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## DIGEST

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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.