

2024 Regular Session

HOUSE BILL NO. 621

BY REPRESENTATIVE STAGNI

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AN ACT

To amend and reenact R.S. 26:911(B)(1)(b) and Subpart BB of Part II-A of Chapter 1 of Subtitle I of Title 39 of the Louisiana Revised Statutes of 1950, consisting of R.S. 39:100.231, to enact R.S. 26:926.1, and to repeal R.S. 26:926, relative to vapor products; to prohibit retail dealers of electronic cigarette products from purchasing such products from certain sources; to establish a vapor product and alternative nicotine product directory; to authorize the commissioner of the office of alcohol and tobacco control to impose fees and fines under certain circumstances; to provide for criminal penalties for certain violations; to provide for requirements and limitations; to provide for age verification; to provide for the disposition of the tax on vapor products; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 26:911(B)(1)(b) is hereby amended and reenacted and R.S. 26:926.1 is hereby enacted to read as follows:

§911. Acts prohibited

\* \* \*

B.(1)

\* \* \*

(b) No vapor retail dealer shall purchase alternative nicotine products, vapor products, or electronic cigarette products for resale except from a wholesale dealer operating with a valid unsuspended Louisiana wholesale dealer permit and a valid stamping agent designation permit pursuant to the provisions of R.S. 26:902(2)(a), except as provided ~~for in~~ by this Chapter.

\* \* \*

1           §926.1. Vapor product and alternative nicotine product directory

2           A. Every vapor product manufacturer and alternative nicotine product  
3           manufacturer whose products are sold in this state, whether directly or through a  
4           wholesale dealer, retail dealer, or similar intermediary or intermediaries, shall  
5           execute and deliver on a form prescribed by the commissioner, a certification to the  
6           commissioner affirming, under penalty of perjury, either of the following:

7                   (1) The product was on the market in the United States as of August 8, 2016,  
8                   and the manufacturer has applied for a marketing order pursuant to 21 U.S.C. 387j  
9                   for the vapor product or alternative nicotine product by submitting a premarket  
10                  tobacco product application on or before September 9, 2020, to the United States  
11                  Food and Drug Administration, hereinafter referred to in this Section as "FDA", and  
12                  either of the following is true:

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

15                          (b) The FDA has issued a no marketing order for the vapor product or  
16                          alternative nicotine product, but the agency or a federal court has issued a stay order  
17                          or injunction during the pendency of the manufacturer's appeal of the no marketing  
18                          order, or the order has been appealed either to the FDA or a challenge to the order  
19                          filed with a federal court and the appeal or challenge is still pending.

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

23           B. In addition to the requirements of Subsection A of this Section, each  
24           manufacturer shall provide a copy of the cover page of the premarket tobacco  
25           application with evidence of receipt of the application by the FDA or a copy of the  
26           cover page of the marketing order or other authorization issued pursuant to 21 U.S.C.  
27           387j, whichever is applicable.

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

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

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

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

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

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

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

13                  (1) Make the directory available for public inspection on the public website  
14                  of the office of alcohol and tobacco control.

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

18                  (3) Send monthly notifications to each wholesale dealer, retail dealer, and  
19                  manufacturer of vapor products and manufacturer of alternative nicotine products  
20                  that has qualified or registered with the commissioner, by electronic communication,  
21                  containing a list of all changes that have been made to the directory in the previous  
22                  month. In lieu of sending monthly notifications, the commissioner may make the  
23                  information available in a prominent place on the public website of the office of  
24                  alcohol and tobacco control.

25                  F. Notwithstanding Subsection A of this Section, if a vapor product  
26                  manufacturer or alternative nicotine product manufacturer can demonstrate to the  
27                  commissioner that the FDA has issued a rule, guidance, or any other formal  
28                  statement that temporarily exempts a vapor product or alternative nicotine product  
29                  from the federal premarket tobacco application requirements, the vapor product or  
30                  alternative product may be added to the directory upon request by the manufacturer  
31                  if the manufacturer provides sufficient evidence that the vapor product or alternative

1 nicotine product is compliant with the federal rule, guidance, or other formal  
2 statement, as applicable.

