

2023 Regular Session

HOUSE BILL NO. 179

BY REPRESENTATIVES WHEAT, ADAMS, AMEDEE, CARRIER, ROBBY CARTER,
COX, EDMONDS, EDMONSTON, GAINES, HODGES, MACK, MINCEY,
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Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TOBACCO/TOBACCO PRODUCTS: Provides relative to the sale of certain vapor products for electronic cigarettes and similar devices

1 AN ACT

2 To amend and reenact R.S. 26:911(B)(1)(b) and to enact R.S. 26:911(A)(7) and 926, relative
3 to vapor products; to provide relative to the sale of e-liquid and vapor products; to
4 prohibit the sale of certain e-liquid and vapor products; to provide relative to the
5 purchase of alternative nicotine products and vapor products for resale; and to
6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 26:911(B)(1)(b) is hereby amended and reenacted and R.S.
9 26:911(A)(7) and 926 are hereby enacted to read as follows:

10 §911. Acts prohibited

11 A. No person, agent, associate, employee, representative, or servant of any
12 person shall permit any of the following acts to be done on or about any premises
13 which sells or offers for sale tobacco products, alternative nicotine products, or vapor
14 products:

15 * * *

16 (7) Sell or serve any e-liquid or vapor products, in each case, only if the
17 e-liquid or vapor products contain nicotine from any source, containing both nicotine
18 from any source and a characterizing flavor to any person. For purposes of this
19 Paragraph, "characterizing flavor" means a distinguishable flavor, taste, or aroma

1 other than tobacco, mint, or menthol, including but not limited to any fruit,
 2 chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb,
 3 wintergreen, or spice flavoring, that is imparted, prior to or during consumption, by
 4 use of a vapor product including liquid nicotine or any smoke or vapor emanating
 5 from that device or product. This Paragraph shall not apply to any e-liquid or vapor
 6 product that has received a marketing order from the United States Food and Drug
 7 Administration pursuant to 21 U.S.C. 387(j).

8 * * *

9 B.(1)

10 * * *

11 (b) No vapor retail dealer shall purchase alternative nicotine products or
 12 vapor products for resale except from ~~a manufacturer of those products or a~~
 13 wholesale dealer operating with a valid unsuspended Louisiana wholesale dealer
 14 permit, except as provided for in this Chapter.

15 * * *

16 §926. Vapor product and alternative nicotine product directory

17 A. Beginning October 1, 2023, every vapor product manufacturer and
 18 alternative nicotine product manufacturer whose products are sold in this state,
 19 whether directly or through a wholesale dealer, retail dealer, or similar intermediary
 20 or intermediaries, shall execute and deliver on a form prescribed by the secretary, a
 21 certification to the secretary certifying, under penalty of perjury, either of the
 22 following:

23 (1) The product was on the market in the United States as of August 8, 2016,
 24 and the manufacturer has applied for a marketing order pursuant to 21 U.S.C. §387j
 25 for the vapor product or alternative nicotine product by submitting a premarket
 26 tobacco product application on or before September 9, 2020, to the United States
 27 Food and Drug Administration (FDA); and either of the following is true:

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

1 (b) The FDA has issued a no marketing order for the vapor product or
2 alternative nicotine product from the FDA; however, the agency or a federal court
3 has issued a stay order or injunction during the pendency of the manufacturer's
4 appeal of the no marketing order.

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

8 B. In addition to the requirements of Subsection A of this Section, each
9 manufacturer shall provide a copy of the cover page of the premarket tobacco
10 application with evidence of receipt of the application by the FDA or a copy of the
11 cover page of the marketing order or other authorization issued pursuant to 21 U.S.C.
12 §387j, whichever is applicable.

13 C. Any manufacturer submitting a certification pursuant to Subsection A
14 shall notify the secretary within 30 days of any material change to the certification,
15 including issuance by the FDA of any of the following:

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

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

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

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

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

28 E. The secretary shall do all of the following:

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

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

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

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

21 G. No wholesale dealer or retail dealer shall be permitted to remit tax with
22 respect to a vapor product or alternative nicotine product unless such vapor product
23 or alternative nicotine product is listed on the directory, and the sale, possession, or
24 transportation of such vapor products or alternative nicotine products by any person,
25 including a permitted wholesale dealer or retail dealer, shall be subject to provisions
26 of R.S. 47:858, 859, and 860 as if such wholesale dealer or retail dealer did not
27 possess a valid permit.

28 H. The secretary shall adopt rules for the implementation and enforcement
29 of this Section.

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 179 Reengrossed

2023 Regular Session

Wheat

Abstract: Prohibits the sale of certain e-liquid and vapor products.

Present law provides for the prohibition of specific acts regarding the sale of tobacco products, alternative nicotine products, and vapor products.

Proposed law retains present law, defines "characterizing flavor", and prohibits the sale or service of any e-liquid or vapor product containing both nicotine from any source and a characterizing flavor. Provides that proposed law shall not apply to any e-liquid or vapor product that has received a marketing order from the U.S. Food and Drug Administration.

Proposed law prohibits the purchase of alternative nicotine products or vapor products for resale except from a La. wholesale dealer with a valid permit.

Proposed law provides for the creation of a vapor product and alternative product directory. Provides for certain duties of the secretary and requires the directory to be made public Nov. 1, 2023.

Proposed law provides that beginning Oct. 1, 2023, vapor product and alternative product manufacturers submit a certification form to the secretary.

(Amends R.S. 26:911(B)(1)(b); Adds R.S. 26:911(A)(7) and 926)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Prohibit the purchase of alternative nicotine products or vapor products for resale except from a Louisiana wholesale dealer with a valid permit.
2. Provide that proposed law shall not apply to any e-liquid or vapor product that received an FDA marketing order.
3. Provide for the creation of a vapor product and alternative product directory.