

438.316 Prohibition on sale of unauthorized vapor products -- Safe harbor certification -- Penalties. (Effective January 1, 2025)

- (1) A retailer shall not sell an unauthorized vapor product to any person.
- (2) Except as provided in subsection (3) of this section, any retailer selling vapor products shall obtain from the manufacturer an applicable safe harbor certification and shall maintain a copy of the certification at the physical location where the vapor product is being sold.
- (3) A retailer is not required to obtain a safe harbor certification for vapor products if those products were purchased from a Kentucky-licensed resident wholesaler.
- (4) Any retailer that violates this section shall be:
 - (a) Subject to a fine of:
 1. One thousand dollars (\$1,000) for the first citation issued for a violation of this section; and
 2. Five thousand dollars (\$5,000) for a second or subsequent citation issued for a violation of this section; and
 - (b) Placed in the tobacco noncompliance database and reporting system and lose the ability to lawfully sell vapor products for one (1) year for any third or subsequent citation issued for a violation within a two (2) year period.
- (5) A retailer in the tobacco noncompliance database and reporting system that sells vapor products that are unauthorized vapor products shall be subject to a fine of ten thousand dollars (\$10,000) per unlawful transaction.
- (6) Any retailer with unpaid fines under this section that are more than sixty (60) days overdue shall lose the ability to lawfully sell vapor products until the fines are paid.
- (7) A retailer shall have an affirmative defense to a violation of selling an unauthorized vapor product if the retailer can establish:
 - (a) Proof of an official material change in the status of a vapor product under review by the FDA within forty-five (45) days of the issuance of the citation; or
 - (b) A safe harbor certification for the vapor product exists onsite at the retail location at the time the citation was issued.

Effective: January 1, 2025

History: Created 2024 Ky. Acts ch. 111, sec. 7, effective January 1, 2025.