

SENATE BILL 763

By Yager

AN ACT to amend Tennessee Code Annotated, Title 10, Chapter 7, Part 5; Title 39, Chapter 17, Part 15; Title 47, Chapter 25; Title 67, Chapter 4, Part 10 and Title 67, Chapter 4, Part 26, relative to regulated consumable products.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-1504(d), is amended by deleting the language "if an ordinary person would conclude on the basis of appearance that the prospective purchaser or recipient may be under thirty (30) years of age".

SECTION 2. Tennessee Code Annotated, Section 67-4-1001(24)(A), is amended by deleting the language "and snuff" and substituting instead the language "snuff, and vapor products".

SECTION 3. Tennessee Code Annotated, Section 67-4-1001, is amended by adding the following as new, appropriately designated subdivisions:

() "Closed-system vapor product" means:

(A) A disposable container or cartridge prefilled with consumable material and sealed by the manufacturer, not easily refillable or intended or designed to be refillable, and intended or used to dispense consumable material when connected to a device that is designed to be reused; and

(B) Any single unit vapor product which is prefilled with consumable material and sealed by the manufacturer, not intended to be refillable, and intended to be disposed of once the consumable material has been depleted;

() "Consumable material" means any liquid nicotine solution intended for use in a vapor product;

() "Open-system vapor product" means:

(A) A vapor product that can be filled and refilled with consumable material by a consumer; and

(B) Any consumable material that is intended to be used with the vapor product described in subdivision () (A);

() "Vapor product":

(A) Means a noncombustible product containing nicotine, whether natural or synthetic, that employs a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce or emit a visible or non-visible vapor;

(B) Includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product, and any vapor cartridge containing consumable material or other container of consumable material that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product; and

(C) Does not include a product regulated under Chapter V of the Food, Drug, and Cosmetic Act (21 U.S.C. § 351 et seq.);

SECTION 4. Tennessee Code Annotated, Section 67-4-1005, is amended by deleting the section and substituting instead the following:

(a) The rate on all other tobacco products, including, but not limited to, cigars, cheroots, stogies, beedies, bidis, manufactured tobacco, and snuff of all descriptions made of tobacco or any substitute for tobacco, but not on vapor products, is six and six-tenths percent (6.6%) of the wholesale cost price.

(b) The rate on closed-system vapor products is seven cents (\$0.07) per milliliter of consumable material contained in the vapor product, and a like rate on all fractional parts of a milliliter of consumable material.

(c) The rate on open-system vapor products is ten percent (10%) of the wholesale cost price.

(d) This section does not apply to smokeless nicotine products.

SECTION 5. Tennessee Code Annotated, Section 67-4-1025(a), is amended by adding the language ", other than vapor products," immediately after the language "All of the taxes on tobacco products".

SECTION 6. Tennessee Code Annotated, Section 67-4-1025, is amended by adding the following as a new subsection:

(f) All of the revenue from taxes on vapor products collected under this part must be deposited in a special account in the state general fund to be used exclusively for administration and enforcement of § 67-4-1034. Any unexpended funds do not revert to the general fund and must be held in the account for use in accordance with this section.

SECTION 7. Tennessee Code Annotated, Title 67, Chapter 4, Part 10, is amended by adding the following as a new section:

67-4-1034. Vapor product directory.

(a) For purposes of this section, "timely filed premarket tobacco product application" means an application pursuant to 21 U.S.C. § 387j for a vapor product containing nicotine derived from tobacco, marketed in the United States as of August 8, 2016, that was submitted to the United States food and drug administration on or before September 9, 2020, and accepted for filing.

(b) By August 1, 2025, and annually thereafter, each manufacturer of a vapor product that is sold for retail sale in this state, whether directly or through an importer,

wholesaler, distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver to the department a certification, under penalty of perjury on a form and in a manner prescribed by the department, that the manufacturer is compliant with this section and that, for each vapor product sold for retail sale in this state:

(1) The manufacturer has received a marketing granted order for the vapor product from the United States food and drug administration (FDA) pursuant to 21 U.S.C. § 387j;

(2) The manufacturer submitted a timely filed premarket tobacco product application for the vapor product to the FDA pursuant to 21 U.S.C. § 387j, and the application either:

(A) Remains under review by the FDA; or

(B) Has received a denial order that has been and remains:

(i) Stayed by the FDA or court order;

(ii) Rescinded by the FDA; or

(iii) Vacated by a court; or

(3) The manufacturer is not required to submit an additional marketing granted order or premarket tobacco product application for the vapor product because the vapor product merely reflects changes to the name, brand style, or packaging of a vapor product that is covered under subdivision (b)(1) or (b)(2).

(c) The following must be indicated on the certification for each vapor product that is sold in this state:

(1) Brand name;

(2) Category, such as consumable material, power unit, device, vapor cartridge, pod, or disposable;

(3) Product name; and

(4) Flavor.

