

2025 Regular Session

HOUSE BILL NO. 412

BY REPRESENTATIVE ROMERO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TOBACCO/TOBACCO PRODUCTS: Provides relative to alternative nicotine products

1 AN ACT

2 To amend and reenact R.S. 26:903(1) through (4), 911(B)(2) and (E), and 926.1 and to enact
3 R.S.14:91.16, relative to alternative nicotine products; to provide for an increase in
4 permit fees; to provide for the prohibition of remote sales of alternative nicotine
5 products; to provide for penalties; to provide for submission of marketing approval
6 of alternative nicotine products to the commissioner of the alcohol and tobacco
7 commission; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 26:903(1) through (4), 911(B)(2) and (E), and 926.1 are hereby
10 amended and reenacted to read as follows:

11 §903. Permit fees

12 The fees for each permit shall not exceed amounts provided for in the
13 following schedule and in accordance with regulations promulgated pursuant to the
14 provisions of the Administrative Procedure Act:

- 15 (1) Retail dealer permit – ~~\$25.00~~ \$100.00 per year or any portion thereof.
- 16 (2) Vending machine operator – ~~\$75.00~~ \$300.00 per year or any portion
17 thereof.
- 18 (3) Vending machine – ~~\$5.00~~ \$20.00 per machine per year or any portion
19 thereof.
- 20 (4) Wholesale dealer – ~~\$75.00~~ \$300.00 per year or any portion thereof.

21 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 §911. Acts prohibited

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3 E. ~~No manufacturer shall sell any vapor products, electronic cigarettes, or~~
4 ~~alternative nicotine products online to any person under the age of twenty-one.~~

5 ~~(1) At the time of any online purchase of vapor products, electronic~~
6 ~~cigarettes, or alternative nicotine products, a manufacturer shall obtain and verify the~~
7 ~~age of the recipient through the use of a real-time electronic age verification platform~~
8 ~~that shall be approved by the commissioner, and the platform shall be capable of~~
9 ~~both of the following:~~

10 ~~(a) Verifying proof of age through authoritative digitized identification card~~
11 ~~technology.~~

12 ~~(b) Storing the recipient's name, age, date of birth, the expiration date of the~~
13 ~~identification, and the date and time that the identification was verified.~~

14 ~~(2) A manufacturer shall refuse the online purchase of any vapor products,~~
15 ~~electronic cigarettes, or alternative nicotine products if either:~~

16 ~~(a) The recipient does not produce a valid and current form of identification~~
17 ~~as provided in this Subsection.~~

18 ~~(b) There is reason to doubt the authenticity or correctness of the recipient's~~
19 ~~identification.~~

20 ~~(3) At the time of any delivery of any vapor products, electronic cigarettes,~~
21 ~~or alternative nicotine products purchased online, a third-party delivery agent shall~~
22 ~~obtain the recipient's signature and verify the age of the recipient through the use of~~
23 ~~a real-time electronic age verification device that shall be approved by the~~
24 ~~commissioner, and the device shall be capable of the following:~~

25 ~~(a) Verifying proof of age through authoritative digitized identification card~~
26 ~~technology.~~

27 ~~(b) Reading a valid state-issued driver's license, a valid state-issued~~
28 ~~identification card, a valid military identification card, or a valid passport.~~

1 ~~(c) Storing the recipient's name, age, date of birth, the expiration date of the~~
2 ~~identification, and the date and time that the identification was scanned.~~

3 ~~(4) The third party's delivery agent shall refuse delivery and return the vapor~~
4 ~~products, electronic cigarettes, or alternative nicotine products to the manufacturer~~
5 ~~if any of the following occur:~~

6 ~~(a) The recipient does not produce a valid and current form of identification~~
7 ~~as provided in this Section.~~

8 ~~(b) There is reason to doubt the authenticity or correctness of the recipient's~~
9 ~~identification.~~

10 ~~(c) The recipient refuses to sign for the receipt of the delivery.~~

11 ~~(5) Any violation of this Subsection shall result in a fine of five hundred~~
12 ~~dollars per offense.~~

13 (1) No person shall cause any vapor product, alternative nicotine product, or
14 electronic cigarette to be ordered or purchased by mail or through a computer
15 network, telephonic network, or other network, to be shipped to any person within
16 the state other than to a retail dealer, wholesale dealer or manufacturer with a valid
17 permit.

