

House Bill 1260

By: Representatives Gaines of the 120th, Jones of the 47th, Burchett of the 176th, Dickey of the 145th, Smith of the 18th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 2 of the Official Code of Georgia Annotated, relating to agriculture, so as to
2 enact the "Georgia Nicotine Vapor Products Directory Act"; to provide for definitions; to
3 require the Commissioner of Agriculture to establish and maintain a directory of nicotine
4 vapor products authorized for sale in this state; to prohibit the sale of any nicotine vapor
5 product not listed in the directory; to provide for compliance checks; to provide for civil
6 penalties and enforcement; to provide for rules and regulations; to require the Commissioner
7 to provide an annual report to the General Assembly; to provide for related matters; to
8 provide for an effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Title 2 of the Official Code of Georgia Annotated, relating to agriculture, is amended by
12 enacting a new chapter to read as follows:

13 "CHAPTER 2414 2-24-1.15 This chapter shall be known and may be cited as the 'Georgia Nicotine Vapor Products
16 Directory Act.'17 2-24-2.18 As used in this chapter, the term:19 (1) 'Consumable nicotine vapor product' means any liquid solution containing nicotine
20 that is intended to be heated into an aerosol state and inhaled by an individual. Such term
21 shall include, but shall not be limited to, e-liquid, e-juice, vape juice, and cartridges that
22 are prefilled with such a solution.23 (2) 'FDA' means the United States Food and Drug Administration.24 (3) 'Nicotine vapor device' means any system or device developed or intended to deliver
25 a consumable nicotine vapor product to an individual who inhales from the device. Such
26 term shall include, but not be limited to, an electronic nicotine delivery system, an
27 electronic cigarette, electronic cigar, electronic pipe, vape pen, vape tool, or electronic
28 hookah. Such term shall not include a fragrance or essential oil diffuser, an air freshener,
29 or any product regulated as a drug or device by the United States Food and Drug
30 Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.31 (4) 'Nicotine vapor product' means any consumable nicotine vapor product or nicotine
32 vapor device.33 (5) 'Timely filed premarket tobacco product application' means an application pursuant
34 to 21 U.S.C. Section 387j for a nicotine vapor product marketed in the United States as
35 of August 8, 2016, that was submitted to the FDA on or before September 9, 2020, and
36 accepted for filing.

37 2-24-3.

38 (a) By December 1, 2024, and annually thereafter, every nicotine vapor product
39 manufacturer that sells nicotine vapor products for retail sale in this state shall execute and
40 deliver a form, prescribed by the Commissioner, under penalty of perjury, that such
41 manufacturer is compliant with this chapter and that, for each nicotine vapor product sold
42 for retail sale in this state, each nicotine dispensing device sold meets either of the
43 following criteria:

44 (1) The manufacturer has submitted a timely filed premarket tobacco product application
45 for the nicotine vapor product pursuant to 21 U.S.C. Section 387j to the FDA, and the
46 application either remains under review by the FDA or has received a marketing denial
47 order that has been and remains stayed by the FDA or court order, rescinded by the FDA,
48 or vacated by a court or has been issued; or

49 (2) The manufacturer has received a marketing granted order under 21 U.S.C. Section
50 387j for the nicotine vapor product from the FDA.

51 (b) The form prescribed by the Commissioner pursuant to subsection (a) of this Code
52 section shall require each nicotine vapor product manufacturer to set forth the name under
53 which the manufacturer transacts or intends to transact business; the address of the location
54 of the manufacturer's principal place of business; the manufacturer's email address; and the
55 brand name, category, such as e-liquid, power unit, device, e-liquid cartridge, e-liquid pod,
56 or disposable, product name, and flavor of each nicotine vapor product that is sold in this
57 state.

58 (c) In addition to completing the form prescribed by the Commissioner pursuant to
59 subsection (a) of this Code section, each nicotine vapor product manufacturer shall provide
60 a copy of:

61 (1) The cover page of the marketing granted order issued pursuant to 21 U.S.C. Section
62 387j; a copy of the acceptance letter issued by the FDA pursuant to 21 U.S.C. Section
63 387j for a timely filed premarket tobacco product application; or a document issued by

64 the FDA or by a court confirming that the premarket tobacco product application has
65 received a denial order that is not yet in effect; and

66 (2) A payment of \$1,000.00 for each nicotine vapor product the first time a manufacturer
67 submits a certification form for that nicotine vapor product and a payment of \$250.00
68 annually thereafter for each nicotine vapor product.

69 (d) The information submitted by the nicotine vapor product manufacturer pursuant to
70 paragraph (1) of subsection (c) of this Code section shall be considered confidential
71 commercial or financial information for purposes of Article 4 of Chapter 18 of Title 50.
72 The nicotine vapor product manufacturer may redact certain confidential commercial or
73 financial information provided under paragraph (1) of subsection (c) of this Code section.
74 The Commissioner shall not disclose such information except as required or authorized by
75 law.