(d) Each annual certification form must be accompanied by:

(1) A copy of:

(A) The marketing granted order issued by the FDA pursuant to 21 U.S.C. Section 387j;

(B) The acceptance letter issued by the FDA pursuant to 21 U.S.C. § 387j for a timely filed premarket tobacco product application; or

(C) A document issued by the FDA or by a court confirming that the premarket tobacco product application has received a denial order that has been and remains stayed by FDA or court order, rescinded by the FDA, or vacated by a court; and

(2) Payment of a fee of twenty-five dollars (\$25.00) for each vapor product each time a manufacturer submits an annual certification form for that vapor product.

(e) The information submitted by the manufacturer pursuant to subdivision (d)(1) is confidential and not subject to the open records law compiled in title 10, chapter 7. The manufacturer may redact proprietary information provided under subdivision (d)(1). The department shall not disclose such information, except as required or authorized by law. As used in this subsection (e), "proprietary information" means commercial or financial information that is used either directly or indirectly in the business of any person or company and that gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information.

(f) A manufacturer that is required to submit a certification form pursuant to this section shall notify the department within thirty (30) calendar days of any material change to the certification form, including the issuance or denial of a marketing

authorization or other order by the FDA pursuant to 21 U.S.C. § 387j, or any other order or action by the FDA or any court that affects the ability of the vapor product to be introduced or delivered into interstate commerce for commercial distribution in the United States.

(g) Starting January 1, 2026, the department shall maintain and make publicly available on the department's website a directory that lists all vapor product manufacturers, brand names, categories, product names, and flavors for which certification forms have been submitted and approved by the department. The department shall update the directory at least monthly to ensure accuracy. The department shall establish a process to provide retailers and licensed distributors and wholesalers notice of the initial publication of the directory and changes made to the directory from the prior month.

(h) A manufacturer or the manufacturer's vapor products must not be included or retained in the directory if the department determines that any of the following apply:

- (1) The manufacturer failed to provide a complete and accurate certification as required by subsection (b);
- (2) The manufacturer submitted a certification that does not comply with the requirements of subsection (c) and (d);
- (3) The manufacturer failed to include with its certification the payment required by subdivision (d)(2);
- (4) The manufacturer sold products in this state that are required to be certified under this section during a period when either the manufacturer or the product had not been certified and listed on the directory; or

(5) The information provided by the manufacturer in its certification is determined by the department to contain false information or contains material misrepresentations or omissions.

(i)

(1) The department shall provide manufacturers with a written notice of deficiencies and an opportunity to cure those deficiencies before taking action to remove manufacturers or products from the directory.

(2) The department shall not remove the manufacturer or its products from the directory until at least thirty (30) business days after the manufacturer has been given notice of an intended action setting forth the reasons for the removal. Notice is deemed sufficient and immediately received by a manufacturer if the notice is sent either electronically or by facsimile to an electronic mail address or facsimile number, as the case may be, that was provided by the manufacturer in its most recently filed certification.

(3) A vapor product manufacturer has fifteen (15) business days from the date of service of the notice of the department's intended action to cure the noted deficiencies or otherwise establish that the vapor product manufacturer or its products should be included in the directory.

(4) Retailers have a thirty-day period following the removal of a manufacturer or its products from the directory in which the retailer is authorized to sell such products that were in the retailer's inventory as of the date of removal. A retailer is not authorized to sell the identified products after the expiration of the thirty-day period.

(5) After thirty (30) calendar days following removal from the directory, the vapor products of a manufacturer identified in the notice of removal and

intended for sale in this state are subject to seizure, forfeiture, and destruction, and may not be purchased or sold for retail sale in this state. The cost of the seizure, forfeiture, and destruction must be borne by the business or person from whom the products are confiscated, except that no products may be seized from a consumer who has made a bona fide purchase of such product. The department may store and dispose of the seized products as appropriate, in accordance with federal, state, and local laws pertaining to storage and disposal of such products.

(j)

(1) Except as provided in subdivisions (j)(2) and (3), beginning January 1, 2026, or on the date that the department first makes the directory available for public inspection on its website, whichever is later, vapor products not included in the directory shall not be sold for retail sale in this state, either directly or through an importer, distributor, wholesaler, retailer, or similar intermediary or intermediaries.

(2) A retailer has sixty (60) calendar days from the date that the department first makes the directory available for inspection on its website to sell products that were in its inventory and not included in the directory or remove those products from inventory.

(3) A distributor or wholesaler has sixty (60) calendar days from the date that the department first makes the directory available for inspection on its website to remove those products intended for sale in this state that were not included in the directory from its inventory.

