

SECOND REGULAR SESSION

HOUSE BILL NO. 2211

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ROBERTS.

3824H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 196, RSMo, by adding thereto one new section relating to vapor products, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 196, RSMo, is amended by adding thereto one new section, to be known as section 196.1202, to read as follows:

196.1202. 1. As used in this section, the following terms mean:

(1) "Department", the Missouri department of revenue;

(2) "Director", the director of the Missouri department of revenue;

(3) "Vapor product", the same meaning as defined under section 407.925.

2. On or before January 1, 2025, and annually on or before each January first thereafter, every manufacturer of vapor products that are sold in this state, whether directly or through a distributor, wholesaler, retailer, or similar intermediary or intermediaries, shall certify under penalty of perjury on a form and in the manner prescribed by the director that the manufacturer agrees to comply with this chapter and that:

(1) The manufacturer has received a marketing authorization or similar order for the vapor product from the United States Food and Drug Administration under 21 U.S.C. Section 387j; or

(2) The vapor product was marketed in the United States as of August 8, 2016, the manufacturer submitted a premarket tobacco product application for the vapor product to the United States Food and Drug Administration under 21 U.S.C. Section 387j on or before September 9, 2020, and the application either remains under review

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 by the United States Food and Drug Administration or a final decision on the
19 application has not otherwise taken effect.

20 3. A manufacturer shall submit a certification form that separately lists each
21 vapor product that is sold in this state.

22 4. Each annual certification form required by subsections 2 and 3 of this section
23 shall be accompanied by:

24 (1) A copy of the marketing authorization or other order for the vapor product
25 issued by the United States Food and Drug Administration under 21 U.S.C. Section
26 387j, or evidence that the premarket tobacco product application for the vapor product
27 was submitted to the United States Food and Drug Administration and a final
28 authorization or order has not yet taken effect; and

29 (2) A payment of two hundred dollars for each vapor product the first time a
30 vapor product manufacturer submits a certification form for that product and a
31 payment of two hundred dollars annually thereafter for each vapor product.

32 5. A manufacturer required to submit a certification form under subsections 2
33 and 3 of this section shall notify the director within thirty days of any material change to
34 the certification form, including the issuance or denial of a marketing authorization or
35 other order by the United States Food and Drug Administration under 21 U.S.C. Section
36 387j, or any other order or action by the United States Food and Drug
37 Administration or any court that affects the ability of the vapor product to be
38 introduced or delivered into interstate commerce for commercial distribution in the
39 United States.

40 6. On or before June 1, 2025, the director shall maintain and make publicly
41 available on the department's website a directory that lists all vapor product
42 manufacturers and vapor products for which certification forms have been submitted
43 and shall update the directory as necessary to ensure accuracy.

44 7. The director shall provide manufacturers notice and an opportunity to cure
45 deficiencies before removing manufacturers or products from the directory.

46 (1) The director shall not remove the manufacturer or its products from the
47 directory until at least fifteen days after the manufacturer has been given notice of an
48 intended action. Notice shall be sufficient and be deemed immediately received by a
49 manufacturer if the notice is sent either electronically or by facsimile to an electronic
50 mail address or facsimile number, as the case may be, provided by the manufacturer in
51 its most recent certification filed under subsections 2 and 3 of this section.

52 (2) The vapor product manufacturer shall have fifteen business days from the
53 date of service of the notice of the director's intended action to establish that the vapor
54 product manufacturer or its products should be included in the directory.

55 **(3) A determination by the director to not include or to remove from the**
56 **directory a manufacturer or a vapor product shall be subject to review by the filing of a**
57 **civil action for prospective declaratory or injunctive relief.**

58 **8. If a product is removed from the directory, each retailer, distributor, and**
59 **wholesaler shall have twenty-one days from the day such product is removed from the**
60 **directory to remove the product from its inventory and return the product to the**
61 **manufacturer for disposal. After twenty-one days following removal from the directory,**
62 **the vapor products of a manufacturer identified in the notice of removal are contraband**
63 **and are subject to penalties under subsection 10 of this section and seizure, forfeiture,**
64 **and destruction under subdivision (2) of subsection 11 of this section.**

65 **9. Beginning June 1, 2025, or on the date that the director first makes the**
66 **directory available for public inspection on the department of revenue website, a person**
67 **shall not sell or offer for sale a vapor product in this state that is not included in the**
68 **directory described by subsections 2 and 3 of this section, and a vapor product**
69 **manufacturer shall not sell, either directly or through a distributor or wholesaler,**
70 **retailer, or similar intermediary or intermediaries, a vapor product in this state that is**
71 **not included in the directory described by subsections 2 and 3 of this section.**

72 **10. The following penalties shall apply to violations of this section:**

73 **(1) A wholesaler, distributor, or retailer of vapor products who sells or offers for**
74 **sale a vapor product in this state that is not included in the directory:**

75 **(a) For a first violation of this section, shall be subject to a civil penalty of five**
76 **hundred dollars per day for each product offered for sale in violation of this section**
77 **until the offending product is removed from the market or until the offending product is**
78 **properly listed in the directory;**

