

## RÉSUMÉ DIGEST

ACT 414 (HB 635)

2023 Regular Session

Hollis

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

New 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 \$0.15 per milliliter of consumable nicotine liquid solution.

Existing 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. Existing 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 existing law that are in excess of total collections for such insurance in Fiscal Year 2000-2001.

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

New law establishes the Dept. of Wildlife and Fisheries (WL&F), Office of State Fire Marshal, and La. Public Defender Board Compensation Fund (compensation fund) as a special fund in the state treasury. After compliance with the requirements of existing 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, requires the treasurer to deposit the next \$6M of the avails of the excise tax levied on vapor products and electronic cigarettes into the compensation fund.

New 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 to 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.

New law requires that monies in the compensation fund shall only be withdrawn, subject to an appropriation by the legislature, and be distributed as follows:

- (1) The first \$600,000 to the office of alcohol and tobacco control (ATC) to be used exclusively for the enforcement of vapor products and electronic cigarettes.
- (2) The remaining funds to be shared equally among the following governmental units:
  - (a) WL&F to be used exclusively for the cost of salary increases and related benefits for enforcement agents.
  - (b) Office of the state fire marshal to be used exclusively for the cost of salary increases and related benefits for its employees.
  - (c) La. Public Defender Board to be used exclusively for the cost of salary increases and related benefits for its employees.

Existing law prohibits a vapor retail dealer from purchasing alternative nicotine or vapor products, hereinafter "product" or "products", for resale except from a wholesale dealer operating with a valid unsuspended La. wholesale dealer permit.

New law adds electronic cigarette products to the items a vapor retail dealer is prohibited from purchasing for resale except from a wholesale dealer operating with a valid unsuspended La. wholesale dealer permit and adds a requirement that a wholesale dealer also operate with a valid stamping agent designation permit.

Prior law authorized a vapor retail dealer to purchase products for resale from a manufacturer of those products operating with a valid unsuspended La. wholesale dealer permit. New law repeals prior law.

New 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.

New 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.

New 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.

New 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.

New 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.

New 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.

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

New law requires, beginning Oct. 1, 2023, every product manufacturer whose products are sold in this state, whether directly or through a wholesale dealer, to execute and deliver to the commissioner of ATC a certification of either of the following:

- (1) The vapor product was on the market in the U.S. Food and Drug Administration (FDA) as of Aug. 8, 2016, and the manufacturer has applied for a marketing order pursuant to federal law and either the premarket tobacco product application remains under review by the FDA or the FDA has issued a no marketing order for the product, but a stay order or injunction has been issued 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 product from the FDA.

New 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.

New law requires a manufacturer submitting a certification 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.

New law requires the commissioner to develop and maintain a directory listing all product manufacturers that have provided certifications that comply with new law and all products listed in those certifications.

New law requires the commissioner to 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 manufacturers or products on a monthly basis. New law also requires the commissioner to send monthly notifications to each wholesale or retail dealer or manufacturer of 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 a monthly notification, the commissioner may make the information available in a prominent place on ATC's public website.

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

New law requires each certifying product manufacturer to pay an initial fee of \$100 per product stock keeping unit (SKU) to offset the costs incurred by the commissioner for processing the certifications and operating the directory. New law requires the commissioner to collect an annual renewal fee of \$100 per SKU to offset the costs associated with maintaining the directory. The fees shall be used by ATC for processing the certifications and operating and maintaining the directory.

New 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 product manufacturer who offers a product for sale that is not listed on the directory shall be subject to a daily fine of \$1,000 for each product offered for sale in violation of new law until the offending product is removed from the market or until the offending product is properly listed on the directory.

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

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

New law requires the commissioner to adopt rules for the implementation and enforcement of new 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. 26:911(E) and 926 and R.S. 39:100.210)