

438.316 Prohibition on sale of unauthorized nicotine vapor products -- Affirmative defense -- Penalties.

- (1) A retailer of nicotine vapor products containing nicotine shall only sell authorized nicotine vapor products.
- (2) Any retailer that violates this section shall be subject to a:
 - (a) Five hundred dollar (\$500) fine to the owner of a retail establishment for a first citation issued for a violation of this section;
 - (b) One thousand dollar (\$1,000) fine to the owner of a retail establishment for a second or subsequent citation issued for a violation of this section; and
 - (c) On or after July 1 2026, revocation of the tobacco, nicotine, or vapor product license upon a fourth citation, which shall result in the inability to reapply for a tobacco, nicotine, or vapor product license for two (2) years.
- (3) Each citation shall be specific to the premises of the retail establishment where the violation occurred.
- (4) 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.
- (5) 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) Proof received under KRS 438.308(1)(b) that the product is an authorized nicotine vapor product.

Effective: April 10, 2026

History: Amended 2026 Ky. Acts ch. 3, sec. 10, effective March 13, 2026; and ch. 70, sec. 9, effective April 10, 2026. -- Amended 2025 Ky. Acts ch. 78, sec. 15, effective March 24, 2025. -- Created 2024 Ky. Acts ch. 111, sec. 7, effective January 1, 2025.

Legislative Research Commission Note (4/10/2026). This statute was amended by 2026 Ky. Acts chs. 3 and 70, which do not appear to be in conflict and have been codified together.

Legislative Research Commission Note (4/10/2026). 2026 Ky. Acts ch. 3, sec. 13, and ch. 70, sec. 18, provide that the amendments to this statute in those Acts shall be retroactive to January 1, 2026.

Legislative Research Commission Note (4/10/2026). 2026 Ky. Acts ch. 70, sec. 14, provides that, notwithstanding any laws to the contrary, that Act shall not be construed to delay enforcement of this statute.