76 (e) Any nicotine vapor product manufacturer submitting a certification pursuant to
77 subsection (a) of this Code section shall notify the Commissioner within 30 days after any
78 material change to the certification, including, but not limited to, issuance by the FDA of
79 any of the following:

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

82 (2) Any other order or action order by the FDA or any court that affects the quality of
83 the nicotine requiring a nicotine vapor product manufacturer to remove a product from
84 the market either temporarily or permanently;

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

88 (4) Any change in policy which results in a nicotine vapor product no longer being
89 exempt from federal enforcement oversight; or

90 (5) Any other change deemed material by the Commissioner pursuant to a rule of the
91 Commissioner.

92 (f) The Commissioner shall develop and maintain a directory listing all nicotine vapor
93 product manufacturers and the nicotine vapor products certified with the Commissioner
94 which comply with this Code section. The Commissioner shall make the directory
95 available by January 1, 2025, on the Commissioner's public website. The Commissioner
96 shall update the directory as necessary to correct mistakes, ensure accuracy, and add or
97 remove nicotine vapor product manufacturers and nicotine vapor products on at least a
98 monthly basis. The Commissioner shall establish a process to provide retailers,
99 distributors, and wholesalers notice of the initial publication of the directory and changes
100 made to the directory in the prior month.

101 (g)(1) The Commissioner shall provide a nicotine vapor product manufacturer notice and
102 an opportunity to cure deficiencies before removing the manufacturer or its products from
103 the directory.

104 (2) The Commissioner shall not remove the nicotine vapor product manufacturer or its
105 nicotine vapor products from the directory until at least 15 days after the manufacturer
106 has been given notice of an intended action. Notice is sufficient and deemed immediately
107 received by a manufacturer if the notice is sent either electronically or by facsimile to an
108 email address or facsimile number provided by the manufacturer in its most recent
109 certification form.

110 (3) The nicotine vapor product manufacturer shall have 15 days from the date of service
111 of the notice of the Commissioner's intended action to cure the deficiencies or otherwise
112 establish that the manufacturer or its nicotine vapor products should be included in the
113 directory.

114 (4) A determination by the Commissioner not to include or to remove from the directory
115 a nicotine vapor product manufacturer or a nicotine vapor product shall be subject to
116 review by the filing of a civil action for prospective declaratory or injunctive relief.

117 (h) If a nicotine vapor product is removed from the directory, each retailer and wholesaler
118 shall have 30 days from the date notice is received that such product is removed from the
119 directory to sell the product or remove the product from its inventory and return the product
120 to the nicotine vapor product manufacturer. Each such manufacturer shall provide to the
121 Commissioner information regarding the return of such product and how the returned
122 product was disposed of within 21 days after receipt. After 30 days following removal
123 from the directory, the product identified in the notice of removal may not be purchased
124 or sold for retail sale in this state and is subject to seizure consistent with the provisions of
125 subsection (l) of this Code section, except that no products may be seized from a consumer
126 who has made a bona fide purchase of such product.

127 (i)(1) Except as provided in paragraphs (2) and (3) of this subsection, beginning
128 March 1, 2025, or on the date that the Commissioner first makes the directory available
129 for public inspection on the Commissioner's public website, whichever is later, nicotine
130 vapor products not included in the directory shall not be sold for retail sale in this state,
131 either directly or through an importer, distributor, wholesaler, retailer, or similar
132 intermediary or intermediaries.

133 (2) Each retailer shall have 60 days from the date that the Commissioner first makes the
134 directory available for inspection on its public website to sell products that were in its
135 inventory and not included in the directory or to remove those products from its inventory
136 and return those products to the manufacturer for disposal.

137 (3) Each distributor or wholesaler shall have 60 days from the date that the
138 Commissioner first makes the directory available for inspection on its public website to
139 remove those products intended for sale in this state from its inventory and return those
140 products to the manufacturer for disposal.

141 (4) After 60 calendar days following publication of the directory, nicotine vapor products
142 not listed in the directory and intended for sale in this state are subject to seizure,

143 forfeiture, and destruction and shall not be purchased or sold for retail sale in this state
144 except as provided in subsection (h) of this Code section.

145 (j) Each retailer, distributor, and wholesaler that sells or distributes nicotine vapor products
146 in this state shall be subject to a minimum of two unannounced compliance checks
147 annually for purposes of enforcing this chapter. Unannounced follow-up compliance
148 checks of all noncompliant retailers, distributors, and wholesalers shall be conducted within
149 30 days after any violation of this Code section. The Commissioner shall publish the
150 results of all compliance checks at least annually and shall make the results available to the
151 public on request.

