. Washington, Esq. (WV Bar #8019)
Lexus D. Allen, Esq. (WV Bar # 14429)
FLAHERTY SENSABAUGH BONASSO PLLC
48 Donley Street, Suite 501
Morgantown, WV 26501
(304) 598-0788
(304) 598-0790 (facsimile)
awashington@flahertylegal.com
lallen@flahertylegal.com

DEFENDANTS

FREDRIC L. WOOTON, in his official capacity as
Commissioner of the West Virginia Alcohol Beverage Control
Administration,

County of Residence of First Listed Defendant

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark ☐ 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☒ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. §1983; 28 U.S.C. §§ 2201 and 2202

Brief description of cause:
Constitutional challenge to West Virginia's Vape and Smoke Retailer Location and Operating Requirements Act, W. Va. Code §16-9H-1 et seq.**VII. REQUESTED IN COMPLAINT:**

- ☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
- DEMAND \$**
- CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE
7/2/2026

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

III. CITIZENSHIP OF PRINCIPAL PARTIES (CONTINUED)						
PLAINTIFFS	CITIZEN OF THIS STATE	CITY OF ANOTHER STATE	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE	INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	FOREIGN NATION
MARION TOBACCO AND VAPE LLC				X		
WHITE HALL SMOKE SHOP LLC				X		
GALAXY SMOKES LLC				X		
KIMO TOBACCO VAPE LLC				X		
ATLANTIC VAPOR HUT LLC				X		
MARTINSBURG TOBACCO & CIGAR LLC				X		
WILD STAR LLC				X		
WHEELING VAPOR PLUS LLC				X		
MORGANTOWN SMOKERS & VAPE LLC				X		
MR LE TOBACCO & VAPE LLC				X		
MORGANTOWN DREAM SMOKERS LLC				X		
HAPPY SMOKE VAPE LLC				X		
HAPPY SMOKE CIGAR LLC				X		
SUPER SMOKE LLC				X		
TRI STATE SMOKE SHOP LLC				X		
KING SMOKERS LLC				X		
SMOKE SHOP & BEAUTY LLC				X		
SMOKERS CLUB LLC				X		
MORGANTOWN TOBACCO & VAPE LLC				X		
LOVE SMOKER LLC				X		
SMOKERS FREEDOM LLC				X		
SZ TOBACCO & VAPE LLC				X		
SHABIBI TOBACCO AND VAPE LLC				X		

ZAK TOBACCO AND VAPE LLC				X		
PUFF CLOUD LLC				X		
SMOKERS MORE LLC				X		
SELF SERVICE SMOKE SHOP, LLC				X		
GLASS LAB VIP, LLC				X		
PATRIOT SMOKE SHOP LLC				X		
VAPORIZE HOUSE LLC				X		
WV SMOKE SHOP LLC				X		
SALAH AHMED QASEM HASAN, an individual				X		
NASEEM HASAN, an individual				X		
OMAR LUTE, an individual				X		
PLANT CRIBS LLC				X		
DBA BLUE RIDGE EXTRACTIONS				X		
SMOKERS MORE LLC				X		
SELF SERVICE SMOKE SHOP, LLC				X		
GLASS LAB VIP, LLC				X		
PATRIOT SMOKE SHOP LLC				X		
VAPORIZE HOUSE LLC WV SMOKE SHOP LLC				X		
SALAH AHMED QASEM HASAN, an individual				X		

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

for the
Southern District of West Virginia

MARION TOBACCO AND VAPE LLC;
WHITE HALL SMOKE SHOP LLC;
GALAXY SMOKES LLC; KIMO
TOBACCO VAPE LLC; ATLANTIC
VAPOR HUT LLC; MARTINSBURG
TOBACCO & CIGAR LLC; WILD STAR
LLC; WHEELING VAPOR PLUS LLC;
MORGANTOWN SMOKERS & VAPE LLC;
MR LE TOBACCO & VAPE LLC;
MORGANTOWN DREAM SMOKERS LLC;
HAPPY SMOKE VAPE LLC; HAPPY
SMOKE CIGAR LLC; SUPER SMOKE LLC;
TRI STATE SMOKE SHOP LLC; KING
SMOKERS LLC; SMOKE SHOP &
BEAUTY LLC; SMOKERS CLUB LLC;
MORGANTOWN TOBACCO & VAPE LLC;
LOVE SMOKER LLC;
SMOKERFREEDOM LLC;
SZ TOBACCO & VAPE LLC;
SHABIBI TOBACCO AND VAPE LLC; ZAK
TOBACCO AND VAPE LLC; PUFF CLOUD
LLC; SMOKERS MORE LLC; SELF SERVICE
SMOKE SHOP, LLC; GLASS LAB VIP, LLC;
PATRIOT SMOKE SHOP LLC; VAPORIZE
HOUSE LLC WV SMOKE SHOP LLC;
SALAH AHMED QASEM HASAN, an
individual; NASEEM HASAN, an individual;
OMAR LUTFI, an individual; and PLANT
CRIBS LLC, DBA BLUE RIDGE EXTRACTIONS

Plaintiffs,

v.

**FREDRICK L. WOOTEN, in his official capacity as
Commissioner of the West Virginia Alcohol Beverage
Control Administration,**

Defendant.

To: Commissioner of the West Virginia Alcohol
Beverage Control Administration
Fredrick L. Wooten, Commissioner
900 Pennsylvania Ave., 4th Floor
Charleston, WV 25302

SUMMONS IN A CIVIL ACTION

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: