

2023 Regular Session

HOUSE BILL NO. 635

BY REPRESENTATIVE HOLLIS

REVENUE/TAXATION DEPT: Increases the rate of the excise tax on vapor products and electronic cigarettes and dedicates a portion of the avails of such increase to payment of salaries and related benefits for La. State Police

1 AN ACT

2 To amend and reenact R.S. 22:831(B), R.S. 26:911(B)(1)(b), and R.S. 47:841(F) and to

3 enact R.S. 26:926 and Subpart Z of Part II-A of Chapter 1 of Subtitle I of Title 39 of

4 the Louisiana Revised Statutes of 1950, to be comprised of R.S. 39:100.210, relative

5 to excise tax; to increase the rate of the excise tax levied on vapor products and

6 electronic cigarettes; to dedicate the avails of the tax levied on vapor products and

7 electronic cigarettes; to establish the Department of Wildlife and Fisheries and

8 Office of State Fire Marshal Compensation Fund; to provide for the deposit and use

9 of the monies in the fund; to provide for certain requirements and limitations; to

10 prohibit retail dealers of electronic cigarette products from purchasing such products

11 from certain sources; to establish a vapor product and alternative nicotine product

12 directory; to authorize the commissioner of the office of alcohol and tobacco control

13 to impose fees and fines under certain circumstances; to provide for criminal

14 penalties for certain violations; to provide for requirements and limitations; to

15 provide for an effective date; and to provide for related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. R.S. 22:831(B) is hereby amended and reenacted to read as follows:

18 §831. Fire, marine, transportation, casualty, surety, or other insurance

19 * * *

1 designation permit pursuant to the provisions of R.S. 26:902(2)(a), except as
2 provided for in this Chapter.

3 * * *

4 §926. Vapor product and alternative nicotine product directory

5 A. Beginning October 1, 2023, every vapor product manufacturer and
6 alternative nicotine product manufacturer whose products are sold in this state,
7 whether directly or through a wholesale dealer, retail dealer, or similar intermediary
8 or intermediaries, shall execute and deliver on a form prescribed by the
9 commissioner, a certification to the commissioner certifying, under penalty of
10 perjury, either of the following:

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

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

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

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

27 B. In addition to the requirements of Subsection A of this Section, each
28 manufacturer shall provide a copy of the cover page of the premarket tobacco
29 application with evidence of receipt of the application by the FDA or a copy of the

1 cover page of the marketing order or other authorization issued pursuant to 21 U.S.C.
2 387j, whichever is applicable.

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

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

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

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

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

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

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

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

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

25 (3) Send monthly notifications to each wholesale dealer, retail dealer, or
26 manufacturer of vapor products and manufacturer of alternative nicotine products
27 that have qualified or registered with the commissioner, by electronic
28 communication, containing a list of all changes that have been made to the directory
29 in the previous month. In lieu of sending monthly notifications, the commissioner

1 may make the information available in a prominent place on the office of alcohol and
2 tobacco control's public website.

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

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

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

1 I. No wholesale dealer or retail dealer shall be permitted to remit tax with
2 respect to a vapor product or alternative nicotine product unless such vapor product
3 or alternative nicotine product is listed on the directory, and the sale, possession, or
4 transportation of such vapor products or alternative nicotine products by any person,
5 including a permitted wholesale dealer or retail dealer, shall be subject to provisions
6 of R.S. 47:858, 859, and 860 as if such wholesale dealer or retail dealer did not
7 possess a valid permit.

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

10 K. The commissioner shall adopt rules for the implementation and
11 enforcement of this Section.

12 Section 3. Subpart Z of Part II-A of Chapter 1 of Subtitle I of Title 39 of the
13 Louisiana Revised Statutes of 1950, comprised of R.S. 39:100.210, is hereby enacted to read
14 as follows:

15 SUBPART Z. THE DEPARTMENT OF WILDLIFE AND FISHERIES AND
16 OFFICE OF STATE FIRE MARSHAL COMPENSATION FUND

17 §100.210. The Department of Wildlife and Fisheries and Office of State Fire
18 Marshal Compensation Fund

19 A. There is hereby created, as a special fund in the state treasury, the
20 Department of Wildlife and Fisheries and Office of State Fire Marshal Compensation
21 Fund, hereafter referred to in this Section as the "fund".

