

1 AN ACT relating to flavored vapor products.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 438.305 is amended to read as follows:

4 As used in KRS 438.305 to 438.340, unless the context requires otherwise:

- 5 (1) (a) "Alternative nicotine product" means a noncombustible product containing  
6 nicotine that is intended for human consumption, whether chewed, absorbed,  
7 dissolved, or ingested by any other means.
- 8 (b) "Alternative nicotine product" does not include any product regulated as a  
9 drug or device by the United States Food and Drug Administration under  
10 Chapter V of the Food, Drug, and Cosmetic Act;
- 11 (2) **"Characterizing flavor" means a taste or aroma, other than the taste or aroma of**  
12 **tobacco, imparted either prior to or during consumption of a tobacco product,**  
13 **vapor product, or alternative nicotine product, or any byproduct produced**  
14 **thereof. "Characterizing flavor" includes but is not limited to tastes or aromas**  
15 **relating to food or drink of any sort; mint; wintergreen; fruit; chocolate; vanilla;**  
16 **honey; candy; cocoa; dessert; alcoholic beverages; herbs; or spices.**
- 17 (3) **"Flavored vapor product" means any vapor product that imparts a characterizing**  
18 **flavor;**
- 19 (4) "Manufacturer" means any person who manufactures or produces tobacco products  
20 within or without this Commonwealth;
- 21 ~~(5)~~~~(3)~~ "Nonresident wholesaler" means any person who purchases cigarettes or other  
22 tobacco products directly from the manufacturer and maintains a permanent  
23 location or locations outside this state at which Kentucky cigarette tax evidence is  
24 attached or from which Kentucky cigarette tax is reported and paid;
- 25 ~~(6)~~~~(4)~~ "Proof of age" means a driver's license or other documentary or written  
26 evidence that the individual is eighteen (18) years of age or older;
- 27 ~~(7)~~~~(5)~~ "Resident wholesaler" means any person who purchases at least seventy-five

1 percent (75%) of all cigarettes or other tobacco products purchased by that person  
2 directly from the cigarette manufacturer on which the cigarette tax provided for in  
3 KRS 138.130 to 138.205 is unpaid, and who maintains an established place of  
4 business in this state at which the person attaches cigarette tax evidence or receives  
5 untaxed cigarettes;

6 ~~(8)~~~~(6)~~ "Sample" means a tobacco product, alternative nicotine product, or vapor  
7 product distributed to members of the general public at no cost;

8 ~~(9)~~~~(7)~~ "Subjobber" means any person who purchases tobacco products, on which the  
9 Kentucky cigarette tax has been paid, from a wholesaler licensed pursuant to KRS  
10 138.195, and makes them available to a retail establishment for resale;

11 ~~(10)~~~~(8)~~ (a) "Tobacco product" means any cigarette, cigar, snuff, smokeless tobacco  
12 product, smoking tobacco, chewing tobacco, and any kind or form of tobacco  
13 prepared in a manner suitable for chewing or smoking, or both, or any kind or  
14 form of tobacco that is suitable to be placed in a person's mouth.

15 (b) "Tobacco product" does not include any alternative nicotine product, vapor  
16 product, or product regulated as a drug or device by the United States Food  
17 and Drug Administration under Chapter V of the Food, Drug, and Cosmetic  
18 Act; and

19 ~~(11)~~~~(9)~~ (a) "Vapor product" means any noncombustible product that employs a  
20 heating element, battery, power source, electronic circuit, or other electronic,  
21 chemical, or mechanical means, regardless of shape or size and including the  
22 component parts and accessories thereto, that can be used to deliver vaporized  
23 nicotine or other substances to users inhaling from the device. "Vapor  
24 product" includes but is not limited to any electronic cigarette, electronic  
25 cigar, electronic cigarillo, electronic pipe, or similar product or device and  
26 every variation thereof, regardless of whether marketed as such, and any vapor  
27 cartridge or other container of a liquid solution or other material that is

1 intended to be used with or in an electronic cigarette, electronic cigar,  
2 electronic cigarillo, electronic pipe, or other similar product or device.

3 (b) "Vapor product" does not include any product regulated as a drug or device by  
4 the United States Food and Drug Administration under Chapter V of the Food,  
5 Drug, and Cosmetic Act.

6 ➔SECTION 2. A NEW SECTION OF KRS 438.305 TO 438.340 IS CREATED  
7 TO READ AS FOLLOWS:

8 (1) No person shall sell, offer for sale, give, transport, or otherwise distribute, nor  
9 possess with intent to sell, give, or otherwise distribute a flavored vapor product  
10 in the Commonwealth.

11 (2) No person shall transport flavored vapor products intended for delivery to any  
12 wholesaler, retailer, or manufacturer of cigarettes, tobacco products, alternative  
13 nicotine products, or vapor products in the Commonwealth.

14 (3) (a) Any person who violates this section shall be fined not less than one  
15 thousand dollars (\$1,000) nor more than two thousand five hundred dollars  
16 (\$2,500) for each offense.

17 (b) The fine shall be administered by the Department of Alcoholic Beverage  
18 Control using a civil enforcement procedure for persons eighteen (18) years  
19 of age or older.

20 (c) All peace officers with general law enforcement authority and employees of  
21 the Department of Alcoholic Beverage Control may issue a uniform  
22 citation, but shall not make an arrest, or take a person under the age of  
23 eighteen (18) years into custody, for a violation of this section.