

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2876

By: Wallace and **Randleman** of
the House

and

Floyd of the Senate

11 COMMITTEE SUBSTITUTE

12 An Act relating to revenue and taxation; creating the
13 Vapor Products Tax Code; defining terms; declaring
14 purpose of tax; levying an excise tax on e-liquids;
15 establishing amount of tax per unit of e-liquid;
16 providing duties, process, and timing for remittance;
17 making declaration as to person liable for tax;
18 requiring certain presumption; providing that e-
19 liquids continue to be subject to sales tax; making
20 declaration as to nature of tax; requiring retention
21 of certain documents by certain entities for certain
22 period of time; requiring certain documents be made
23 available for inspection during certain periods;
24 providing for apportionment of revenues; creating the
 Vapor Products Regulation Revolving Fund; providing
 revolving fund characteristics; declaring funds
 accruing to the fund appropriated; authorizing
 expenditure of funds by the Alcoholic Beverage Laws
 Enforcement Commission for certain purpose; providing
 process for expenditure; providing for codification;
 and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1551 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 Sections 1 through 7 of this act shall be known and may be cited
5 as the "Vapor Products Tax Code".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1552 of Title 68, unless there
8 is created a duplication in numbering, reads as follows:

9 As used in the Vapor Products Tax Code:

- 10 1. "Act" or "this act" means the Vapor Products Tax Code;
- 11 2. "Commission" means the Oklahoma Tax Commission;
- 12 3. "E-liquid" means a liquid that may contain nicotine,
13 flavorings or other ingredients that are intended for use in a vapor
14 product.

15 SECTION 3. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1553 of Title 68, unless there
17 is created a duplication in numbering, reads as follows:

18 A. For the purpose of providing revenue for the support of the
19 functions of state government, there is hereby levied an excise tax
20 of ten cents (\$0.10) per milliliter on all e-liquid imported or
21 manufactured, for sale, use or distribution, or used or possessed in
22 this state.

23 B. The excise tax levied under subsection A of this section
24 shall be paid as follows:

1 1. Payment of such tax shall be made by the person shipping the
2 product into Oklahoma, or in the case of direct imports from foreign
3 countries by the importer, or in the case of e-liquids manufactured
4 in Oklahoma by the first seller thereof; and

5 2. Due and payable excise taxes levied by this section shall be
6 remitted electronically simultaneously with tax returns
7 electronically filed with the Commission using procedures prescribed
8 by the Commission. The tax returns shall be made under oath by the
9 person liable for the tax on forms prescribed and provided by the
10 Commission and shall be accompanied by payment of the taxes due and
11 any additional sums due as provided by this section. Tax returns
12 and payment of excise tax and other sums due shall be electronically
13 filed with the Commission no later than the fifteenth day of the
14 month immediately succeeding the month of shipment, importation or
15 first sale of the e-liquids as provided in paragraph 1 of this
16 section.

17 C. For the purpose of collecting and remitting the excise tax
18 imposed under this section, the person liable for such tax is hereby
19 declared to be the agent of the state for such purposes.

20 D. The Commission shall consider it a presumption that all e-
21 liquids delivered to a retailer in this state shall be used and
22 consumed within this state.

23 E. The retail sale of e-liquids shall continue to be subject to
24 the sales tax statutes enacted by the Legislature.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1504 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 The excise tax levied by the Vapor Products Tax Code is hereby
5 declared and intended to be a direct tax upon the ultimate retail
6 consumer of e-liquids in this state, and when such tax is paid by,
7 or collected from, any other person, as herein provided for, such
8 payment shall be considered as an advance payment for convenience
9 and facility only, and such tax shall thereafter be added to the
10 price of such e-liquid and recovered from the ultimate retail
11 consumer thereof.

12 SECTION 5. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1505 of Title 68, unless there
14 is created a duplication in numbering, reads as follows:

15 Copies of all invoices for the purchase or sale of any e-liquids
16 shall be retained by each manufacturer, distributor, and retailer
17 for a period of not less than three (3) years from the date of such
18 transaction. Upon the request of the Commission such documents, in
19 physical or electronic form, shall be made available to the
20 Commission for inspection by the Commission and their authorized
21 agents, provided such requests occur during the normal business
22 hours of the manufacturer, distributor, or retailer.

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1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1506 of Title 68, unless there
3 is created a duplication in numbering, reads as follows:

4 All revenue accruing from the excise tax levied by Section 3 of
5 this act shall be collected by the Commission and distributed as
6 follows:

- 7 1. For fiscal years ending on or prior to June 30, 2023:
 - 8 a. fifty percent (50%) to the Vapor Products Regulation
9 Revolving Fund created pursuant to Section 7 of this
10 act, and
 - 11 b. fifty percent (50%) to the General Revenue Fund;
- 12 2. For fiscal years beginning on or after July 1, 2023:
 - 13 a. seventy-five percent (75%) to the General Revenue
14 Fund; and
 - 15 b. twenty-five percent (25%) to the Vapor Products
16 Regulation Revolving Fund created pursuant to Section
17 7 of this act.

18 SECTION 7. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 5-128.1 of Title 37A, unless
20 there is created a duplication in numbering, reads as follows:

21 There is hereby created in the State Treasury a revolving fund
22 for the Alcoholic Beverage Laws Enforcement Commission to be
23 designated the "Vapor Products Regulation Revolving Fund". The fund
24 shall be a continuing fund, not subject to fiscal year limitations,

1 and shall consist of all monies designated for deposit in the fund
2 by law. All monies accruing to the credit of said fund are hereby
3 appropriated and may be budgeted and expended by the Alcoholic
4 Beverage Laws Enforcement Commission for the purpose of regulating
5 vapor products as required by law. Expenditures from said fund
6 shall be made upon warrants issued by the State Treasurer against
7 claims filed as prescribed by law with the Director of the Office of
8 Management and Enterprise Services for approval and payment.

9 SECTION 8. This act shall become effective January 1, 2022.
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11 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
12 02/25/2021 - DO PASS, As Amended and Coauthored.
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