

The Senate Committee on Regulated Industries and Utilities offered the following substitute to HB 1260:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to enact the "Georgia Nicotine Vapor Products Directory Act"; to provide for
3 definitions; to require the establishment and maintenance of a directory of nicotine vapor
4 products authorized for sale in this state; to prohibit the sale of any vapor product containing
5 nicotine that is not listed in the directory; to provide for compliance checks and enforcement;
6 to provide for seizure and destruction of contraband; to provide for civil penalties and
7 enforcement; to provide procedures for the revocation and suspension of licenses for
8 violations; to provide for statutory construction; to provide for rules and regulations; to
9 require an annual report to the General Assembly; to provide for related matters; to provide
10 an effective date; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
14 amended by designating Code Sections 48-11-1 through 48-11-30 as Article 1 of Chapter 11
15 and enacting a new article to read as follows:

16

"ARTICLE 217 48-11-40.

18 This article shall be known and may be cited as the 'Georgia Nicotine Vapor Products
19 Directory Act.'

20 48-11-41.21 As used in this article, the term:22 (1) 'Directory' means the directory of nicotine vapor products the commissioner is
23 required to develop and maintain as provided in this article.24 (2) 'FDA' means the United States Food and Drug Administration.25 (3) 'Foreign business entity' means an entity formed under a law other than the law of
26 this state.27 (4) 'Licensee' means any vapor product dealer, vapor product distributor, vapor product
28 importer, or vapor product manufacturer licensed under Article 1 of this chapter.29 (5) 'Nicotine vapor product' means any consumable vapor product that contains any
30 amount of nicotine and any vapor device developed or intended to deliver any
31 consumable vapor product that contains nicotine.32 (6) 'Timely filed premarket tobacco product application' means an application pursuant
33 to 21 U.S.C. Section 387j for a nicotine vapor product marketed in the United States as
34 of August 8, 2016, that was submitted to the FDA on or before September 9, 2020, and
35 accepted for filing.36 48-11-42.37 (a)(1) The commissioner shall develop a process by which vapor product manufacturers
38 can submit the certification required under subsection (b) of this Code section and any
39 other information required under this article to be used to create the directory listing

40 required under Code Section 48-11-43 and for such other purposes as provided in this
41 article. Such process may include a portal or software application accessible through an
42 internet website. The commissioner may allow a vapor product manufacturer to file a
43 single certification for all of its nicotine vapor products or require a separate certification
44 for each nicotine vapor product.

45 (2) Notwithstanding any law to the contrary, the commissioner shall be authorized to
46 disclose the certifications and any other information received pursuant to this chapter,
47 Chapters 13 and 13A of Title 10, and Title 16 with federal, state, or local courts or
48 agencies for purposes of enforcing the provisions of this chapter, Chapters 13 and 13A
49 of Title 10, and Title 16, or the corresponding laws of other states.

50 (b) Within 12 months of the effective date of this article, and annually thereafter, every
51 vapor product manufacturer that sells nicotine vapor products in this state or sells nicotine
52 vapor products to a licensee shall execute and deliver a certification to the commissioner
53 in a format prescribed by the commissioner through rules and regulations. In such
54 certification, the vapor product manufacturer shall attest, under penalty of perjury, as to
55 each nicotine vapor product:

56 (1) The vapor product manufacturer in offering such nicotine vapor product for sale in
57 this state or in selling such nicotine vapor product to a licensee for the purpose of selling
58 in it in this state is compliant with federal law and this chapter;

59 (2) The nicotine vapor product does not contain any substance or exceed the quantity of
60 any substance that is illegal to be sold in this state pursuant to federal law or the laws of
61 this state; and

62 (3)(A) The vapor product manufacturer has submitted a timely filed premarket tobacco
63 product application for the nicotine vapor product pursuant to 21 U.S.C. Section 387j
64 to the FDA, and the application either remains under review by the FDA or has
65 received a marketing denial order that has been and remains stayed by the FDA or court
66 order, rescinded by the FDA, or vacated by a court; or

67 (B) The vapor product manufacturer has received a marketing granted order under
68 21 U.S.C. Section 387j for the nicotine vapor product from the FDA.

