2024 Regular Session

HOUSE BILL NO. 621

BY REPRESENTATIVE STAGNI

TOBACCO/TOBACCO PRODUCTS: Provides relative to vapor products

AN ACT

To amend and reenact R.S. 26:911(B)(1)(b), to enact R.S. 26:926.1, and to repeal R.S. 26:926, relative to vapor products; to prohibit retail dealers of electronic cigarette products from purchasing such products from certain sources; to establish a vapor product and alternative nicotine product directory; to authorize the commissioner of the office of alcohol and tobacco control to impose fees and fines under certain circumstances; to provide for criminal penalties for certain violations; to provide for requirements and limitations; to provide for age verification; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 26:911(B)(1)(b) is hereby amended and reenacted and R.S. 26:926.1 is hereby enacted to read as follows:

§911. Acts prohibited

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B.(1)

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(b) No vapor retail dealer shall purchase alternative nicotine products, vapor products, or electronic cigarette products for resale except from a wholesale dealer operating with a valid unsuspended Louisiana wholesale dealer permit and a valid

stamping agent designation permit pursuant to the provisions of R.S. 26:902(2)(a), except as provided ~~for in~~ by this Chapter.

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§926.1. Vapor product and alternative nicotine product directory

A. Every vapor product manufacturer and alternative nicotine product manufacturer whose products are sold in this state, whether directly or through a wholesale dealer, retail dealer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the commissioner, a certification to the commissioner certifying, under penalty of perjury, either of the following:

(1) The product was on the market in the United States as of August 8, 2016, and the manufacturer has applied for a marketing order pursuant to 21 U.S.C. §387j for the vapor product or alternative nicotine product by submitting a premarket tobacco product application on or before September 9, 2020, to the United States Food and Drug Administration, hereinafter referred to in this Section as "FDA", and either of the following is true:

(a) The premarket tobacco product application for the vapor product or alternative nicotine product remains under review by the FDA.

(b) The FDA has issued a no marketing order for the vapor product or alternative nicotine product, but the agency or a federal court has issued a stay order or injunction during the pendency of the manufacturer's appeal of the no marketing order, or the order has been appealed either to the FDA or a challenge to the order filed with a federal court and the appeal or challenge is still pending.

(2) The manufacturer has received a marketing order or other authorization under 21 U.S.C. 387j for the vapor product or alternative nicotine product from the FDA.

B. In addition to the requirements of Subsection A of this Section, each manufacturer shall provide a copy of the cover page of the premarket tobacco application with evidence of receipt of the application by the FDA or a copy of the

cover page of the marketing order or other authorization issued pursuant to 21 U.S.C. 387j, whichever is applicable.

C. Any manufacturer submitting a certification pursuant to Subsection A of this Section shall notify the commissioner within thirty days of any material change to the certification, including issuance by the FDA of any of the following:

(1) A market order or other authorization pursuant to 21 U.S.C. 387j.

(2) An order requiring a manufacturer to remove a product from the market either temporarily or permanently.

(3) Any notice of action taken by the FDA affecting the ability of the new product to be introduced or delivered into interstate commerce for commercial distribution.

(4) Any change in policy that results in a product no longer being exempt from federal enforcement oversight.

D. The commissioner shall develop and maintain a directory listing all vapor product manufacturers and alternative nicotine product manufacturers that have provided certifications that comply with Subsection A of this Section and all products that are listed in those certifications.

E. The commissioner shall do all of the following:

(1) Make the directory available for public inspection on the public website of the office of alcohol and tobacco control.

(2) Update the directory as necessary in order to correct mistakes and to add or remove vapor product manufacturers and alternative nicotine product manufacturers or products manufactured by those manufacturers.

(3) Send monthly notifications to each wholesale dealer, retail dealer, or manufacturer of vapor products and manufacturer of alternative nicotine products that have qualified or registered with the commissioner, by electronic communication, containing a list of all changes that have been made to the directory in the previous month. In lieu of sending monthly notifications, the commissioner

may make the information available in a prominent place on the public website of the office of alcohol and tobacco control.

F. Notwithstanding Subsection A of this Section, if a vapor product manufacturer or alternative nicotine product manufacturer can demonstrate to the commissioner that the FDA has issued a rule, guidance, or any other formal statement that temporarily exempts a vapor product or alternative nicotine product from the federal premarket tobacco application requirements, the vapor product or alternative product may be added to the directory upon request by the manufacturer if the manufacturer provides sufficient evidence that the vapor product or alternative nicotine product is compliant with the federal rule, guidance, or other formal statement, as applicable.

G. Each certifying vapor product manufacturer or alternative nicotine product manufacturer shall pay an initial fee of one hundred dollars per product stock keeping unit or SKU to offset the costs incurred by the commissioner for processing the certifications and operating the directory. The commissioner shall collect an annual renewal fee of one hundred dollars per product stock keeping unit or SKU to offset the costs associated with maintaining the directory and satisfying the requirements of this Section. The fees received pursuant to this Section by the commissioner shall be used by the office of alcohol and tobacco control exclusively for processing the certifications and operating and maintaining the directory.