79 **(b) For a second violation within a twelve-month period, the license of the**
80 **licensee shall be suspended for at least fourteen days;**

81 **(c) For a third violation within a twelve-month period, the license of the licensee**
82 **shall be suspended for at least sixty days; and**

83 **(d) For a fourth or subsequent violation within a twelve-month period, the**
84 **license of the licensee shall be suspended for at least one year;**

85 **(2) A manufacturer of vapor products whose vapor products are not listed in the**
86 **directory and are sold in this state, whether directly or through a distributor,**
87 **wholesaler, retailer, or similar intermediary or intermediaries, is subject to a civil**
88 **penalty of five hundred dollars per day for each product offered for sale in violation of**
89 **this section until the offending product is removed from the market or until the**
90 **offending product is properly listed in the directory. In addition, any manufacturer of**
91 **vapor products that falsely represents any of the information required by subsection 2**

92 or 3 of this section shall be guilty of a class C misdemeanor for each false representation;
93 and

94 (3) A repeated violation of this section shall constitute an unfair trade practice
95 under the provisions of sections 375.930 to 375.948. Nothing in this section shall be
96 construed to create or imply a private cause of action for a violation of sections 376.2050
97 to 376.2053.

98 11. (1) The director or the attorney general may examine the books, papers, and
99 records of any distributor, wholesaler, or retailer in this state for the purpose of
100 determining compliance with this section. The director or the attorney general may
101 make inspections and examinations at any time during ordinary business hours, and
102 may inspect the premises and all desks, safes, vaults, and other fixtures and furniture
103 contained in or upon the premises for the purpose of ascertaining whether
104 noncompliant vapor products are held or possessed in violation of this section.
105 Unannounced follow-up inspections and examinations of all noncompliant distributors,
106 wholesalers, and retailers are required within thirty days after any violation of this
107 section. The director shall publish the results of all inspections and examinations at
108 least annually and shall make the results available to the public upon request.

109 (2) Any vapor products offered for sale in violation of this section are declared to
110 be contraband goods and may be seized by the director or attorney general, the
111 director's agents or the attorney general's agents, or employees, or by any law
112 enforcement of this state if directed by the director or attorney general to do so, without
113 a warrant. The cost of such seizure, forfeiture, and destruction shall be borne by the
114 person from whom the products are confiscated.

115 (3) In an action brought under this section, the director or attorney general may
116 recover reasonable expenses incurred in investigating and preparing the case, and
117 attorney's fees.

118 12. The director shall disclose to the attorney general any information received
119 under this section that is requested by the attorney general for purposes of determining
120 compliance with and enforcing the provisions of this section. The director and attorney
121 general shall share with each other information received under this section, or
122 corresponding laws of other states.

123 13. (1) Any nonresident manufacturer of vapor products that has not registered
124 to do business in the state as a foreign corporation or business entity shall, as a condition
125 precedent to being included in the directory created in this section, appoint and
126 continually engage without interruption the services of an agent in this state to act as
127 agent for the service of process on whom all process shall be served, and any action or
128 proceeding against it concerning or arising out of the enforcement of this section, may

129 be served in any manner authorized by law. Such service shall constitute legal and valid
130 service of process on the manufacturer. The manufacturer shall provide the name,
131 address, telephone number, and proof of the appointment and availability of such agent
132 to the department.

133 (2) The manufacturer shall provide notice to the department thirty calendar
134 days prior to termination of the authority of an agent and shall further provide proof to
135 the satisfaction of the department of the appointment of a new agent no less than five
136 calendar days prior to the termination of an existing agent's appointment. In the event
137 an agent terminates an agency appointment, the manufacturer shall notify the
138 department of the termination within five calendar days and shall include proof to
139 the satisfaction of the department of the appointment of a new agent.

140 (3) Any manufacturer whose vapor products are sold in this state who has not
141 appointed and engaged the services of an agent as required by this section shall be
142 deemed to have appointed the secretary of state as its agent for service of process. The
143 appointment of the secretary of state as agent shall not satisfy the condition precedent
144 required in subdivision (1) of this subsection to be included or retained in the directory.

145 14. On or before December 31, 2025, and annually on or before each December
146 thirty-first thereafter, the director shall provide a report to the general assembly
147 regarding the status of the directory, manufacturers and products included in the
148 directory, revenue and expenditures related to the administration of this section, and
149 enforcement activities undertaken pursuant to this section.

150 15. All fees and penalties collected under this section shall be used for the
151 administration and enforcement of this section.

152 16. The department, in conjunction with the attorney general, may promulgate
153 all necessary rules and regulations for the administration of this section. Any rule or
154 portion of a rule, as that term is defined in section 536.010, that is created under the
155 authority delegated in this section shall become effective only if it complies with and is
156 subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This
157 section and chapter 536 are nonseverable and if any of the powers vested with the
158 general assembly pursuant to chapter 536 to review, to delay the effective date, or to
159 disapprove and annul a rule are subsequently held unconstitutional, then the grant of
160 rulemaking authority and any rule proposed or adopted after August 28, 2024, shall be
161 invalid and void.

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