18 (2) This Subsection applies regardless of whether the person engaged in the
19 business of selling or distributing a vapor product, alternative nicotine product, or
20 electronic cigarette is located within or without the state.

21 (3) A person shall not, with knowledge or reason to know of the violation,
22 provide assistance to a person in violation of this Subsection.

23 (4) A person who violates this Subsection shall be subject to the following
24 schedule of civil fines to be paid into the state treasury:

25 (a) For a first offense, not less than five hundred dollars but not more than
26 one thousand dollars.

27 (b) For a second offense, which occurs within two years of the first offense,
28 not less than one thousand dollars but not more than two thousand dollars, and their
29 permit shall be suspended for six months.

1 (2) The manufacturer has received a marketing order or other authorization
2 under 21 U.S.C. 387j for the vapor product or alternative nicotine product from the
3 FDA.

4 B. Every alternative nicotine product manufacturer whose products are sold
5 in this state, whether directly or through a wholesale dealer, retail dealer, or similar
6 intermediary or intermediaries, shall execute and deliver on a form prescribed by the
7 commissioner a certification to the commissioner affirming, under penalty of
8 perjury, either of the following:

9 (1) The product was on the market in the United States as of April 14, 2022,
10 and the manufacturer has applied for a marketing order pursuant to 21 U.S.C. 387j
11 for the vapor product or alternative nicotine product by submitting a premarket
12 tobacco product application on or before May 14, 2022, to the FDA, and either of
13 the following is true:

14 (a) The premarket tobacco product application for the alternative nicotine
15 product remains under review by the FDA.

16 (b) The FDA has issued a no marketing order for the alternative nicotine
17 product, but the agency or a federal court has issued a stay order or injunction during
18 the pendency of the manufacturer's appeal of the no marketing order, or the order has
19 been appealed either to the FDA or a challenge to the order filed with a federal court
20 and the appeal or challenge is still pending.

21 (2) The manufacturer has received a marketing order or other authorization
22 under 21 U.S.C. 387j for the alternative nicotine product from the FDA.

23 B. C. In addition to the requirements of ~~Subsection~~ Subsections A and B of
24 this Section, each manufacturer shall provide a copy of the cover page of the
25 premarket tobacco application with evidence of receipt of the application by the FDA
26 or a copy of the cover page of the marketing order or other authorization issued
27 pursuant to 21 U.S.C. 387j, whichever is applicable.

1 ~~C. D.~~ Any manufacturer submitting a certification pursuant to Subsection A
2 of this Section shall notify the commissioner within thirty days of any material
3 change to the certification, including issuance by the FDA of any of the following:

4 (1) A market order or other authorization pursuant to 21 U.S.C. 387j.

5 (2) An order requiring a manufacturer to remove a product from the market
6 either temporarily or permanently.

7 (3) Any notice of action taken by the FDA affecting the ability of the new
8 product to be introduced or delivered into interstate commerce for commercial
9 distribution.

10 (4) Any change in policy that results in a product no longer being exempt
11 from federal enforcement oversight.

12 ~~D. E.~~ The commissioner shall develop and maintain a directory listing all
13 vapor product manufacturers and alternative nicotine product manufacturers that
14 have provided certifications that comply with ~~Subsection~~ Subsections A and B of this
15 Section and all products that are listed in those certifications.

16 ~~E. F.~~ The commissioner shall do all of the following:

17 (1) Make the directory available for public inspection on the public website
18 of the office of alcohol and tobacco control.

19 (2) Update the directory as necessary in order to correct mistakes and to add
20 or remove vapor product manufacturers and alternative nicotine product
21 manufacturers or products manufactured by those manufacturers.

22 (3) Send monthly notifications to each wholesale dealer, retail dealer, and
23 manufacturer of vapor products and manufacturer of alternative nicotine products
24 that has qualified or registered with the commissioner, by electronic communication,
25 containing a list of all changes that have been made to the directory in the previous
26 month. In lieu of sending monthly notifications, the commissioner may make the
27 information available in a prominent place on the public website of the office of
28 alcohol and tobacco control.

