

1 AN ACT relating to the regulation of nicotine products.

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

3 ➔Section 1. KRS 241.060 is amended to read as follows:

4 The board shall have the following functions, powers, and duties:

- 5 (1) To promulgate reasonable administrative regulations governing procedures relative
6 to the applications for and revocations of licenses, the supervision and control of the
7 use, manufacture, sale, transportation, storage, advertising, and trafficking of
8 alcoholic beverages, and all other matters over which the board has jurisdiction.
9 The only administrative regulation that shall be promulgated in relation to the direct
10 shipper license is to establish the license application, as set forth in KRS
11 243.027(4). To the extent any administrative regulation previously promulgated is
12 contrary to the provisions of KRS 13A.120(2), the board shall repeal or amend the
13 administrative regulation as necessary by January 1, 2022. Administrative
14 regulations need not be uniform in their application but may vary in accordance
15 with reasonable classifications;
- 16 (2) To limit in its sound discretion the number of licenses of each kind or class to be
17 issued in this state or any political subdivision, and restrict the locations of licensed
18 premises. To this end, the board may make reasonable division and subdivision of
19 the state or any political subdivision into districts. Administrative regulations
20 relating to the approval, denial, and revocation of licenses may be different within
21 the several divisions or subdivisions;
- 22 (3) To hold hearings in accordance with the provisions of KRS Chapter 13B. The
23 department may pay witnesses the per diem and mileage provided in KRS 421.015;
- 24 (4) To conduct hearings and appeals under KRS 241.150, 241.200, 241.260, 243.470,
25 **and** 243.520~~[, 438.308, 438.309, 438.312, 438.316, and 438.340]~~ and render final
26 orders upon the subjects of the hearings and appeals;
- 27 (5) (a) To order the destruction of evidence, other than contraband alcoholic

1 beverages suitable for public auction under paragraph (b) of this subsection, in
2 the department's possession after all administrative and judicial proceedings
3 are conducted.

4 (b) To dispose of contraband alcoholic beverages through public auction if:

5 1. A final order relating to those contraband alcoholic beverages has been
6 entered after all administrative and judicial proceedings are conducted,
7 if applicable;

8 2. The entire proceeds of the public auction are donated to the alcohol
9 wellness and responsibility education fund established in KRS 211.285;
10 and

11 3. The board deems the inventory safe to release to the public, including
12 but not limited to the alcoholic beverages being in their original,
13 unopened packaging;

14 (6) To suspend, revoke, or cancel for cause, after a hearing in accordance with KRS
15 Chapter 13B, any license; and

16 (7) To prohibit the issuance of a license for the premises until the expiration of two (2)
17 years from the time the offense was committed if a violation of KRS Chapters 241
18 to 244 has taken place on the premises which the owner knew of or should have
19 known of, or was committed or permitted in or on the premises owned by the
20 licensee.

21 ➔Section 2. KRS 438.305 is amended to read as follows:

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

23 (1) (a) "Alternative nicotine product" means a noncombustible product containing
24 nicotine that is intended for human consumption, whether chewed, absorbed,
25 dissolved, or ingested by any other means.

26 (b) "Alternative nicotine product" does not include any product regulated as a
27 drug or device by the United States Food and Drug Administration under

1 Chapter V of the Food, Drug, and Cosmetic Act;

2 (2) ~~["Authorized vapor product" means a vapor product containing nicotine for which~~
3 ~~the manufacturer has obtained:~~

4 (a) ~~Authorization from the FDA; or~~

5 (b) ~~A safe harbor certification;~~

6 (3) ~~"Department" means the Department of Alcoholic Beverage Control;~~

7 (4) ~~"FDA" means the United States Food and Drug Administration;~~

8 (5) ~~]"Manufacturer" means any person who manufactures or produces tobacco products~~
9 ~~within or without this Commonwealth;~~

10 (3)~~(6)] "Nonresident wholesaler" means any person who purchases cigarettes or other~~
11 ~~tobacco products directly from the manufacturer and maintains a permanent~~
12 ~~location or locations outside this state at which Kentucky cigarette tax evidence is~~
13 ~~attached or from which Kentucky cigarette tax is reported and paid;~~