22 B.(1) Notwithstanding any provision of law to the contrary, after compliance
23 with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana,
24 relative to the Bond Security and Redemption Fund, and after a sufficient amount is
25 allocated from that fund to pay all of the obligations secured by the full faith and
26 credit of the state which become due and payable within any fiscal year, after the
27 first twenty-two million dollars of the avails of the tax levied pursuant to the
28 provisions of R.S. 47:841(F) is deposited into the Louisiana State Police Salary Fund
29 pursuant to the provisions of R.S. 22:831(B)(2), the treasurer shall deposit the next

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 635 Reengrossed

2023 Regular Session

Hollis

Abstract: Increase the rate of the tax levied on vapor products and electronic cigarettes from \$0.05 per milliliter to \$0.10 per milliliter of consumable nicotine liquid solution and dedicates the first \$22M of the avails of the tax to funding salaries and related benefits of the La. State Police and the next \$4M of the avails of the tax to funding salaries and related benefits for Dept. of Wildlife and Fisheries (WL&F) enforcement agents and employees of the office of state fire marshal.

Present law levies an excise tax on vapor products and electronic cigarettes at a rate of \$0.05 per milliliter of consumable nicotine liquid solution or other material containing nicotine that is depleted as a vapor product is used.

Proposed law increases the rate of the tax levied on vapor products and electronic cigarettes from \$0.05 per milliliter of consumable nicotine liquid solution to \$0.10 per milliliter of consumable nicotine liquid solution.

Present law defines "vapor product" to mean any noncombustible product containing nicotine or other substances that employ a heating element, power source, electronic circuit, or other electronic, chemical or mechanical means, regardless of shape or size, used to produce vapor from nicotine in a solution or other form. Includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. Proposed law retains present law.

Present law (R.S. 22:831) establishes the La. State Police Salary Fund (fund) to be used to cover the cost of salary increases and related benefits for members of the state police service and for special law enforcement initiatives. Present law requires the treasurer to annually deposit up to \$15.6 million into the fund from the avails of taxes collected on certain types of insurance specified in present law that are in excess of total collections for such insurance in Fiscal Year 2000-2001.

Proposed law additionally deposits into the fund the first \$22M of the avails of the excise tax levied on vapor products and electronic cigarettes.

Proposed law establishes the WL&F and Office of State Fire Marshal Compensation Fund (compensation fund) as a special fund in the state treasury. After compliance with the requirements of present constitution, relative to the Bond Security and Redemption Fund, and after a sufficient amount is allocated to pay all of the obligations secured by the full faith and credit of the state which become due and payable, and after the first \$22M of the avails of the excise tax levied on vapor products and electronic cigarettes is deposited into the fund, the treasurer shall deposit the next \$4M of the avails of the excise tax levied on vapor products and electronic cigarettes into the compensation fund.

Proposed law requires monies in the compensation fund to be invested by the treasurer in the same manner as monies in the state general fund and interest earned on investment of such monies shall be credited to the compensation fund. Unexpended and unencumbered monies in the compensation fund at the end of the fiscal year shall remain in the compensation fund.

Proposed law requires monies in the compensation fund to be used as follows:

- (1) 50% to cover the cost of salary increases and related benefits for WL&F enforcement agents.
- (2) 50% to cover the cost of salary increases and related benefits for employees of the office of state fire marshal.

Present law prohibits a vapor retail dealer from purchasing alternative nicotine products or vapor products for resale except from a manufacturer of those products or a wholesale dealer operating with a valid unsuspended La. wholesale dealer permit.

Proposed law changes present law by adding electronic cigarette products to the items a vapor retail dealer is prohibited from purchasing for resale except from certain specific sources. Proposed law additionally removes a manufacturer of those products as a source that a vapor retail dealer is authorized to purchase these products from and adds the requirement that a wholesale dealer also operate with a valid stamping agent designation permit.