1 ~~F.~~ G. Notwithstanding Subsection A of this Section, if a vapor product
2 manufacturer or alternative nicotine product manufacturer can demonstrate to the
3 commissioner that the FDA has issued a rule, guidance, or any other formal
4 statement that temporarily exempts a vapor product or alternative nicotine product
5 from the federal premarket tobacco application requirements, the vapor product or
6 alternative product may be added to the directory upon request by the manufacturer
7 if the manufacturer provides sufficient evidence that the vapor product or alternative
8 nicotine product is compliant with the federal rule, guidance, or other formal
9 statement, as applicable.

10 ~~G.~~ H. Each certifying vapor product manufacturer or alternative nicotine
11 product manufacturer shall pay an initial fee of one hundred dollars per product stock
12 keeping unit or SKU to offset the costs incurred by the commissioner for processing
13 the certifications and operating the directory. The commissioner shall collect an
14 annual renewal fee of one hundred dollars per product stock keeping unit or SKU to
15 offset the costs associated with maintaining the directory and satisfying the
16 requirements of this Section. The fees received pursuant to this Section by the
17 commissioner shall be used by the office of alcohol and tobacco control exclusively
18 for processing the certifications and operating and maintaining the directory.

19 ~~H.~~ I. Beginning on the date that the commissioner makes the directory
20 available for public inspection on the public website of the office of alcohol and
21 tobacco control as provided in Subsection ~~E~~ F of this Section, a vapor product
22 manufacturer or alternative nicotine product manufacturer who offers for sale a
23 vapor product or alternative nicotine product not listed on the directory is subject to
24 a one thousand dollar daily fine for each vapor product or alternative nicotine
25 product offered for sale in violation of this Section until the offending product is
26 removed from the market or until the offending product is properly listed on the
27 directory.

1 ~~¶~~ J.(1) The sale, possession, or transportation of vapor products or
2 alternative nicotine products not listed on the directory by any person, including a
3 permitted wholesale dealer or retail dealer, shall be subject to provisions of R.S.
4 47:858, 859, and 860 as if such wholesale dealer or retail dealer did not possess a
5 valid permit.

6 (2) Each unit of vapor product or alternative nicotine product sold or offered
7 for sale, possessed, or transported shall constitute a separate violation for purposes
8 of Paragraph (1) of this Subsection.

9 ~~¶~~ K. Any other violation of this Section shall result in a fine of five hundred
10 dollars per offense.

11 ~~¶~~ L. The commissioner shall adopt rules for the implementation and
12 enforcement of this Section.

13 Section 2. R.S. 14:91.16 is hereby enacted to read as follows:

14 §91.16. Unlawful remote sales of alternative nicotine products.

15 A. It shall be unlawful for any person to cause any vapor product, alternative
16 nicotine product, or electronic cigarette to be ordered or purchased by mail or
17 through a computer network, telephonic network, or other network, to be shipped to
18 any person within the state other than to a retail dealer, wholesale dealer, or
19 manufacturer with a valid permit.

20 B. This Section applies regardless of whether the person engaged in the
21 business of selling or distributing a vapor product, alternative nicotine product, or
22 electronic cigarette is located within or without the state.

23 C. A person shall not, with knowledge or reason to know of the violation,
24 provide assistance to a person in violation of this Subsection.

25 D. A person who violates this Section shall be fined not more than one
26 thousand dollars, imprisoned for not more than six months, or both.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 412 Reengrossed

2025 Regular Session

Romero

Abstract: Provides that each alternative nicotine product manufacturer provide proof that a copy of the cover page of its premarket tobacco application was submitted on or before April 14, 2022, along with evidence that the product was on the market in the U.S. as of May 14, 2022.

Present law provides for fees for permits for retail dealers (\$25), vending machine operators (\$75), vending machines (\$5), and wholesale dealers (\$75).

Proposed law increases the fees for permits for retail dealers from \$25 to \$100, vending machine operators from \$75 to \$300, vending machines from \$5 to \$20, and wholesale dealers from \$75 to \$300.

Present law provides that a wholesale dealer shall only sell tobacco products, alternative nicotine products, or vapor products to a retail dealer with a valid registration or permit.

