

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM  
2024 REGULAR SESSION  
**Unofficial Document**

Amend printed copy of **SB 344**

On page 1, beginning on line 3 and ending on page 11, line 20 by deleting all text and inserting the following in lieu thereof:

"➔SECTION 1. A NEW SECTION OF KRS 438.305 TO 438.340 IS CREATED TO READ AS FOLLOWS:

**The General Assembly finds and declares that:**

- (1) Young persons aged twenty-one (21) and younger are significant users of cigarettes and flavored, disposable vapor products, and these products pose a risk to their health and development;**
- (2) In 2020, to protect young persons, the General Assembly raised the age to legally purchase vapor products from eighteen (18) to twenty-one (21) years to align the laws regarding the legal purchase of vapor products with tobacco and cigarettes;**
- (3) To ensure compliance with the laws regarding sales of tobacco and vapor products, Kentucky conducts random checks of retailers who sell vapor products to enforce compliance with age restrictions;**
- (4) Some noncompliance among retailers persists, mostly among those whose primary business is not devoted solely to the sale of vapor products; and**
- (5) Those retailers who vigilantly enforce age restrictions barring the sale of tobacco and vapor products to those under the age of twenty-one (21) should be aided and supported**

Amendment No. SFA

Rep. Sen. Jimmy Higdon

Committee Amendment \_\_\_\_\_

Signed:  \_\_\_\_\_

Floor Amendment \_\_\_\_\_

LRD Drafter: \_\_\_\_\_

Adopted: \_\_\_\_\_

Date: \_\_\_\_\_

Rejected: \_\_\_\_\_

Doc. ID: XXXX

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by a sensible scheme of licensure that monitors compliance, identifies noncompliant retailers, and supports legitimate, legal, retail activities in the Commonwealth.

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

(1) Notwithstanding any provision of law to the contrary and except as provided in subsection (2) of this section, beginning December 1, 2024, no person, firm, or corporation shall:

(a) Operate as a retailer selling vapor products in or on any premises in the Commonwealth without first obtaining a vapor product business license issued by the department; or

(b) Sell, at retail, a flavored vapor product to a customer except through a face-to-face sales transaction at a licensed, age-restricted vapor product business.

(2) Licensure shall not be required of and shall not prohibit persons engaged in display, exhibition, or sale of vapor products, including flavored vapor products, at trade shows or exhibitions provided that:

(a) Access to the portion of the trade show's venue where flavored vapor products are displayed, offered for sale, or sold is restricted to persons who are over the age of twenty-one (21);

(b) Each attendee of the trade show, as a condition of admission to the venue, presents a photo identification which shall be authenticated and verified through a third-party electronic database approved by the department; and

(c) Manufacturers, distributors, or retailers whose flavored vapor products are displayed, offered for sale, or sold at the venue shall conduct a secondary age authentication and verification prior to commencing the retail sale transaction for any vapor product.

➔SECTION 3. A NEW SECTION OF KRS 348.305 TO 348.340 IS CREATED TO READ AS FOLLOWS:

- (1) No person shall sell or cause to be sold any vapor product at retail to any person under the age of twenty-one (21) or solicit any person under the age of twenty-one (21) to purchase any vapor product at retail.
- (2) The department, with the assistance of the Department of Agriculture, sheriff, chief of police, or the employees of those offices shall:

  - (a) Investigate the information provided in each vapor product business licensure application; and
  - (b) If the license is approved, notwithstanding KRS 438.330 and 438.337, random inspections or compliance checks of the licensee shall be conducted not less than once annually during normal business hours or as deemed appropriate by the commissioner.
- (3) Any violation found during a compliance check shall be rechecked by the department's enforcement division:

  - (a) Not earlier than one (1) month nor later than three (3) months after a notice of violation is issued to the licensee; or
  - (b) As soon as the commissioner deems practicable.
- (4) Notwithstanding any provision of law to the contrary and in addition to any other fines or penalties that may apply, any person who violates subsection (1) of Section 2 of this Act shall be subject to a fine of:

  - (a) Five thousand dollars (\$5,000) for the first violation;
  - (b) Ten thousand dollars (\$10,000) for the second violation; and
  - (c) Twenty-five thousand dollars (\$25,000) for a third or subsequent violation.
- (5) Notwithstanding any provision of law to the contrary, and in addition to any penalties

imposed under KRS 438.313 for violations pertaining to the distribution of vapor products and KRS 438.315 for violations pertaining to the sale of vapor products from vending machines, any person who violates subsection (1) of this section shall be subject to a fine of:

- (a) Five thousand dollars (\$5,000) for a first violation;
- (b) Ten thousand dollars (\$10,000) for a second violation; and
- (c) Permanent revocation of the retail license to sell vapor products required in subsection (1) of Section 2 of this Act upon a third violation.