Proposed law requires, beginning Oct. 1, 2023, every vapor product manufacturer and alternative nicotine product manufacturer whose products are sold in this state, whether directly or through a wholesale dealer, retail dealer, or similar intermediary, to execute and deliver to the commissioner of the office of alcohol and tobacco control (ATC) a certification of either of the following:

- (1) The vapor product was on the market in the U.S. as of August 8, 2016, and the manufacturer has applied for a marketing order pursuant to federal law by submitting a premarket tobacco product application on or before Sept. 9, 2020, to the U.S. Food and Drug Administration, (FDA) and either the premarket tobacco product application for the vapor product or alternative nicotine product remains under review by the FDA or the FDA has issued a no marketing order for the vapor product or alternative nicotine product, but the agency or a federal court has issued a stay order or injunction during the pendency of the manufacturer's appeal or the order has been appealed or challenged and the appeal or challenge is still pending.
- (2) The manufacturer has received a marketing order or other authorization pursuant to federal law for the vapor product or alternative nicotine product from the FDA.

Proposed law additionally requires each manufacturer to provide a copy of the cover page of the premarket tobacco application with evidence of receipt of the application by the FDA or a copy of the cover page of the marketing order, whichever is applicable.

Proposed law requires a manufacturer submitting a certification pursuant to proposed law to notify the commissioner within 30 days of any material change to the certification, including issuance by the FDA of any of the following:

- (1) A market order or other authorization.
- (2) An order requiring a manufacturer to remove a product from the market either temporarily or permanently.
- (3) Any notice of action taken by the FDA affecting the ability of the new product to be introduced or delivered into interstate commerce for commercial distribution.
- (4) Any policy change that results in a product no longer being exempt from federal enforcement oversight.

Proposed law requires the commissioner to develop and maintain a directory listing all vapor product manufacturers and alternative nicotine product manufacturers that have provided certifications that comply with proposed law and all products listed in those certifications.

Proposed law requires the commissioner make the directory available for public inspection on its website by Nov. 1, 2023, and to update the directory as necessary to add or remove vapor product manufacturers and alternative nicotine product manufacturers or products manufactured by those manufacturers on a monthly basis. Proposed law also requires the commissioner to send monthly notifications to each wholesale dealer, retail dealer, or manufacturer of vapor products and manufacturer of alternative nicotine products that have qualified or registered with the commissioner, by electronic communication, indicating changes made to the directory in the previous month. However, in lieu of this monthly notification, the commissioner may make the information available in a prominent place on ATC's public website.

Proposed law provides that if a vapor product manufacturer or alternative nicotine product manufacturer can demonstrate that the FDA has issued a rule or formal statement that temporarily exempts a vapor product or alternative nicotine product from the federal premarket tobacco application requirements, the vapor product or alternative product may be added to the directory upon request by the manufacturer if the manufacturer provides sufficient evidence that the vapor product or alternative nicotine product is compliant with the federal rule.

Proposed law requires each certifying vapor product manufacturer or alternative nicotine product manufacturer to pay an initial fee of \$2,000 to offset the costs incurred by the commissioner for processing the certifications and operating the directory. Further requires the commissioner to collect an annual renewal fee of \$500 to offset the costs associated with maintaining the directory and satisfying the requirements of proposed law. The fees shall be used by the commissioner for processing certifications and operating and maintaining the directory.

Proposed law provides that beginning Nov. 1, 2023, or when the commissioner makes the directory available for public inspection on its website, whichever is later, a vapor product manufacturer or alternative nicotine product manufacturer who offers for sale a vapor product or alternative nicotine product not listed on the directory shall be subject to a daily fine of \$1,000 for each vapor product or alternative nicotine product offered for sale in violation of proposed law until the offending product is removed from the market or until the offending product is properly listed on the directory.