14 (4)~~(7)] "Proof of age" means a driver's license or other documentary or written~~
15 ~~evidence of an individual's age;~~

16 (5)~~(8)] "Resident wholesaler" means any person who purchases at least seventy-five~~
17 ~~percent (75%) of all cigarettes or other tobacco products purchased by that person~~
18 ~~directly from the cigarette manufacturer on which the cigarette tax provided for in~~
19 ~~KRS 138.130 to 138.205 is unpaid, and who maintains an established place of~~
20 ~~business in this state at which the person attaches cigarette tax evidence or receives~~
21 ~~untaxed cigarettes;~~

22 ~~[(9) "Retailer" means any person, online or in person, who sells tobacco products,~~
23 ~~alternative nicotine products, or vapor products to a consumer for any purpose other~~
24 ~~than resale;~~

25 (10) ~~"Safe harbor certification":~~

26 (a) ~~Means a certification provided by a manufacturer establishing that a vapor~~
27 ~~product:~~

- 1 ~~1. Falls within a safe harbor established by the FDA by the manufacturer's~~
2 ~~timely pursuing the path to market described in subparagraph 2. of this~~
3 ~~paragraph; and~~
- 4 ~~2. Is a nicotine product containing tobacco-derived nicotine that was~~
5 ~~commercially marketed in the United States as of August 8, 2016, for which~~
6 ~~the manufacturer submitted a premarket tobacco product application on or~~
7 ~~before September 9, 2020, to the FDA that:~~
- 8 ~~a. Remains under review, but has not received either a marketing denial order or~~
9 ~~a marketing granted order;~~
- 10 ~~b. Has received a marketing denial order, but remains under a stay by the FDA~~
11 ~~or continues to be subject to an appeal to or review by a court of competent~~
12 ~~jurisdiction; or~~
- 13 ~~c. Has had a marketing denial order that has been rescinded by the FDA or~~
14 ~~vacated by a court of competent jurisdiction;~~
- 15 ~~(b) Shall contain a copy of the first page of the communication from the FDA~~
16 ~~reflecting an acceptance for review or the submission tracking number or, if~~
17 ~~on appeal, a copy of the first page of the document filed with the applicable~~
18 ~~agency or court; and~~
- 19 ~~(c) May be provided and maintained in hard copy or in electronic form;]~~
- 20 (6)~~[(11)]~~ "Sample" means a tobacco product, alternative nicotine product, or vapor
21 product distributed to members of the general public at no cost;
- 22 (7)~~[(12)]~~ "Subjobber" means any person who purchases tobacco products, on which the
23 Kentucky cigarette tax has been paid, from a wholesaler licensed pursuant to KRS
24 138.195, and makes them available to a retail establishment for resale;
- 25 ~~[(13)] "Tobacco noncompliance database and reporting system" means the database of~~
26 ~~retailers that have violated KRS 438.312 or 438.316 developed and maintained by~~
27 ~~the department under KRS 438.307;]~~

1 ~~(8)~~~~[(14)]~~ (a) "Tobacco product" means any cigarette, cigar, snuff, smokeless tobacco
 2 product, smoking tobacco, chewing tobacco, and any kind or form of tobacco
 3 prepared in a manner suitable for chewing or smoking, or both, or any kind or
 4 form of tobacco that is suitable to be placed in a person's mouth. "Tobacco
 5 product" also means any product made or derived from tobacco that is
 6 intended for human consumption, including any component, part, or accessory
 7 of a tobacco product, except for raw materials other than tobacco used in
 8 manufacturing any component, part, or accessory of a tobacco product, in
 9 accordance with the federal Tobacco Control Act, Pub. L. No. 111-31.

