

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 635

2023 Regular Session

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

Synopsis of Senate Amendments

1. Changes the increase in the tax levied on vapor products and electronic cigarettes from \$0.10 per milliliter of consumable nicotine liquid solution to \$0.15 per milliliter of consumable nicotine liquid solution.
2. Changes the amount of the initial fee collected by the commissioner from each certifying vapor or alternative nicotine product manufacturer to offset the costs for processing certification and operating the directory from \$2,000 to \$100 per product stock keeping unit (SKU).
3. Changes the amount of the annual renewal fee the commissioner is authorized to collect from \$500 to \$100 per SKU to offset the costs associated with maintaining the directory and satisfying the requirements of proposed law.
4. Prohibits manufacturers from selling vapor products, electronic cigarettes, or alternative nicotine products online to any person under the age of 21.
5. Adds requirements for manufacturers selling vapor products, electronic cigarettes, or alternative nicotine products online to verify the age of the recipient through the use of a real-time electronic age verification *platform* and provides for penalties for violations.
6. Adds requirements for 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* at the time of the delivery of online purchases of vapor products, electronic cigarettes, or alternative nicotine products.
7. Changes the name of the compensation fund from the Dept. of Wildlife and Fisheries and Office of State Fire Marshal Compensation Fund to the Dept. of Wildlife and Fisheries, Office of State Fire Marshal, and La. Public Defender Board Compensation Fund.
8. Increases the amount of avails of the tax levied on vapor products and electronic cigarettes to be deposited by the treasurer into the compensation fund from \$4M to \$6M.
9. Adds distribution of monies in the compensation fund to ATC for enforcement of vapor products and electronic cigarettes and the La. Public Defender Board for salary increases and related benefits for employees.

Digest of Bill as Finally Passed by Senate

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 \$0.15 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 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 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, 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.

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 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.

Proposed 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.

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 prohibits a manufacturer from selling any vapor products, electronic cigarettes, or alternative nicotine products online to any person under the age of 21 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.

Proposed 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.

Proposed law requires a manufacturer to refuse the online purchase of any vapor products, electronic cigarettes, or alternative nicotine products 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.

Proposed 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 vapor products, electronic cigarettes, or alternative nicotine products.

Proposed 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.

Proposed law requires a third party delivery agent to refuse delivery and return the vapor products, electronic cigarettes, or alternative nicotine products 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.

Proposed law provides for a fine of \$500 per offense for a violation of proposed law.

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 or dealer or similar intermediary, 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. 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 or alternative nicotine product remains under review by the FDA or the FDA has issued a no marketing order for the vapor 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 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 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. Proposed law also requires the commissioner to send monthly notifications to each wholesale or retail dealer or manufacturer of vapor or 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 or alternative nicotine product manufacturer can demonstrate that the FDA has issued a rule or formal statement that temporarily exempts a vapor or alternative nicotine product from the federal premarket tobacco application requirements, the vapor or alternative nicotine product may be added to the directory upon request by the manufacturer if the manufacturer provides sufficient evidence that the vapor or alternative nicotine product is compliant with the federal rule.

Proposed law requires each certifying vapor or alternative nicotine 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. Proposed 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.

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 or alternative nicotine product manufacturer who offers for sale a vapor or alternative nicotine product not listed on the directory shall be subject to a daily fine of \$1,000 for each vapor 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 or retail dealer from being permitted to remit tax with respect to a vapor or alternative nicotine product unless the vapor or alternative nicotine product is listed on the directory. Further provides that the sale, possession, or transportation of a vapor 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. 26:911(E) and 926 and R.S. 39:100.210)