

1 AN ACT relating to 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) **"Enhanced vapor product" means a vapor product, reusable or disposable, with**  
12 **a cartridge or other container holding a solution, salts, or other material to be**  
13 **vaporized or aerosolized for inhalation that is enhanced by material that**  
14 **contains:**
- 15 **(a) Flavorings other than tobacco or menthol that are designed to sweeten or**  
16 **otherwise alter the taste of the vaporized or aerosolized product so it no**  
17 **longer tastes like a typical cigarette or tobacco product;**
- 18 **(b) Psychoactive or mood-altering substances;**
- 19 **(c) Any compounds from the cannabis plant, including but not limited to delta-**  
20 **9-tetrahydrocannabinol (THC) or cannabidiol (CBD);**
- 21 **(d) A nicotine salt strength in excess of four percent (4%); or**
- 22 **(e) Oils, compounds, or other chemicals that are intended to enhance the**  
23 **delivery of substances included in paragraphs (a) to (d) of this subsection**  
24 **into the lungs of the consumer;**
- 25 **(3)** "Manufacturer" means any person who manufactures or produces tobacco products  
26 within or without this Commonwealth;
- 27 **(4)**~~**(3)**~~ "Nonresident wholesaler" means any person who purchases cigarettes or other

1 tobacco products directly from the manufacturer and maintains a permanent  
 2 location or locations outside this state at which Kentucky cigarette tax evidence is  
 3 attached or from which Kentucky cigarette tax is reported and paid;

4 ~~(5)~~~~(4)~~ "Proof of age" means a driver's license or other documentary or written  
 5 evidence that the individual is eighteen (18) years of age or older;

6 ~~(6)~~~~(5)~~ "Resident wholesaler" means any person who purchases at least seventy-five  
 7 percent (75%) of all cigarettes or other tobacco products purchased by that person  
 8 directly from the cigarette manufacturer on which the cigarette tax provided for in  
 9 KRS 138.130 to 138.205 is unpaid, and who maintains an established place of  
 10 business in this state at which the person attaches cigarette tax evidence or receives  
 11 untaxed cigarettes;

12 ~~(7)~~~~(6)~~ "Sample" means a tobacco product, alternative nicotine product, or vapor  
 13 product distributed to members of the general public at no cost;

14 ~~(8)~~~~(7)~~ "Subjobber" means any person who purchases tobacco products, on which the  
 15 Kentucky cigarette tax has been paid, from a wholesaler licensed pursuant to KRS  
 16 138.195, and makes them available to a retail establishment for resale;

17 ~~(9)~~~~(8)~~ ~~{(a) —}~~ "Tobacco product" means:

18 (a) Any ~~[cigarette, cigar, snuff,]~~ smokeless tobacco product, smoking tobacco,  
 19 chewing tobacco, and any kind or form of tobacco prepared in a manner  
 20 suitable for chewing, snorting, or smoking, or any combination  
 21 thereof; ~~[both,] or [any kind or form of tobacco that is suitable to be placed in~~  
 22 ~~a person's mouth.]~~

23 (b) Any product, which has not been approved by the Federal Drug  
 24 Administration as an over-the-counter nicotine replacement therapy, that is  
 25 suitable to be placed in an individual's oral cavity which contains:

26 1. Any kind or form of tobacco; or

27 2. Any kind or form of a product containing nicotine which may or may

1 not contain tobacco; or

2 3. Vapor products~~["Tobacco product" does not include any alternative~~  
 3 ~~nicotine product, vapor product, or product regulated as a drug or device~~  
 4 ~~by the United States Food and Drug Administration under Chapter V of~~  
 5 ~~the Food, Drug, and Cosmetic Act]; and~~

6 (10)~~(9)~~ (a) "Vapor product" means any noncombustible product that employs a  
 7 heating element, battery, power source, electronic circuit, or other electronic,  
 8 chemical, or mechanical means, regardless of shape or size and including the  
 9 component parts and accessories thereto, that can be used to deliver vaporized  
 10 or aerosolized nicotine or other substances to users inhaling from the device.  
 11 "Vapor product" includes but is not limited to any electronic cigarette,  
 12 electronic cigar, electronic cigarillo, electronic pipe, or similar product or  
 13 device and every variation thereof, regardless of whether marketed as such,  
 14 and any vapor cartridge or other container of a liquid solution or other  
 15 material that is intended to be used with or in an electronic cigarette,  
 16 electronic cigar, electronic cigarillo, electronic pipe, or other similar product  
 17 or device.

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

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

23 (1) (a) A retailer or manufacturer of an enhanced vapor product shall register with  
 24 the Department of Alcoholic Beverage Control.

25 (b) The registration fee for a retailer or manufacturer of enhanced vapor  
 26 products shall be two hundred ten dollars (\$210) per location annually.

27 1. Registration fees paid into the State Treasury under this subsection

1 shall be credited to a revolving trust and agency account, as provided  
2 in KRS 45.253, for the Department of Alcoholic Beverage Control.

3 2. These moneys shall be used solely for the administration and  
4 enforcement of KRS 438.305 to 438.340.

5 3. Notwithstanding KRS 45.229, any moneys remaining in the fund at  
6 the close of the fiscal year shall not lapse but shall be carried forward  
7 into the succeeding fiscal year to be used for the purposes set forth in  
8 subparagraph 2. of this paragraph.

9 (2) (a) A registered retailer or manufacturer of an enhanced vapor product shall  
10 not sell the enhanced vapor product online, through catalog sales, or by  
11 phone. All sales of enhanced vapor products shall require an in-person  
12 purchase.

13 (b) It shall be unlawful for any person in the business of selling enhanced  
14 vapor products in another state or country to deliver or ship or cause to be  
15 delivered or shipped any enhanced vapor product directly to any Kentucky  
16 resident who does not hold a valid manufacturer or retailer registration  
17 issued by the Commonwealth of Kentucky.

18 (3) (a) No later than January 1, 2021, proof of age verification for purchasers of  
19 enhanced vapor products under this section shall require real-time age  
20 verification through an electronic third-party source.

21 (b) Every retailer of enhanced vapor products shall display at all times in a  
22 prominent place a printed card at least eight (8) inches by eleven (11) inches  
23 in size which shall show, in thirty (30) point or larger type, substantially as  
24 follows:

25 Persons under the age of twenty-one (21) are subject to a fine of up to one  
26 hundred dollars (\$100) if they:

27 1. Enter the premises of an enhanced vapor product retailer to buy, or

- 1                   have provided to them enhanced vapor products.
- 2                   2. Possess, purchase, attempt to purchase, or get another to purchase
- 3                   enhanced vapor products.
- 4                   3. Misrepresent their age for the purpose of purchasing or obtaining
- 5                   enhanced vapor products.
- 6                   (c) The fine referenced in paragraph (b) of this subsection shall be
- 7                   administered by the Department of Alcoholic Beverage Control using a civil
- 8                   enforcement procedure.
- 9                   (4) A retailer or manufacturer of enhanced vapor products shall not permit a person
- 10                  under the age of twenty-one (21) unaccompanied by a parent or guardian to
- 11                  remain on the premises.
- 12                  (5) A violation of this section by a retailer or manufacturer of enhanced vapor
- 13                  products may result in a revocation of the retailer's or manufacturer's
- 14                  registration.