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HOUSE FLOOR AMENDMENTS

2023 Regular Session

Amendments proposed by Representative Hollis to Engrossed House Bill No. 635 by Representative Hollis

1 AMENDMENT NO. 1

2 On page 1, line 2, after "R.S. 22:831(B)" and before "relative" delete "and R.S. 47:841(F),"  
3 and insert a comma "," and insert the following:

4 "R.S. 26:911(B)(1)(b), and R.S. 47:841(F) and to enact R.S. 26:926"

5 AMENDMENT NO. 2

6 On page 1, line 4, after "tax;" and before "to provide" insert the following:

7 "to prohibit retail dealers of electronic cigarette products from purchasing such  
8 products from certain sources; to establish a vapor product and alternative nicotine product  
9 directory; to authorize the commissioner of the office of alcohol and tobacco control to  
10 impose fees and fines under certain circumstances; to provide for criminal penalties for  
11 certain violations; to provide for requirements and limitations;"

12 AMENDMENT NO. 3

13 On page 2, between lines 9 and 10, insert the following:

14 "Section 2. R.S. 26:911(B)(1)(b) is hereby amended and reenacted and R.S. 26:926  
15 is hereby enacted to read as follows:

16 §911. Acts prohibited

17 \* \* \*

18 B.(1)

19 \* \* \*

20 (b) No vapor retail dealer shall purchase alternative nicotine products, ~~or~~  
21 ~~vapor products, or electronic cigarette products~~ for resale except from a  
22 ~~manufacturer of those products or a~~ wholesale dealer operating with a valid  
23 ~~unsuspended Louisiana wholesale dealer permit and a valid stamping agent~~  
24 ~~designation permit pursuant to the provisions of R.S. 26:902(2)(a),~~ except as  
25 provided for in this Chapter.

26 \* \* \*

27 §926. Vapor product and alternative nicotine product directory

28 A. Beginning October 1, 2023, every vapor product manufacturer and  
29 alternative nicotine product manufacturer whose products are sold in this state,  
30 whether directly or through a wholesale dealer, retail dealer, or similar intermediary  
31 or intermediaries, shall execute and deliver on a form prescribed by the

1 commissioner, a certification to the commissioner certifying, under penalty of  
2 perjury, either of the following:

3 (1) The product was on the market in the United States as of August 8, 2016,  
4 and the manufacturer has applied for a marketing order pursuant to 21 U.S.C. §387j  
5 for the vapor product or alternative nicotine product by submitting a premarket  
6 tobacco product application on or before September 9, 2020, to the United States  
7 Food and Drug Administration, hereinafter referred to in this Section as "FDA" and  
8 either of the following is true:

9 (a) The premarket tobacco product application for the vapor product or  
10 alternative nicotine product remains under review by the FDA.

11 (b) The FDA has issued a no marketing order for the vapor product or  
12 alternative nicotine product, but the agency or a federal court has issued a stay order  
13 or injunction during the pendency of the manufacturer's appeal of the no marketing  
14 order, or the order has been appealed either to the FDA or a challenge to the order  
15 filed with a federal court and the appeal or challenge is still pending.

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

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

24 C. Any manufacturer submitting a certification pursuant to Subsection A of  
25 this Section shall notify the commissioner within thirty days of any material change  
26 to the certification, including issuance by the FDA of any of the following:

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

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

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

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

35 D. The commissioner shall develop and maintain a directory listing all vapor  
36 product manufacturers and alternative nicotine product manufacturers that have  
37 provided certifications that comply with Subsection A of this Section and all  
38 products that are listed in those certifications.

39 E. The commissioner shall do all of the following:

40 (1) Make the directory available for public inspection on its website by  
41 November 1, 2023.

42 (2) Update the directory as necessary in order to correct mistakes and to add  
43 or remove vapor product manufacturers and alternative nicotine product  
44 manufacturers or products manufactured by those manufacturers consistent with the  
45 requirements of Paragraphs (1) and (2) of this Subsection on a monthly basis.

1           (3) Send monthly notifications to each wholesale dealer, retail dealer, or  
 2 manufacturer of vapor products and manufacturer of alternative nicotine products  
 3 that have qualified or registered with the commissioner, by electronic  
 4 communication, containing a list of all changes that have been made to the directory  
 5 in the previous month. In lieu of sending monthly notifications, the commissioner  
 6 may make the information available in a prominent place on the office of alcohol and  
 7 tobacco control's public website.

8           F. Notwithstanding Subsection A of this Section, if a vapor product  
 9 manufacturer or alternative nicotine product manufacturer can demonstrate to the  
 10 commissioner that the FDA has issued a rule, guidance, or any other formal  
 11 statement that temporarily exempts a vapor product or alternative nicotine product  
 12 from the federal premarket tobacco application requirements, the vapor product or  
 13 alternative product may be added to the directory upon request by the manufacturer  
 14 if the manufacturer provides sufficient evidence that the vapor product or alternative  
 15 nicotine product is compliant with the federal rule, guidance, or other formal  
 16 statement, as applicable.

17           G. Each certifying vapor product manufacturer or alternative nicotine product  
 18 manufacturer shall pay an initial fee of two thousand dollars to offset the costs  
 19 incurred by the commissioner for processing the certifications and operating the  
 20 directory. The commissioner shall collect an annual renewal fee of five hundred  
 21 dollars to offset the costs associated with maintaining the directory and satisfying the  
 22 requirements of this Section. The fees received pursuant to this Section by the  
 23 commissioner shall be used by the office of alcohol and tobacco control exclusively  
 24 for processing the certifications and operating and maintaining the directory.

25           H. Beginning November 1, 2023, or on the date that the commissioner first  
 26 makes the directory available for public inspection on its website as provided in  
 27 Subsection F of this Section, whichever is later, a vapor product manufacturer or  
 28 alternative nicotine product manufacturer who offers for sale a vapor product or  
 29 alternative nicotine product not listed on the directory is subject to a one thousand  
 30 dollars daily fine for each vapor product or alternative nicotine product offered for  
 31 sale in violation of this Section until the offending product is removed from the  
 32 market or until the offending product is properly listed on the directory.

33           I. No wholesale dealer or retail dealer shall be permitted to remit tax with  
 34 respect to a vapor product or alternative nicotine product unless such vapor product  
 35 or alternative nicotine product is listed on the directory, and the sale, possession, or  
 36 transportation of such vapor products or alternative nicotine products by any person,  
 37 including a permitted wholesale dealer or retail dealer, shall be subject to provisions  
 38 of R.S. 47:858, 859, and 860 as if such wholesale dealer or retail dealer did not  
 39 possess a valid permit.

40           J. Any other violation of this Section shall result in a fine of five hundred  
 41 dollars per offense.

42           K. The commissioner shall adopt rules for the implementation and  
 43 enforcement of this Section."

44 AMENDMENT NO. 4

45 On page 2, at the beginning of line 10, delete "Section 2." and insert "Section 4  
 46 ."

47 AMENDMENT NO. 5

48 On page 2, line 14, after "a tax of" and before "cents" delete "thirty" and insert "ten"

1 AMENDMENT NO. 6

2 On page 2, at the beginning of line 18, delete "Section 3." and insert "Section 5."