

BY REPRESENTATIVES BRASS, BACALA, BERAULT, BILLINGS, ROBBY CARTER, CARVER, CHASSION, CHENEVERT, DOMANGUE, EDMONSTON, FISHER, GALLE, GREEN, HEBERT, JACKSON, TRAVIS JOHNSON, KNOX, LAFLEUR, TERRY LANDRY, MACK, MARTINEZ, MURRAY, NEWELL, ORGERON, SPELL, STAGNI, WILEY, WYBLE, AND ZERINGUE

AN ACT

To amend and reenact R.S. 26: 901(introductory paragraph), (1)(introductory paragraph), and (32)(introductory paragraph), 903(1) through (4), 911(B)(2), 916(B), 918(A)(introductory paragraph) and (1) and (3) and 926.1(J) and (K), and R.S. 47:843(C)(3), and to enact R.S. 26:901(36), 901.1(D), 911(F), 914.1, 918(E), and 926, and R.S. 47:841(B)(8), relative to vapor and alternative nicotine products and modified risk tobacco products; to provide for the definitions of an alternative nicotine product, a vapor product, and a nicotine analogue; to provide for facts and findings; to provide for an increase in permit fees; to require a wholesale dealer to verify that a retail dealer has a valid permit; to provide for requirements for certain permitted manufacturers and dealers of vapor products; to provide for limitations and requirements; to except certain sales of vapor products relative to affiliated entities; to provide for certain exceptions; to provide for the suspension or revocation of permits; to provide for the seizure and forfeiture of alternative nicotine and vapor products; to provide for penalties; to provide for submission of marketing approval of alternative nicotine products to the commissioner of the alcohol and tobacco commission; to provide for imposition of tax; to provide for use of stamps; to provide for severability; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. R.S. 26:901(introductory paragraph), (1)(introductory paragraph), and  
3 (32)(introductory paragraph), 903(1) through (4), 911(B)(2), 916(B), 918(A)(introductory  
4 paragraph) and (1) and (3) and 926.1(J) and (K) are hereby amended and reenacted and R.S.  
5 26:901(36), 901.1(D), 911(F), 914.1, 918(E), and 926 are hereby enacted to read as follows:

6 §901. Definitions

7 As used in this Chapter, the following terms have the ~~meaning~~ meanings  
8 ascribed to them in this Section, unless the context clearly indicates otherwise:

9 (1) "Alternative nicotine product" means any noncombustible product  
10 containing nicotine or a nicotine analogue that is intended for human consumption,  
11 whether chewed, absorbed, dissolved, or ingested by any other means. "Alternative  
12 nicotine product" does not include any of the following:

13 \* \* \*

14 (32) "Vapor product" means any noncombustible product containing  
15 nicotine, a nicotine analogue, or other substances that ~~employs~~ employ a heating  
16 element, power source, electronic circuit, or other electronic, chemical, or  
17 mechanical means, regardless of shape or size, that can be used to produce vapor  
18 from nicotine or other substances. "Vapor product" includes any electronic cigarette,  
19 electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, and  
20 any vapor cartridge or other container of nicotine or nicotine analogue in a solution  
21 or other form that is intended to be used with or in an electronic cigarette, electronic  
22 cigar, electronic cigarillo, electronic pipe, or similar product or device. "Vapor  
23 product" does not include any of the following:

24 \* \* \*

25 (36)(a) "Nicotine analogue" means a substance with either of the following  
26 characteristics:

27 (i) The chemical structure is substantially similar to the chemical structure  
28 of nicotine.







1 §918. Civil penalties

2 A. Notwithstanding any other provision of this Chapter to the contrary, the  
3 commissioner may, in lieu of or in addition to revocation or suspension of a permit  
4 issued ~~under~~ pursuant to the authority of this Chapter, impose the following schedule  
5 of fines to be paid into the state treasury:

6 (1) For a first offense, not less than fifty dollars but not more than ~~five~~  
7 hundred one thousand dollars.

8 \* \* \*

9 (3) For a third offense, which occurs within two years of the first offense, not  
10 less than five hundred dollars but not more than ~~two thousand five hundred~~ four  
11 thousand dollars.

12 \* \* \*

13 E. Notwithstanding any other provision of this Chapter to the contrary, for  
14 a violation of R.S. 26:913, the commissioner may impose the following schedule of  
15 fines to be paid into the state treasury:

16 (1) For a first offense, not less than five hundred dollars but not more than  
17 one thousand dollars.

18 (2) For a second offense, which occurs within two years of the first offense,  
19 not less than one thousand dollars but not more than two thousand dollars.

20 (3) For a third offense, which occurs within two years of the first offense, not  
21 less than two thousand dollars but not more than four thousand dollars.