Proposed law prohibits a wholesale dealer or retail dealer from being permitted to remit tax with respect to a vapor product or alternative nicotine product unless the vapor product or alternative nicotine product is listed on the directory. Further provides that the sale, possession, or transportation of a vapor product or alternative nicotine product by any person, without a valid permit shall subject the person violating this provisions to criminal penalties as provided for in present law (R.S. 47:858, 859, and 860).

Proposed law provides that any other violation of proposed law shall result in a fine of \$500 per offense.

Proposed law requires the commissioner to adopt rules for the implementation and enforcement of proposed law.

Effective July 1, 2023.

(Amends R.S. 22:831(B), R.S. 26:911(B)(1)(b), and R.S. 47:841(F); Adds R.S. 26:926 and R.S. 39:100.210)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Change the increase of the tax levied on vapor products and electronic cigarettes from 15% of the retail sales price of vapor products and electronic cigarettes to \$0.30 per milliliter of consumable nicotine liquid solution.
2. Change the amount of the tax proceeds dedicated to the La. State Police Salary Fund from one-half of the avails of the excise tax on vapor products and electronic cigarettes to the first \$22M of the avails of the excise tax levied on vapor products and electronic cigarettes.

The House Floor Amendments to the engrossed bill:

1. Change the increase in the tax levied on vapor products and electronic cigarettes from \$0.30 per milliliter of consumable nicotine liquid solution to \$0.10 per milliliter of consumable nicotine liquid solution.
2. Establish the WL&F and Office of State Fire Marshal Compensation Fund as a special fund in the state treasury and require, after the first \$22M of the avails of the excise tax levied on vapor products and electronic cigarettes is deposited into the fund, the treasurer to deposit the next \$4M of the avails of the excise tax levied on vapor products and electronic cigarettes into the compensation fund.
3. Require 50% of the monies deposited into the compensation fund to be used to cover the cost of salary increases and related benefits for WL&F enforcement agents and 50% of the monies in the compensation fund to cover the cost of salary increases and related benefits for employees of the office of state fire marshal.
4. Add electronic cigarette products to the items a vapor retail dealer is prohibited from purchasing for resale except from certain specific sources.
5. Remove a manufacturer of electronic cigarette products as a source that a vapor retail dealer is authorized to purchase these products from and add a requirement that a wholesale dealer also operate with a valid stamping agent designation permit.
6. Add a requirement that, beginning Oct. 1, 2023, every vapor product manufacturer and alternative nicotine product manufacturer whose products are sold in this state to execute and deliver to the commissioner of ATC a certification of certain information concerning the vapor products and alternative nicotine products they sell.
7. Require manufacturers to submit certain information to the commissioner in compliance with proposed law.
8. Require the commissioner to develop and maintain a directory listing all vapor product manufacturers and alternative nicotine product manufacturers that have provided certifications that comply with proposed law and all products listed in those certifications.
9. Add requirements for the compilation, administration, and maintenance of the directory by the commissioner and requirements that manufacturer's must also comply with.

10. Require each certifying vapor product manufacturer or alternative nicotine product manufacturer to pay an initial fee of \$2,000 to offset the costs incurred by the commissioner for processing the certifications and operating the directory.
11. Authorize the commissioner to collect an annual renewal fee of \$500 to offset the costs associated with maintaining the directory and satisfying the requirements of proposed law.
12. Add authorization for the commissioner to assess a daily fine of \$1,000 for each vapor product or alternative nicotine product offered for sale in violation of proposed law until the offending product is removed from the market or until the offending product is properly listed on the directory.
13. Prohibit a wholesale dealer or retail dealer from being permitted to remit tax with respect to a vapor product or alternative nicotine product unless the vapor product or alternative nicotine product is listed on the directory.
14. Add authorization to subject a person who sales, possesses, or transports a vapor product or alternative nicotine product without a valid permit to criminal penalties as provided for in present law (R.S. 47:858, 859, and 860).
15. Add authorization for the commissioner to impose a fine of \$500 per offense for other violations of proposed law.
16. Require the commissioner to adopt rules for the implementation and enforcement of proposed law.