(4) After sixty (60) calendar days following publication of the directory, vapor products not listed in the directory and intended for sale in this state are

subject to seizure, forfeiture, and destruction, and shall not be purchased or sold for retail sale except as provided in subsection (i). The cost of the seizure, forfeiture, and destruction must be borne by the business or person from whom the products are confiscated, except that no products may be seized from a consumer who has made a bona fide purchase of such product.

(5) Retailers are authorized to purchase vapor products only from licensed distributors or wholesalers of tobacco products.

(k)

(1) The following penalties apply to violations of this section:

(A)

(i) A retailer, distributor, wholesaler, or importer who sells or offers for sale a vapor product for retail sale in this state that is not included in the directory is subject to a civil penalty of up to five hundred dollars (\$500) for each individual vapor product offered for sale in violation of this section;

(ii) The civil penalty for a second violation under this subdivision (k)(1) within a twelve-month period is at least seven hundred fifty dollars (\$750) but not more than one thousand dollars (\$1,000) per product, and the suspension of the license of the retailer, distributor, wholesaler, or importer for thirty (30) calendar days; and

(iii) The civil penalty for a third violation under this subdivision (k)(1) within a twelve-month period is at least one thousand dollars (\$1,000) but not more than one thousand five

hundred dollars (\$1,500) per product, and the revocation of the license of the retailer, distributor, wholesaler, or importer; and

(B) A manufacturer whose vapor products are not listed in the directory and who causes the products that are not listed to be sold for retail sale in this state, whether directly or through an importer, distributor, wholesaler, retailer, or similar intermediary or intermediaries, is subject to a civil penalty of ten thousand dollars (\$10,000) for each individual vapor product offered for sale in violation of this section. In addition, a manufacturer that knowingly and falsely represents any information required by a certification form commits a Class A misdemeanor. Each false representation is a separate offense.

(2) In an action to enforce this section, the state is entitled to recover costs, including the costs of investigation, expert witness fees, and reasonable attorney fees.

(3) Notwithstanding this section to the contrary, a repeated violation of this section constitutes a deceptive trade practice under § 47-18-104.

(I)

(1) A manufacturer not registered to do business in the state shall, as a condition precedent to having the manufacturer's name or products listed and retained in the directory, appoint, and continually engage without interruption, a registered agent in this state for service of process on whom all process and any action or proceeding arising out of the enforcement of this section may be served. The manufacturer shall provide to the department the name, address, and telephone number of its agent for service of process and provide any other information relating to its agent as may be requested by the department.

(2) A manufacturer located outside of the United States shall, as an additional condition precedent to having the manufacturer's products listed or retained in the directory, cause each of the importers of any of the manufacturer's products to be sold in this state to appoint, and continually engage without interruption, the services of an agent in this state in accordance with this section. All obligations of a manufacturer imposed by this section with respect to appointment of its agent also apply to the importers with respect to appointment of their agents.

(3) A manufacturer shall provide written notice to the department not later than thirty (30) calendar days prior to the termination of the authority of an agent appointed pursuant to subdivision (l)(1) or (l)(2). Not less than five (5) calendar days prior to the termination of an existing agent appointment, a manufacturer shall provide to the department the name, address, and telephone number of the manufacturers newly appointed agent for service of process and provide any other information relating to the new appointment as may be requested by the department. In the event an agent terminates an agency appointment, the manufacturer shall notify the department of the termination within five (5) calendar days and include proof to the satisfaction of the department of the appointment of a new agent.

(m) A retailer, distributor, or wholesaler that sells or distributes vapor products in this state is subject to at least two (2) unannounced compliance checks by the department or its designee, including any state or local law enforcement official, annually for purposes of enforcing this section. Such compliance checks must take place during business hours. Unannounced follow-up compliance checks of all noncompliant retailers, distributors, and wholesalers must be conducted within thirty (30) calendar

days after any violation of this section. The department shall publish the results of all compliance checks at least annually and make the results available to the public on request.

(n) If the department elects not to include a vapor product or vapor product manufacturer on the directory, or if the department removes a vapor product or vapor product manufacturer from the directory, then that action is subject to review in the manner provided by § 67-1-105 and in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. In the event of a conflict between § 67-1-105 and the Uniform Administrative Procedures Act, the Uniform Administrative Procedures Act governs.

(o) The department may promulgate rules necessary to effectuate this section. Rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(p) All fees and penalties collected by the department pursuant to this section must be used for the administration and enforcement of this section. Funds collected pursuant to this section must be placed in a special account within the general fund and do not revert to the general fund at the end of a fiscal year.

(q) The department shall submit a report to the chief clerks of the senate and the house of representatives, the office of legislative budget analysis, and the legislative librarian regarding the status of the directory, manufacturers, and products included in the directory, revenue and expenditures related to administration of this section, and enforcement activities undertaken pursuant to this section. The initial report must be submitted by July 1, 2026, and subsequent annual reports must be submitted by each July 1 thereafter.

SECTION 8. This act takes effect July 1, 2025, the public welfare requiring it.