22 \* \* \*

23 §926. Seizure and forfeiture of alternative nicotine products and vapor products in  
24 the possession of unpermitted retail dealers

25 All alternative nicotine products and vapor products purchased, offered for  
26 sale, or sold for retail sale or to a consumer in this state in violation of this Chapter,  
27 including such products found on the premises of a business or any location  
28 operating without a permit in violation of this Chapter, are contraband and subject  
29 to forfeiture and shall not be purchased or sold for retail sale or to a consumer in this  
30 state. The commissioner may seize and destroy or dispose of such products. The cost

1 of such seizure and destruction or disposal shall be borne by the person from whom  
2 the products are confiscated. Within twenty-one days of destroying or otherwise  
3 disposing of any such seized products, the commissioner shall provide an invoice to  
4 the person from whom the products are confiscated, and payment shall be due to the  
5 commissioner within twenty-one days of the person receiving the invoice.

6 §926.1. Vapor product and alternative nicotine product directory

7 \* \* \*

8 J.(1) The sale, offer for sale, possession, or transportation of vapor products  
9 or alternative nicotine products not listed on the directory for sale in this state or to  
10 a person in this state by any person, including a permitted wholesale dealer, ~~or~~ retail  
11 dealer, or a person without a permit, shall be subject to ~~provisions of R.S. 47:858,~~  
12 ~~859, and 860 as if such wholesale dealer or retail dealer did not possess a valid~~  
13 ~~permit.~~ the following penalties:

14 (a) For a first offense, one thousand dollars.

15 (b) For a second offense, which occurs within two years of the first offense,  
16 two thousand dollars, and the permit of the person shall be suspended for six months.

17 (c) For a third offense, which occurs within two years of the first offense,  
18 four thousand five hundred dollars, and the permit of the person shall be revoked.

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

22 (3) The commissioner or the attorney general may bring an action in the  
23 courts of this state to enforce this Chapter and shall be entitled to recover the costs  
24 of the investigation, expert witness fees, the action, and reasonable attorney fees.

25 (4) If a court determines that a person has violated this Section by having  
26 sold or distributed vapor products or alternative nicotine products not listed on the  
27 directory within the state or to a person in this state, the court shall order any profits,  
28 gains, gross receipts, or other benefits from the violation to be disgorged. Revenue  
29 received pursuant to this Paragraph shall be used to recover the costs of the  
30 investigation, expert witness fees, the action, and reasonable attorney fees, with any

1 remaining funds to be used by the office of alcohol and tobacco control exclusively  
2 for compensating such agency for its costs expended in enforcing this Chapter,  
3 conducting the periodic examinations authorized by R.S. 26:916, and taking any  
4 resulting enforcement actions.

5 (5) A second or subsequent violation of R.S. 26:926.1 is an unfair and  
6 deceptive trade practice within the meaning of R.S. 51:1405(A).

7 (6) Revenue received through fines imposed by this Section shall be used by  
8 the office of alcohol and tobacco control exclusively for conducting the periodic  
9 examinations authorized by R.S. 26:926 and taking any resulting enforcement  
10 actions.

11 K. Any other violation of this Section shall ~~result in a fine of five hundred~~  
12 ~~dollars per offense~~ be subject to the provisions of R.S. 26:918.

13 \* \* \*

14 Section 2. R.S. 47:843(C)(3) is hereby amended and reenacted and R.S.  
15 47:841(B)(8) is hereby enacted to read as follows:

16 §841. Imposition of tax

17 There is hereby levied a tax upon the sale, use, consumption, handling, or  
18 distribution of all cigars, cigarettes, smoking and smokeless tobacco, and vapor  
19 products and electronic cigarettes as defined herein, within the state of Louisiana,  
20 according to the classification and rates hereinafter set forth:

21 \* \* \*

22 B. Cigarettes.

23 \* \* \*

24 (8) Any tax imposed pursuant to this Subsection shall be reduced by sixty  
25 five percent for any product the secretary of the United States Department of Health  
26 and Human Services determines to be a modified risk tobacco product pursuant to  
27 21 U.S.C. 387k, as amended from time to time.

28 \* \* \*

29 §843. Use of stamps or meter impression required; limitations

30 \* \* \*

1 C. Purchase of stamps

2 \* \* \*

3 (3) Cigarette tax stamps shall be sold by the secretary of the Department of  
 4 Revenue to bonded, registered Louisiana tobacco dealers in the state of Louisiana  
 5 who hold a valid stamping agent designation in accordance with R.S. 26:902(2)(a)  
 6 and who have a direct purchasing contract with a manufacturer at a discount of ~~five~~  
 7 six and one-half percent from the face value, when purchased in quantities of not less  
 8 than one hundred dollars face value, and the same provisions and discount shall  
 9 apply ~~where~~ when the metered stamping machine or device is used. Wholesale  
 10 tobacco dealers qualified to purchase Louisiana stamps with benefit of the discount  
 11 described in this Paragraph shall receive the additional benefit of a ten percent  
 12 discount on the purchase of Louisiana stamps to be applied to those products the  
 13 United States Food and Drug Administration has determined to be a modified risk  
 14 tobacco product.

15 \* \* \*

16 Section 3. If any provision or item of this Act, or the application thereof, is held  
 17 invalid, including, but not limited to, any provision in violation of the single object rule set  
 18 forth in the Louisiana Constitution, Article 3, Section 15(A), such invalidity shall not affect  
 19 other provisions, items, or applications of this Act which can be given effect without the  
 20 invalid provision, item, or application, and to this end the provisions of this Act are hereby  
 21 declared severable.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

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

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

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