Proposed law requires a wholesale dealer to verify that a retail dealer is operating with a valid registration or permit.

Present law prohibits a manufacturer from selling any products or electronic cigarettes online to any person under 21 years of age and requires a manufacturer, at the time of the online purchase, to obtain and verify the age of the recipient through the use of a real-time electronic age verification platform approved by the commissioner.

Present law requires the real-time electronic age verification platform to be capable of verifying proof of age through authoritative digitized identification card technology and storing the recipient's name, age, date of birth, the expiration date of the identification, and the date and time that the identification was verified.

Present law requires a manufacturer to refuse the online purchase of any products or electronic cigarettes if the recipient does not produce a valid and current form of identification or if there is reason to doubt the authenticity or correctness of the recipient's identification.

Present law requires a third-party delivery agent to obtain the recipient's signature and to verify the recipient's age through the use of a real-time electronic age verification device approved by the commissioner at the time of the delivery of online purchases of products or electronic cigarettes.

Present law requires the real-time electronic age verification device to be capable of verifying the recipient's age through authoritative digitized identification card technology, reading a valid state-issued driver's license or other valid identification card or passport, and storing the recipient's name, age, date of birth, the expiration date of the identification, and the date and time that the identification was scanned.

Present law requires a third-party delivery agent to refuse delivery and return the products or electronic cigarettes to the manufacturer if the recipient does not produce a valid and current form of identification, there is reason to doubt the authenticity or correctness of the recipient's identification, or the recipient refuses to sign for the receipt of the delivery.

Present law provides for a fine of \$500 per offense for a violation of new law.

Proposed law deletes present law and provides that no person shall cause any vapor product, alternative tobacco product, or electronic cigarette to be ordered or purchased through the mail or computer network or shipped to any person within the state other than to a retail dealer, wholesale dealer, or manufacturer with a valid permit.

Proposed law provides for civil penalties for the first offense of \$500 but no more than \$1,000; for the second offense, which occurs within two years of the first offense, not less than \$1,000 but not more than \$2,000 and a suspended permit; and for a third offense, which occurs within two years of the first offense, not less than \$2,000 but not more than \$4,000 and a revoked permit.

Proposed law provides, in addition to the civil fines, for criminal penalties of a fine of not more than \$1,000 and imprisonment of not more than six months or both.

Proposed law permits the commissioner to revoke or suspend the permit in addition to any fines imposed.

Present law provides that every vapor product manufacturer and alternative nicotine product manufacturer shall execute and deliver a certification detailing certain information to the commissioner of alcohol and tobacco prior to selling its products in the state.

Present law provides that every vapor product manufacturer and alternative nicotine product manufacturer whose products are sold in this state shall deliver a copy of the cover page of its premarket tobacco application indicating that it was submitted to the FDA on or before Sept. 9, 2020, along with evidence that the product was on the market in the U.S. as of Aug. 8, 2016.

Proposed law retains present law with regard to vapor product manufacturers.

Present law provides that every alternative nicotine product manufacturer whose products are sold in this state shall deliver a copy of the cover page of its premarket tobacco application indicating that it was submitted to the FDA on or before May 14, 2022, along with evidence that the product was on the market in the U.S. as of April 14, 2022.

Proposed law creates the crime of unlawful remote sales of alternative nicotine products and provides for a fine of not more than \$1,000 or imprisonment for not more than six months or both.

(Amends R.S. 26:903(1)-(4), 911(B)(2) and (E), and 926.1; Adds R.S. 14:91.16)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Increase the permit fees for retail dealers, vending machine operators, vending machines, and wholesale dealers.
2. Require wholesale dealers to verify that a retail dealer has a valid registration or permit prior to the sale of tobacco products, alternative nicotine products, or vapor products.
3. Prohibit the ordering or purchasing of vapor products, electronic cigarettes, and nicotine products by mail, computer network, telephonic network, or other network to be shipped in the state other than to a retail dealer, wholesale dealer, or manufacturer with a valid permit.

4. Provide for civil penalties for unlawful remote sales of vapor products, electronic cigarettes, and nicotine products and create the crime of unlawful remote sales of alternative nicotine products.