69 (c) The certification under subsection (b) of this Code section shall require each vapor
70 product manufacturer to set forth:

71 (1) The name under which the vapor product manufacturer transacts or intends to
72 transact business;

73 (2) The license identification information for any license issued to the vapor product
74 manufacturer by the commissioner under Article 1 of this chapter;

75 (3) The address of the location of the vapor product manufacturer's principal place of
76 business;

77 (4) The vapor product manufacturer's email address;

78 (5) The brand name, category or type, product name, flavor, and description of each of
79 such vapor product manufacturer's nicotine vapor product that it seeks to have made part
80 of the directory; and

81 (6) Such other information as may be required by the commissioner pursuant to rules and
82 regulations.

83 (d) In addition to the certification required under subsection (b) of this Code section, each
84 vapor product manufacturer shall submit to the commissioner for each nicotine vapor
85 product a copy of:

86 (1)(A) The cover page of the marketing granted order issued pursuant to 21 U.S.C.
87 Section 387j;

88 (B) A copy of the acceptance letter issued by the FDA pursuant to 21 U.S.C.
89 Section 387j for a timely filed premarket tobacco product application; or

90 (C) A document issued by the FDA or by a court confirming that the premarket
91 tobacco product application has received a denial order that is not yet in effect; and

92 (2) A payment of \$1,000.00 for each nicotine vapor product the first time the vapor
93 product manufacturer submits a certification for that nicotine vapor product and a
94 payment of \$250.00 annually thereafter for each such nicotine vapor product.

95 (e) The information submitted by the vapor product manufacturer pursuant to
96 paragraph (1) of subsection (d) of this Code section shall be considered confidential
97 commercial or financial information for purposes of Article 4 of Chapter 18 of Title 50.
98 The vapor product manufacturer may redact certain confidential commercial or financial
99 information provided under paragraph (1) of subsection (d) of this Code section, subject
100 to approval by the commissioner. The commissioner shall not disclose such information
101 except as required or authorized by law.

102 (f) Any vapor product manufacturer that submits a certification pursuant to subsection (b)
103 of this Code section shall notify the commissioner within 30 days after any material change
104 to such certification as to any nicotine vapor product, including, but not limited to:

105 (1) Issuance or denial of a marketing authorization or other order by the FDA pursuant
106 to 21 U.S.C. Section 387j;

107 (2) Any other order by the FDA or a court or any action required by the FDA concerning
108 the content or quality of the nicotine used in a nicotine vapor product requiring a vapor
109 product manufacturer to remove such nicotine vapor product from the market either
110 temporarily or permanently;

111 (3) Any notice of action taken by the FDA affecting the ability of the nicotine vapor
112 product to be introduced or delivered into interstate commerce for commercial
113 distribution in the United States; or

114 (4) Any other change deemed material by the commissioner pursuant to the rules and
115 regulations.

116 (g) The commissioner may by rules and regulations establish a procedure to allow vapor
117 product manufacturers to renew certifications without having to resubmit all the

118 information required by this Code section, if there has not been any change as to such
119 information.

120 48-11-43.

121 (a) The commissioner shall develop and maintain a directory listing all the nicotine vapor
122 products for which a certification has been submitted that complies with this article. Such
123 directory listing shall include information as to the vapor product manufacturer that
124 submitted the certification and may include the status of any marketing authorization,
125 order, or other action of the FDA or any court provided under subsection (b) of Code
126 Section 48-11-42. The commissioner shall make the directory available on the
127 department's public website within 14 months of the effective date of this article. The
128 commissioner on at least a monthly basis shall update the directory to correct mistakes,
129 ensure accuracy, and add or remove nicotine vapor products as may be necessary. The
130 commissioner shall establish by rules and regulations a process to provide any vapor
131 product manufacturer that submits a certification pursuant to Code Section 48-11-42 and
132 all licensees notice of the initial publication of the directory and changes made to the
133 directory in the prior month.