H. Beginning on the date that the commissioner makes the directory available for public inspection on the public website of the office of alcohol and tobacco controlas provided in Subsection E of this Section, a vapor product manufacturer or alternative nicotine product manufacturer who offers for sale a vapor product or alternative nicotine product not listed on the directory is subject to a one thousand dollar daily fine for each vapor product or alternative nicotine product offered for sale in violation of this Section until the offending product is removed from the market or until the offending product is properly listed on the directory.

I.(1) The sale, possession, or transportation of vapor products or alternative nicotine products not listed on the directory by any person, including a permitted wholesale dealer or retail dealer, shall be subject to provisions of R.S. 47:858, 859, and 860 as if such wholesale dealer or retail dealer did not possess a valid permit.

(2) Each unit of vapor product or alternative nicotine product sold or offered for sale, possessed, or transported shall constitute a separate violation for purposes of Paragraph (1) of this Subsection.

J. Any other violation of this Section shall result in a fine of five hundred dollars per offense.

K. The commissioner shall adopt rules for the implementation and enforcement of this Section.

Section 2. R.S. 26:926 is hereby repealed in its entirety.

Section 3. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 621 Engrossed 2024 Regular Session Stagni

Abstract: Provides relative to the sale of e-liquid and vapor products, and creates the vapor product and alternative nicotine product directory.

Present law provides that no vapor retail dealer shall purchase alternative nicotine products, vapor products, or electronic cigarette products for resale except from a wholesale dealer operating with a valid unsuspended La. wholesale dealer permit and a valid stamping agent designation permit.

Proposed law provides for the creation of a vapor product and alternative product directory.

Proposed law provides that every vapor product manufacturer and alternative nicotine product manufacturer whose products are sold in this state, whether directly or through a wholesale dealer, retail dealer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the commissioner.

Proposed law provides that every manufacturer shall execute and deliver a certification detailing certain information to the commissioner.

Proposed law provides that each manufacturer shall provide a copy of the cover page of the premarket tobacco application with evidence of receipt of the application by the U.S. Food and Drug Administration (FDA) or a copy of the cover page of the marketing order or other authorization issued pursuant federal law.

Proposed law provides that any manufacturer submitting a certification shall notify the commissioner within 30 days of any material change to the certification.

Proposed law requires the commissioner to develop and maintain a directory listing all vapor product manufacturers and alternative nicotine product manufacturers that have provided certifications that comply with proposed law.

Proposed law requires the commission to do all of the following:

(1) Make the directory available for public inspection on the office of alcohol and tobacco control's public website.

(2) Update the directory as necessary in order to correct mistakes and to add or remove vapor product manufacturers and alternative nicotine product manufacturers or products manufactured by those manufacturers.

(3) Send monthly notifications to each wholesale dealer, retail dealer, or manufacturer of vapor products and manufacturer of alternative nicotine products that have qualified or registered with the commissioner, by electronic communication, containing a list of all changes that have been made to the directory in the previous month. In lieu of sending monthly notifications, the commissioner may make the information available in a prominent place on the office of alcohol and tobacco control's public website.

Proposed law provides a procedure for a manufacturer to add a vapor product or alternative nicotine product to the directory upon request by the manufacturer.

Proposed law requires each certifying vapor product manufacturer or alternative nicotine product manufacturer to pay an initial fee of $100 per product stock keeping unit or SKU to offset the costs incurred by the commissioner for processing the certifications and operating the directory.

Proposed law provides that the commissioner shall collect an annual renewal fee of $100 per product stock keeping unit or SKU to offset the costs associated with maintaining the directory and satisfying the requirements of proposed law.

Proposed law beginning on the date that the commissioner makes the directory available for public inspection on its website, a vapor product manufacturer or alternative nicotine product manufacturer who offers for sale a vapor product or alternative nicotine product not listed on the directory is subject to a $1000 daily fine for each vapor product or alternative nicotine product offered for sale in violation proposed law.

Proposed law provides that the sale, possession, or transportation of vapor products or alternative nicotine products not listed on the directory by any person, including a permitted wholesale dealer or retail dealer, shall be subject to provisions of present law (R.S. 47:858, 859, and 860) as if such wholesale dealer or retail dealer did not possess a valid permit.

Proposed law provides that each unit of vapor product or alternative nicotine product sold or offered for sale, possessed, or transported shall constitute a separate violation for purposes of proposed law.

Proposed law provides that any other violation of proposed law shall result in a fine of $500 per offense.

Proposed law requires the commissioner to adopt rules for the implementation and enforcement of proposed law.

Proposed law repeals present law (R.S. 26:926) in order to reenact and redesignate existing law.

Effective upon signature of governor or lack of time for gubernatorial action.

(Amends R.S. 26:911(B)(1)(b); Adds R.S. 26:926.1; Repeals R.S. 26:926)