152 (k)(1)(A) A retailer, distributor, or wholesaler that sells at retail or offers for retail sale
153 a nicotine vapor product that is not included in the directory shall be subject to a civil
154 penalty of \$500.00 per day for each nicotine vapor product offered for sale in violation
155 of this Code section until the offending nicotine vapor product is either removed from
156 the market or properly listed on the directory.

157 (B) For a second violation of this type within a 12 month period, the civil penalty shall
158 be at least \$750.00 but not more than \$1,000.00 per product, and the license issued
159 pursuant to Chapter 11 of Title 48 shall be suspended for at least 14 days.

160 (C) For a third violation of this type within a 12 month period, the civil penalty shall
161 be at least \$71,000.00 but not more than \$1,500.00 per product, and the license issued
162 pursuant to Chapter 11 of Title 48 shall be suspended for at least 60 days.

163 (D) For a fourth or subsequent violation of this type within a 12 month period, the
164 license issued pursuant to Chapter 11 of Title 48 shall be suspended for at least one
165 year.

166 (2) A manufacturer whose nicotine vapor products are not listed in the directory and that
167 causes the products that are not listed to be sold for retail sale in this state, whether
168 directly or through an importer, distributor, wholesaler, retailer, or similar intermediary
169 or intermediaries, is subject to a civil penalty of \$10,000.00 per day for each individual

170 nicotine vapor product offered for sale in violation of this Code section until the
171 offending nicotine vapor product is either removed from the market or properly listed on
172 the directory. In addition, any manufacturer that falsely represents any information
173 required by a certification form shall be guilty of a misdemeanor for each false
174 representation.

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

178 (4) In an action brought under this subsection, the Commissioner may recover reasonable
179 expenses incurred in investigating and preparing the case and attorneys' fees.

180 (l) Any nicotine vapor products offered for sale in violation of this Code section are
181 declared to be contraband goods and may be seized by the Commissioner, the
182 Commissioner's agents or employees, or any law enforcement of this state if directed by
183 the Commissioner to do so, without a warrant. The cost of such seizure, forfeiture, and
184 destruction shall be borne by the person from whom the nicotine vapor products are
185 confiscated.

186 (m) The Commissioner shall have authority to enforce compliance with this Code section
187 and may promulgate any rules and regulations necessary to effect the purposes of this Code
188 section. Such rules and regulations may include a procedure to allow nicotine vapor
189 product manufacturers to renew certifications without having to resubmit all the
190 information required by this Code section.

191 (n)(1) Any nonresident nicotine vapor product manufacturer that has not registered to do
192 business in this state as a foreign corporation or business entity shall, as a condition
193 precedent to being included in the directory created by this Code section, appoint and
194 continually engage without interruption the services of an agent in this state to act as
195 agent for the service of process on whom all process, and any action or proceeding
196 against it concerning or arising out of the enforcement of this Code section, may be

197 served in any manner authorized by law. Such service shall constitute legal and valid
198 service of process on the manufacturer. The manufacturer shall provide the name,
199 address, telephone number, and proof of the appointment and availability of such agent
200 to the Commissioner.

201 (2) The nicotine vapor product manufacturer shall provide notice to the Commissioner
202 30 calendar days prior to termination of the authority of an agent and shall further provide
203 proof to the satisfaction of the Commissioner of the appointment of a new agent no less
204 than five calendar days prior to the termination of an existing agent appointment. In the
205 event an agent terminates an agency appointment, the manufacturer shall notify the
206 Commissioner of the termination within five calendar days and shall include proof to the
207 satisfaction of the Commissioner of the appointment of a new agent.

208 (3) Any nicotine vapor product manufacturer whose nicotine vapor products are sold in
209 this state that has not appointed and engaged the services of an agent as required by this
210 subsection shall be deemed to have appointed the Secretary of State as its agent for
211 service of process. The appointment of the Secretary of State as agent shall not satisfy
212 the condition precedent required in subsection (a) of this Code section to be included or
213 retained in the directory.

214 (o) Starting January 31, 2025, and annually thereafter, the Commissioner shall provide a
215 report to the General Assembly regarding the status of the directory, nicotine vapor product
216 manufacturers and nicotine vapor products included in the directory, revenue, and
217 expenditures related to administration of this Code section, and enforcement activities
218 undertaken pursuant to this Code section.

219 (p) All fees and penalties collected by the Commissioner pursuant to this Code section
220 shall be used for administration and enforcement of this Code section."

221 **SECTION 2.**

222 This Act shall become effective upon its approval by the Governor or upon its becoming law
223 without such approval.

224 **SECTION 3.**

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