134 (b)(1) The commissioner shall provide a vapor product manufacturer with notice of any
135 deficiencies in the submitted certification and an opportunity to cure such deficiencies
136 before removing a nicotine vapor product of such vapor product manufacturer from the
137 directory.

138 (2) The commissioner shall not remove from the directory a nicotine vapor product of
139 such vapor product manufacturer until at least 15 days after the vapor product
140 manufacturer has been given notice of such intended action. Notice shall be sufficient
141 and deemed immediately received by a vapor product manufacturer if the notice is sent
142 either electronically or by facsimile to an email address or facsimile number provided by

143 the vapor product manufacturer in its most recent certification form for such nicotine
144 vapor product.

145 (3) The vapor product manufacturer shall have 15 days from the date of service of the
146 notice of the commissioner's intended action provided pursuant to paragraph (2) of this
147 subsection to cure any deficiencies or otherwise establish to the satisfaction of the
148 commissioner that such nicotine vapor product of such vapor product manufacturer
149 should be included in the directory.

150 (4) A determination by the commissioner not to include in or to remove from the
151 directory a nicotine vapor product shall be subject to judicial review in the same manner
152 as is provided by law for judicial review of contested cases under Chapter 13 of Title 50,
153 the 'Georgia Administrative Procedure Act.'

154 48-11-44.

155 (a) Beginning on the date that the commissioner first makes the directory available on
156 the department's public website, nicotine vapor products not included in the directory
157 shall not be sold or purchased in this state except as provided in this Code section.

158 (b)(1) Each vapor product dealer shall have six months from the date that the
159 commissioner first makes the directory available on the department's public website to
160 sell nicotine vapor products that were in its inventory and not included in the directory
161 or to remove those nicotine vapor products from its inventory and return those nicotine
162 vapor products to the vapor product manufacturer or vapor product distributor from
163 whom it was acquired for a full refund.

164 (2) Each vapor product distributor shall have six months from the date that the
165 commissioner first makes the directory available on the department's public website to
166 remove those nicotine vapor products intended for sale or purchase in this state from its
167 inventory and return those nicotine vapor products to the vapor product manufacturer
168 from whom it was acquired for a full refund.

169 (3) After six months following publication of the directory, nicotine vapor products not
170 listed in the directory and intended for sale or purchase in this state shall be subject to
171 seizure, forfeiture, storage, and destruction consistent with the provisions of Code
172 Section 48-11-48 and shall not be sold or purchased in this state except as otherwise
173 provided in this article.

174 (c)(1) If a nicotine vapor product is removed from the directory, each vapor product
175 dealer and vapor product distributor shall have 30 days from the date notice is received
176 that such nicotine vapor product has been removed from the directory to sell such
177 nicotine vapor product or remove such nicotine vapor product from its inventory and
178 return such nicotine vapor product to the vapor product manufacturer from whom it was
179 acquired for a full refund. Each such nicotine vapor product manufacturer shall provide
180 to the commissioner information regarding the return of such nicotine vapor product
181 within 21 days after receipt.

182 (2) After 30 days following removal of a nicotine vapor product from the directory, it
183 shall be unlawful to purchase or sell such nicotine vapor product identified in the notice
184 of removal in this state and such nicotine vapor product shall be subject to seizure
185 consistent with the provisions of Code Section 48-11-48. Such prohibition on the
186 purchase and sale of such nicotine vapor products shall not prohibit the vapor product
187 manufacturer or vapor product distributor from providing a refund pursuant to this Code
188 section.

189 48-11-45.

190 Each vapor product dealer and vapor product distributor that sells or distributes vapor
191 products in this state shall be subject to compliance checks by the department for purposes
192 of enforcing this article. Unannounced follow-up compliance checks conducted on or
193 behalf of the department of all noncompliant vapor product dealers and vapor product
194 distributors shall be conducted within 30 days after any violation of this Code section. The

195 commissioner on an annual basis shall make available on the department's public website
196 the results of all compliance checks.

197 48-11-46.