(6) The fine shall be imposed and collected by the Department of Alcoholic Beverage Control using a civil enforcement procedure.

→SECTION 4. A NEW SECTION OF KRS 438.305 TO 438.340 IS CREATED TO READ AS FOLLOWS:

(1) Each application for a vapor products business license shall be made in a form prescribed by the department, along with the license fee, and any supporting documentation required by the department. The license may be renewed annually. The vapor products business license shall be posted in a conspicuous place in the premises of the business where vapor products are sold.

(2) The license shall remain in full force and effect from the date of issuance until the next occurring January 1 unless it is surrendered by the licensee, suspended, or revoked.

(3) The fee for each license shall be two hundred fifty dollars (\$250) per year for each licensed premises and the fee shall be made payable to the department.

(4) The license shall not be transferred from one (1) person to another or from one (1) location to another location. A new license shall be required whenever a retailer has a change in ownership.

→SECTION 5. A NEW SECTION OF KRS 438.305 TO 438.340 IS CREATED TO

READ AS FOLLOWS:

- (1) The commissioner shall approve or deny every application for a license within sixty (60) days from the receipt of a completed application.
- (2) If the application is denied, the:

  - (a) License shall not be issued;
  - (b) License fee shall be returned to the applicant;
  - (c) Applicant shall be notified of the commissioner's denial which shall include the reason for the denial; and
  - (d) Applicant may appeal the denial and request an administrative hearing on the matter in accordance with KRS Chapter 13B.
- (3) If the commissioner permanently revokes a license pursuant to Section 3 of this Act, the commissioner shall:

  - (a) Notify the applicant within ten (10) days of the decision to revoke the license;
  - (b) Commence a hearing on the license revocation in accordance with KRS Chapter 13B; and
  - (c) Issue a final order explaining the decision and facts supporting the license revocation.

A final order of the commissioner shall be appealable to the Franklin Circuit Court.
- (4) Within thirty (30) days of the effective date of this Act, the department shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and Sections 1, 2, 3, and 4 of this Act, including establishing a procedure for administering citations, issuing orders, and filing appeals under this section and Section 2 of this Act for any violation of the provisions of Sections 1 to 5 of this Act, order of the commissioner, or administrative regulation promulgated thereunder.

➔ Section 6. KRS 438.305 is amended to read as follows:

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

- (1) **"Age-restricted vapor product business" means any business that:**
  - (a) **Requires persons to be twenty-one (21) years of age or older to enter the premises of the business;**
  - (b) **Determines the age of the customer through authentication and verification of the purchaser's photo identification using a third-party electronic database approved by the department; and**
  - (c) **Derives no less than seventy-five percent (75%) if its gross sales from the sale of vapor products and vapor product accessories;**
- (2) **"Accessory" means any product that is intended or reasonably expected to be used for the human consumption of a vapor product;**
- (3) (a) "Alternative nicotine product" means a noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means.  
  
(b) "Alternative nicotine product" does not include any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act;
- (4) **"Characterizing flavor" means a taste or aroma, excluding the taste or aroma of tobacco or menthol, imparted either prior to or during consumption of a tobacco product or any byproduct produced by a vapor product;**
- (5) **"Commissioner" means the commissioner of the Department of Alcoholic Beverage Control;**
- (6) **"Department" means the Department of Alcoholic Beverage Control;**
- (7) **"Flavored vapor product" means any vapor product that contains nicotine derived from any source, and includes as an ingredient a characterizing flavor other than tobacco or**