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

14 ~~(15) "Unauthorized vapor product":~~

15 ~~(a) Means any vapor product that has not been authorized by the FDA; and~~

16 ~~(b) Does not include a vapor product for which the manufacturer has received:~~

17 ~~1. A marketing granted order or other authorization to market from the~~
 18 ~~FDA; or~~

19 ~~2. A safe harbor certification}; and~~

20 ~~(9)~~~~[(16)]~~ (a) "Vapor product" means any noncombustible product that employs a
 21 heating element, battery, power source, electronic circuit, or other electronic,
 22 chemical, or mechanical means, regardless of shape or size and including the
 23 component parts and accessories thereto, that can be used to deliver vaporized
 24 nicotine or other substances to users inhaling from the device. "Vapor
 25 product" includes but is not limited to any device deemed to be an electronic
 26 nicotine delivery system by the United States Food and Drug Administration,
 27 any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe,

1 or similar product or device and every variation thereof, regardless of whether
2 marketed as such, and any vapor cartridge or other container of a liquid
3 solution or other material that is intended to be used with or in an electronic
4 cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar
5 product or device.

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

9 ➔Section 3. KRS 438.310 is amended to read as follows:

10 (1) No person shall sell or cause to be sold any tobacco product, ~~or~~ alternative
11 nicotine product, or vapor product at retail to any person under the age of twenty-
12 one (21), or solicit any person under the age of twenty-one (21) to purchase any
13 tobacco product or alternative nicotine product at retail.

14 (2) Any person who sells tobacco products, ~~or~~ alternative nicotine products, or vapor
15 products at retail shall cause to be posted in a conspicuous place in his or her
16 establishment a notice stating that it is illegal to sell tobacco products, alternative
17 nicotine products, or vapor products to persons under age twenty-one (21).

18 (3) Any person selling tobacco products, alternative nicotine products, or vapor
19 products shall require proof of age from a prospective buyer or recipient if the
20 person has reason to believe that the prospective buyer or recipient is under the age
21 of twenty-one (21).

22 (4) A person who violates subsection (1) or (2) of this section shall be subject to a fine
23 of not less than one hundred dollars (\$100) nor more than five hundred dollars
24 (\$500) for a first violation and a fine of not less than five hundred dollars (\$500)
25 nor more than one thousand dollars (\$1,000) for any subsequent violation. The fine
26 shall be administered by the Department of Alcoholic Beverage Control using a
27 civil enforcement procedure.

1 ➔Section 4. KRS 438.313 is amended to read as follows:

- 2 (1) No wholesaler, retailer, or manufacturer of cigarettes, tobacco products,~~[or]~~
3 alternative nicotine products, or vapor products may distribute cigarettes, tobacco
4 products, ~~[or]~~alternative nicotine products, or vapor products, including samples
5 thereof, free of charge or otherwise, to any person under the age of twenty-one (21).
- 6 (2) Any person who distributes cigarettes, tobacco products,~~[or]~~ alternative nicotine
7 products, or vapor products, including samples thereof, free of charge or otherwise
8 shall require proof of age from a prospective buyer or recipient if the person has
9 reason to believe that the prospective purchaser or recipient is under the age of
10 twenty-one (21).
- 11 (3) Any person who violates the provisions of this section shall be fined not less than
12 one thousand dollars (\$1,000) nor more than two thousand five hundred dollars
13 (\$2,500) for each offense. The fine shall be administered by the Department of
14 Alcoholic Beverage Control using a civil enforcement procedure for persons
15 eighteen (18) years of age or older.
- 16 (4) All peace officers with general law enforcement authority and employees of the
17 Department of Alcoholic Beverage Control may issue a uniform citation, but may
18 not make an arrest, or take a child into custody, for a violation of this section.

19 ➔Section 5. The following KRS sections are repealed:

- 20 438.306 Retailer to disclose to Secretary of State whether it sells authorized vapor
21 products -- Secretary of State to maintain list of retailers.
- 22 438.307 Enforcement by Department of Alcoholic Beverage Control -- Online
23 publication of list of retailers of authorized vapor products.
- 24 438.308 Duties and responsibilities of manufacturers of vapor products.
- 25 438.309 Duties and responsibilities of wholesalers.
- 26 438.312 Prohibition on retailers distributing authorized vapor products to any person
27 under age 21 -- Affirmative defense -- Penalties.

- 1 438.316 Prohibition on sale of unauthorized vapor products -- Safe harbor certification -
- 2 - Penalties.
- 3 438.331 Enforcement by certified peace officers -- Citations.