198 (a) In addition to any other provision of law, a vapor product dealer or a vapor product
199 distributor that has a nicotine vapor product that is not included in the directory and is
200 available for sale or is offered for sale in this state in violation of this article shall be
201 subject to a civil penalty as follows:

202 (1) A violation of a total quantity of 20 nicotine vapor product units or less shall be
203 punishable:

204 (A) For a first violation, no penalty if the nicotine vapor products are removed as
205 provided in this chapter;

206 (B) For a second violation within a 12 month period, by a fine of ten times the retail
207 value of the units of nicotine vapor products involved;

208 (C) For a third violation within an 18 month period, by a fine of 25 times the retail
209 value of the units of nicotine vapor products involved; and

210 (D) For a fourth violation within a 24 month period, by a fine of 25 times the retail
211 value of the units of nicotine vapor products involved and revocation of the license of
212 the vapor product dealer or the vapor product distributor, as applicable, by the
213 department pursuant to Code Section 48-11-6;

214 (2) A violation of a total quantity of more than 20 nicotine vapor product units shall be
215 punishable:

216 (A) For a first violation, no penalty if the nicotine vapor products are removed as
217 provided in this chapter;

218 (B) For a second violation within a 12 month period, by a fine of \$10,000.00 or 50
219 times the retail value for each unit of nicotine vapor product involved, whichever is
220 greater;

221 (C) For a third violation within an 18 month period, by a fine of \$20,000.00 or 50 times
222 the retail value for each unit of nicotine vapor product involved, whichever is greater,
223 and a 60 day suspension of the license of the vapor product dealer or the vapor product
224 distributor, as applicable, by the department pursuant to Code Section 48-11-6; and
225 (D) For a fourth violation within a 24 month period, by a fine of \$30,000.00 or 50
226 times the retail value for each unit of nicotine vapor product involved, whichever is
227 greater, and revocation of the license of the vapor product dealer or the vapor product
228 distributor, as applicable, by the department pursuant to Code Section 48-11-6; and
229 (3) Notwithstanding paragraphs (1) and (2) of this subsection, a fourth violation of any
230 quantity of units of nicotine vapor products shall result in a revocation of the license of
231 the vapor product dealer or the vapor product distributor, as applicable, by the department
232 pursuant to Code Section 48-11-6.

233 For purposes of this subsection, each unit of a nicotine vapor product that may be sold
234 individually shall be counted separately to determine the quantity of nicotine vapor
235 products.

236 (b) A vapor product manufacturer whose nicotine vapor products are not listed in the
237 directory and that causes the nicotine vapor products that are not listed to be sold in this
238 state, whether directly or through a vapor product importer, vapor product distributor,
239 vapor product dealer, or any other person, shall be subject to a civil penalty of \$10,000.00
240 per day for each individual nicotine vapor product offered for sale in violation of this
241 chapter until the offending nicotine vapor product is either removed from the market or
242 properly listed on the directory. In addition, any vapor product manufacturer that falsely
243 represents any information on the certification or that is required under this chapter to be
244 provided to the commissioner or the department shall be guilty of a misdemeanor for each
245 false representation.

246 (c) A repeated violation of this Code section shall constitute a deceptive trade practice
247 under Part 1 of Article 15 of Chapter 1 of Title 10, the 'Uniform Deceptive Trade Practices
248 Act.'

249 48-11-47.

250 In an action for any violation brought under this chapter, the commissioner may recover
251 reasonable expenses incurred in investigating and preparing the case and attorneys' fees if
252 successful in the initial action, unless such action is successfully appealed and reversed.

253 48-11-48.

254 (a) Any nicotine vapor products offered for sale or sold in violation of this article are
255 declared to be contraband goods and shall be seized by the commissioner, the
256 commissioner's agents or employees, or any law enforcement officer of this state if directed
257 by the commissioner to do so.

258 (b) Upon seizure, the person from whom the contraband property was seized, if known,
259 shall be provided with a receipt identifying the contraband property seized and indicating
260 from whom the contraband property was seized and the place of seizure. Such contraband
261 shall be stored pending a hearing and appeal provided for in subsections (d) and (e) of this
262 Code section and thereafter destroyed, if authorized.

263 (c) A copy of the receipt shall be:

264 (1) Filed with the department and shall be a public record open to public inspection; and

265 (2) Posted at the courthouse of the county in which the contraband was seized.