**menthol:**

- ~~(8)~~~~(2)~~ "Manufacturer" means any person who manufactures or produces tobacco products within or without this Commonwealth;
- ~~(9)~~~~(3)~~ "Nonresident wholesaler" means any person who purchases cigarettes or other tobacco products directly from the manufacturer and maintains a permanent location or locations outside this state at which Kentucky cigarette tax evidence is attached or from which Kentucky cigarette tax is reported and paid;
- ~~(10)~~~~(4)~~ "Proof of age" means a driver's license or other documentary or written evidence of an individual's age;
- ~~(11)~~~~(5)~~ "Resident wholesaler" means any person who purchases at least seventy-five percent (75%) of all cigarettes or other tobacco products purchased by that person directly from the cigarette manufacturer on which the cigarette tax provided for in KRS 138.130 to 138.205 is unpaid, and who maintains an established place of business in this state at which the person attaches cigarette tax evidence or receives untaxed cigarettes;
- ~~(12)~~~~(6)~~ "Sample" means a tobacco product, alternative nicotine product, or vapor product distributed to members of the general public at no cost;
- ~~(13)~~~~(7)~~ "Subjobber" means any person who purchases tobacco products, on which the Kentucky cigarette tax has been paid, from a wholesaler licensed pursuant to KRS 138.195, and makes them available to a retail establishment for resale;
- ~~(14)~~~~(8)~~ (a) "Tobacco product" means any cigarette, cigar, snuff, smokeless tobacco product, smoking tobacco, chewing tobacco, and any kind or form of tobacco prepared in a manner suitable for chewing or smoking, or both, or any kind or form of tobacco that is suitable to be placed in a person's mouth. "Tobacco product" also means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product,

except for raw materials other than tobacco used in manufacturing any component, part, or accessory of a tobacco product, in accordance with the federal Tobacco Control Act, Pub. L. No. 111-31;

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

**(15) "Trade show" means an event where businesses in a given industry gather to exhibit their products and services and may include marketing and sales of those products and services; and**

~~(16)(9)~~ (a) "Vapor product" means any noncombustible product that employs a heating element, battery, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size and including the component parts and accessories thereto, that can be used to deliver vaporized nicotine or other substances to users inhaling from the device. "Vapor product" includes but is not limited to any device deemed to be an electronic nicotine delivery system by the United States Food and Drug Administration, any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and every variation thereof, regardless of whether marketed as such, and any vapor cartridge or other container of a liquid solution or other material that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar product or device.

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

➔Section 7. KRS 438.310 is amended to read as follows:



- (1) No person shall sell or cause to be sold any tobacco product ~~or~~ alternative nicotine product~~, or vapor product~~ at retail to any person under the age of twenty-one (21), or solicit any person under the age of twenty-one (21) to purchase any tobacco product ~~or~~ alternative nicotine product~~, or vapor product~~ at retail.
- (2) Any person who sells tobacco products, alternative nicotine products, or vapor products at retail shall cause to be posted in a conspicuous place in his or her establishment a notice stating that it is illegal to sell tobacco products, alternative nicotine products, or vapor products to persons under age twenty-one (21).
- (3) Any person selling tobacco products, alternative nicotine products, or vapor products shall require proof of age from a prospective buyer or recipient if the person has reason to believe that the prospective buyer or recipient is under the age of twenty-one (21).
- (4) A person who violates subsection (1) or (2) of this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for a first violation and a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) for any subsequent violation. The fine shall be administered by the Department of Alcoholic Beverage Control using a civil enforcement procedure.

➔Section 8. KRS 438.337 is amended to read as follows:

- (1) The Department of Alcoholic Beverage Control shall carry out the enforcement provisions of KRS 438.305 to 438.340.
- (2) The Department of Alcoholic Beverage Control shall be entitled to the revenue produced by one-twentieth of one cent (\$0.0005) of the three-cent (\$0.03) per pack revenue collected by the Finance and Administration Cabinet from the state excise tax on the sale of cigarettes as imposed by KRS 138.140 **and one hundred percent (100%) of the license fee imposed by Section 4 of this Act unless the license is denied** to be deposited in a trust and agency account created in the State Treasury, and to keep fifty percent (50%) of any fines

collected under KRS 438.305 to 438.340 to offset the costs of enforcement of KRS 438.305 to 438.340.

- (3) The Department of Alcoholic Beverage Control shall be responsible for maintaining statistics for compilation of required reports to be submitted to the United States Department of Health and Human Services.
- (4) The Department of Alcoholic Beverage Control shall devise a plan and time frame for enforcement to determine by random inspection if the percentage of retailers or distributors making illegal sales to persons under the age of twenty-one (21) does or does not exceed federal guidelines preventing tobacco sales to persons under the age of twenty-one (21).

➔Section 9. Sections 1 to 5 of this Act shall be known as the Kentucky Youth Tobacco and Vapor Products Harm Reduction and Prevention Act of 2024."