

2023 Regular Session

HOUSE BILL NO. 635

BY REPRESENTATIVE HOLLIS

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. 26:911(E) and 926 and Subpart Z of Part II-A of Chapter 1 of Subtitle I
4 of Title 39 of the Louisiana Revised Statutes of 1950, to be comprised of R.S.
5 39:100.210, relative to excise tax; to increase the rate of the excise tax levied on
6 vapor products and electronic cigarettes; to dedicate the avails of the tax levied on
7 vapor products and electronic cigarettes; to establish the Department of Wildlife
8 Fisheries, Office of State Fire Marshal, and Louisiana Public Defender Board
9 Compensation Fund; to provide funds to the office of alcohol and tobacco control for
10 the exclusive purpose of enforcement of vapor products and electronic cigarettes; to
11 provide for the deposit and use of the monies in the fund; to provide for certain
12 requirements and limitations; to prohibit retail dealers of electronic cigarette
13 products from purchasing such products from certain sources; to establish a vapor
14 product and alternative nicotine product directory; to authorize the commissioner of
15 the office of alcohol and tobacco control to impose fees and fines under certain
16 circumstances; to provide for criminal penalties for certain violations; to provide for
17 requirements and limitations; to provide for age verification; to provide for an
18 effective date; and to provide for related matters.

19 Be it enacted by the Legislature of Louisiana:

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

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

2 * * *

3 B. There is hereby created in the state treasury as a special fund the
4 Louisiana State Police Salary Fund, hereafter referred to in this Subsection as the
5 "fund". Monies in the ~~Louisiana State Police Salary Fund~~ fund shall be used in
6 amounts appropriated by the legislature to cover the cost of salary increases and
7 related benefits for members of the state police service and for special law
8 enforcement initiatives. After allocation of money to the Bond Security and
9 Redemption Fund as provided in Article VII, Section 9(B) of the Constitution of
10 Louisiana, the treasurer shall deposit in and credit to the fund amounts received as
11 follows:

12 (1) ~~Taxes~~ The avails of taxes collected under the provisions of this Section
13 in Fiscal Year 2002-2003 and ensuing fiscal years that are in excess of total
14 collections under the provisions of this Section in Fiscal Year 2000-2001, ~~after first~~
15 ~~having been credited to the Bond Security and Redemption Fund as required by~~
16 ~~Article VII, Section 9(B) of the Constitution of Louisiana, shall be deposited into the~~
17 ~~Louisiana State Police Salary Fund~~ until the amount deposited in each fiscal year is
18 equal to fifteen million six hundred thousand dollars.

19 (2) The first twenty-two million dollars of the avails of the excise tax levied
20 pursuant to R.S. 47:841(F).

21 Section 2. R.S. 26:911(B)(1)(b) is hereby amended and reenacted and R.S.
22 26:911(E) and 926 are hereby enacted to read as follows:

23 §911. Acts prohibited

24 * * *

25 B.(1)

26 * * *

27 (b) No vapor retail dealer shall purchase alternative nicotine products, ~~or~~
28 vapor products, or electronic cigarette products for resale except from a
29 ~~manufacturer of those products or a~~ wholesale dealer operating with a valid
30 unsuspended Louisiana wholesale dealer permit and a valid stamping agent

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

3 * * *

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

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

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

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

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

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

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

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

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

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

1 or injunction during the pendency of the manufacturer's appeal of the no marketing
 2 order, or the order has been appealed either to the FDA or a challenge to the order
 3 filed with a federal court and the appeal or challenge is still pending.

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

7 B. In addition to the requirements of Subsection A of this Section, each
 8 manufacturer shall provide a copy of the cover page of the premarket tobacco
 9 application with evidence of receipt of the application by the FDA or a copy of the
 10 cover page of the marketing order or other authorization issued pursuant to 21 U.S.C.
 11 387j, whichever is applicable.

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

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

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

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

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

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

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

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

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

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

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

20 G. Each certifying vapor product manufacturer or alternative nicotine product
 21 manufacturer shall pay an initial fee of one hundred dollars per product stock
 22 keeping unit or SKU to offset the costs incurred by the commissioner for processing
 23 the certifications and operating the directory. The commissioner shall collect an
 24 annual renewal fee of one hundred dollars per product stock keeping unit or SKU to
 25 offset the costs associated with maintaining the directory and satisfying the
 26 requirements of this Section. The fees received pursuant to this Section by the
 27 commissioner shall be used by the office of alcohol and tobacco control exclusively
 28 for processing the certifications and operating and maintaining the directory.

29 H. Beginning November 1, 2023, or on the date that the commissioner first
 30 makes the directory available for public inspection on its website as provided in

1 Subsection E of this Section, whichever is later, a vapor product manufacturer or
 2 alternative nicotine product manufacturer who offers for sale a vapor product or
 3 alternative nicotine product not listed on the directory is subject to a one thousand
 4 dollars daily fine for each vapor product or alternative nicotine product offered for
 5 sale in violation of this Section until the offending product is removed from the
 6 market or until the offending product is properly listed on the directory.

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

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

16 K. The commissioner shall adopt rules for the implementation and
 17 enforcement of this Section.

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

21 SUBPART Z. THE DEPARTMENT OF WILDLIFE AND FISHERIES,
 22 OFFICE OF STATE FIRE MARSHAL, AND THE LOUISIANA PUBLIC
 23 DEFENDER BOARD COMPENSATION FUND

24 §100.210. Department of Wildlife and Fisheries, Office of State Fire Marshal, and
 25 Louisiana Public Defender Board Compensation Fund

26 A. There is hereby created, as a special fund in the state treasury, the
 27 Department of Wildlife and Fisheries, Office of State Fire Marshal, and Louisiana
 28 Public Defender Board Compensation Fund, hereafter referred to in this Section as
 29 the "fund".

1 B.(1) Notwithstanding any provision of law to the contrary, after compliance
2 with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana,
3 relative to the Bond Security and Redemption Fund, and after a sufficient amount is
4 allocated from that fund to pay all of the obligations secured by the full faith and
5 credit of the state which become due and payable within any fiscal year, after the
6 first twenty-two million dollars of the avails of the tax levied pursuant to the
7 provisions of R.S. 47:841(F) is deposited into the Louisiana State Police Salary Fund
8 pursuant to the provisions of R.S. 22:831(B)(2), the treasurer shall deposit the next
9 six million dollars of the avails of the tax levied pursuant to the provisions of R.S.
10 47:841(F) into the fund. Monies in the fund shall be used solely as provided for in
11 Subsection C of this Section.

12 (2) Monies in the fund shall be invested by the treasurer in the same manner
13 as monies in the state general fund and interest earned on investment of such monies
14 shall be credited to the fund. Unexpended and unencumbered monies in the fund at
15 the end of the fiscal year shall remain in the fund.

16 C. Monies in the fund shall only be withdrawn subject to an appropriation by
17 the legislature and shall be distributed as follows:

18 (1) The first distribution to the office of alcohol and tobacco control shall be
19 six hundred thousand dollars. These funds shall be expended exclusively for the
20 purposes of the enforcement of vapor products and electronic cigarettes.

21 (2) The remaining funds shall be distributed and shared equally among the
22 following governmental units:

23 (a) The funds distributed to the Department of Wildlife and Fisheries shall
24 be used exclusively to cover the cost of salary increases and related benefits for
25 enforcement agents.

26 (b) The funds distributed to the Office of the State Fire Marshal shall be used
27 exclusively cover the cost of salary increases and related benefits for its employees.