266 (d) Any person desiring to make claim to the contraband property shall file a claim with
267 the commissioner within ten days from the day of seizure. The commissioner, within 30
268 days of receipt of any such claim, shall afford the claimant a hearing in which to show
269 entitlement to the seized items. The burden of proof at such hearing shall be upon the
270 claimant to establish a claim as to the items seized and to show compliance with or

271 justification for noncompliance with this article. The commissioner shall enter a written
272 order granting or denying the claim within 30 days from the date of the hearing.

273 (e) An appeal from the commissioner's order may be taken to the Superior Court of Fulton
274 County by filing with the commissioner, within 15 days from the date of the decision, a
275 copy of the petition for review filed in the Superior Court of Fulton County. The
276 proceedings on the petition for review shall be governed by Chapter 3 of Title 5 except as
277 provided otherwise in this Code section. The appeal shall be based upon the record made
278 before the commissioner. The commissioner shall transmit the record and appropriate
279 documents to the superior court within 30 days after the date the petition for review is
280 received. The superior court shall review the record for errors of law, violation of
281 constitutional or statutory provisions, violation of the statutory authority of the agency,
282 lawfulness of the procedure, lack of any evidence to support the commissioner's decision,
283 and arbitrariness and abuse of discretion. However, the court shall not substitute its
284 judgment as to the weight of evidence on questions of fact.

285 (f) The cost of such seizure, forfeiture, storage, and destruction shall be borne by the
286 person from whom the nicotine vapor products determined to be contraband are
287 confiscated.

288 48-11-49.

289 (a) Any nonresident vapor product manufacturer that has not registered to do business in
290 this state as a foreign corporation or business entity shall, as a condition precedent to being
291 included in the directory, appoint and continually engage without interruption the services
292 of an agent in this state to act as agent for the service of process on whom all process, and
293 any action or proceeding against it concerning or arising out of the enforcement of this
294 article, may be served in any manner authorized by law. Such service shall constitute legal
295 and valid service of process on the vapor product manufacturer. The vapor product

296 manufacturer shall provide the name, address, telephone number, and proof of the
297 appointment and availability of such agent to the commissioner.

298 (b) The vapor product manufacturer shall provide notice to the commissioner 30 days prior
299 to termination of the authority of an agent and shall further provide proof to the satisfaction
300 of the commissioner of the appointment of a new agent no less than five days prior to the
301 termination of an existing agent appointment. In the event an agent terminates an agency
302 appointment, the vapor product manufacturer shall notify the commissioner of the
303 termination within five days and shall include proof to the satisfaction of the commissioner
304 of the appointment of a new agent.

305 (c) Any vapor product manufacturer whose nicotine vapor products are offered for sale or
306 sold in this state that has not appointed and engaged the services of an agent as required by
307 this Code section shall be deemed to have appointed the Secretary of State as its agent for
308 service of process. The appointment of the Secretary of State as agent shall not satisfy the
309 condition precedent required in subsection (a) of this Code section to be included or
310 retained in the directory.

311 48-11-50.

312 Nothing in this article shall be construed as limiting the commissioner in the exercise of
313 his or her authority, as provided under Article 1 of this chapter, to suspend or refuse to
314 renew a license for violations of Chapters 13 and 13A of Title 10, Title 16, Title 48, or any
315 other provisions of law and any rules or regulations promulgated thereunder.

316 48-11-51.

317 Starting on January 31 of the first year after the year in which this article becomes
318 effective, and annually thereafter, the commissioner shall provide a report to the General
319 Assembly regarding the status of the directory, the nicotine vapor products included in the

320 directory, revenue, and expenditures related to administration of this article, and
321 enforcement activities undertaken pursuant to this article."

322 **SECTION 2.**

323 This Act shall become effective only if funds are specifically appropriated for the purposes
324 of this Act in an appropriations Act making specific reference to this Act and shall become
325 effective when funds so appropriated become available for expenditure.

326 **SECTION 3.**

327 All laws and parts of laws in conflict with this Act are repealed.