3 G. Each certifying vapor product manufacturer or alternative nicotine  
4 product manufacturer shall pay an initial fee of one hundred dollars per product stock  
5 keeping unit or SKU to offset the costs incurred by the commissioner for processing  
6 the certifications and operating the directory. The commissioner shall collect an  
7 annual renewal fee of one hundred dollars per product stock keeping unit or SKU to  
8 offset the costs associated with maintaining the directory and satisfying the  
9 requirements of this Section. The fees received pursuant to this Section by the  
10 commissioner shall be used by the office of alcohol and tobacco control exclusively  
11 for processing the certifications and operating and maintaining the directory.

12 H. Beginning on the date that the commissioner makes the directory  
13 available for public inspection on the public website of the office of alcohol and  
14 tobacco control as provided in Subsection E of this Section, a vapor product  
15 manufacturer or alternative nicotine product manufacturer who offers for sale a  
16 vapor product or alternative nicotine product not listed on the directory is subject to  
17 a one thousand dollar daily fine for each vapor product or alternative nicotine  
18 product offered for sale in violation of this Section until the offending product is  
19 removed from the market or until the offending product is properly listed on the  
20 directory.

21 I.(1) The sale, possession, or transportation of vapor products or alternative  
22 nicotine products not listed on the directory by any person, including a permitted  
23 wholesale dealer or retail dealer, shall be subject to provisions of R.S. 47:858, 859,  
24 and 860 as if such wholesale dealer or retail dealer did not possess a valid permit.

25 (2) Each unit of vapor product or alternative nicotine product sold or offered  
26 for sale, possessed, or transported shall constitute a separate violation for purposes  
27 of Paragraph (1) of this Subsection.

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

30 K. The commissioner shall adopt rules for the implementation and  
31 enforcement of this Section.

1 Section 2. Subpart BB of Part II-A of Chapter 1 of Subtitle I of Title 39 of the  
2 Louisiana Revised Statutes of 1950, consisting of R.S. 39:100.231, is hereby amended and  
3 reenacted to read as follows:

4 SUBPART BB. THE DEPARTMENT OF WILDLIFE AND FISHERIES,  
5 OFFICE OF STATE FIRE MARSHAL, AND THE ~~LOUISIANA PUBLIC~~  
6 ~~DEFENDER BOARD~~ OFFICE OF THE STATE PUBLIC DEFENDER  
7 COMPENSATION FUND

8 §100.231. Department of Wildlife and Fisheries, Office of State Fire Marshal, and  
9 ~~Louisiana Public Defender Board~~ Office of the State Public Defender  
10 Compensation Fund

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

15 B.(1) Notwithstanding any provision of law to the contrary, after compliance  
16 with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana,  
17 relative to the Bond Security and Redemption Fund, and after a sufficient amount is  
18 allocated from that fund to pay all of the obligations secured by the full faith and  
19 credit of the state which become due and payable within any fiscal year, after the  
20 first twenty-two million dollars of the avails of the tax levied pursuant to the  
21 provisions of R.S. 47:841(F) is deposited into the Louisiana State Police Salary Fund  
22 pursuant to the provisions of R.S. 22:831(B)(2), the treasurer shall deposit the next  
23 six million dollars of the avails of the tax levied pursuant to the provisions of R.S.  
24 47:841(F) into the fund. Monies in the fund shall be used solely as provided for in  
25 Subsection C of this Section.

26 (2) Monies in the fund shall be invested by the treasurer in the same manner  
27 as monies in the state general fund, and interest earned on investment of the monies  
28 shall be credited to the fund. Unexpended and unencumbered monies in the fund at  
29 the end of the fiscal year shall remain in the fund.

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

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

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

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

11 (b) The funds distributed to the office of the state fire marshal shall be used  
12 exclusively to cover the cost of salary increases and related benefits for its  
13 employees.

14 (c) The funds distributed to the ~~Louisiana Public Defender Board~~ office of  
15 the state public defender shall be used exclusively to cover the cost of salary  
16 increases and related benefits for its employees.

17 Section 3. R.S. 26:926 is hereby repealed in its entirety.

18 Section 4. This Act shall become effective upon signature by the governor or, if not  
19 signed by the governor, upon expiration of the time for bills to become law without signature  
20 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
21 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
22 effective on the day following such approval.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_