

HOUSE BILL 113

By Smith

AN ACT to amend Tennessee Code Annotated, Title 4; Title 29; Title 39, Chapter 17; Title 39, Chapter 15; Title 43; Title 67, Chapter 4, Part 10 and Title 68, relative to the sale of tobacco, smoking hemp, and vapor products.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-1505, is amended by deleting subsection (b) and substituting instead the following:

(b) A law enforcement officer shall not issue a citation to a person who violates this section. However, a law enforcement officer with evidence of the violation shall seize the product as contraband.

SECTION 2. Tennessee Code Annotated, Section 39-17-1505, is amended by deleting subsection (c).

SECTION 3. Tennessee Code Annotated, Section 39-17-1509(a), is amended by deleting the language "shall conduct random, unannounced inspections at locations" and substituting instead the language "shall conduct at least two (2) random, unannounced inspections each year at each location" and by adding the following sentence to the end of the subsection:

If a location is found to be in violation of this part, then the department shall make an unannounced inspection within six (6) months of the violation.

SECTION 4. Tennessee Code Annotated, Section 39-17-1509, is amended by deleting the first three sentences of subsection (b) and substituting instead the following:

A retailer who violates § 39-17-1504, § 39-17-1506, § 39-17-1507, or § 39-17-1508 is subject to a civil penalty of two hundred fifty dollars (\$250) for the retailer's first

violation, five hundred dollars (\$500) for the retailer's second violation, and one thousand dollars (\$1,000) for the retailer's third or subsequent violation. For purposes of determining whether a violation is the retailer's first, second, third, or subsequent violation, the commissioner shall count only those violations that occurred within the previous five (5) years. The commissioner may suspend a retailer's retail tobacco license for a period of not less than thirty (30) days and not more than ninety (90) days if the retailer violates § 39-17-1504 or §§ 39-17-1506 - 39-17-1508 three (3) or more times within a three-year period and may revoke a retailer's retail tobacco license for any subsequent violations.

SECTION 5. Tennessee Code Annotated, Section 39-17-1509(b)(1), is amended by deleting the subdivision and substituting instead the following:

(1) The commissioner shall issue the assessment of civil penalty only against the retailer, as defined in § 43-19-401, responsible for the violation;

SECTION 6. Tennessee Code Annotated, Title 43, Chapter 19, is amended by adding the following as a new part:

43-19-401. Definitions.

As used in this part:

(1) "Commissioner" means the commissioner of agriculture;

(2) "Department" means the department of agriculture;

(3) "Person" means any natural person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation, or any officer, agent, employee, factor, or any other personal representative thereof, in any capacity;

(4) "Retailer" means a person who operates a business in which tobacco products are sold at retail; and

(5) "Tobacco product" has the same meaning as defined in § 39-17-1503.

43-19-402. Licensing of tobacco retailers.

(a) A retailer shall obtain an annual retail tobacco license from the department before engaging in the retail sale of tobacco products.

(b) The commissioner shall promulgate rules to establish the qualifications for the issuance of a retail tobacco license. The rules promulgated pursuant to this section must establish the fee for a retail tobacco license, which must be at a level to ensure the department's enforcement and licensing activities are fully funded.

43-19-403. Enforcement.

(a) The commissioner shall enforce this part and title 39, chapter 17, part 15, using the revenue generated from the issuance of retail tobacco licenses.

(b) Licenses may be suspended or revoked by the commissioner pursuant to § 39-17-1509(b).

43-19-404. Unlicensed sales – Penalties.

(a) A person shall not sell any tobacco products without first obtaining a retail tobacco license under this part.

(b) A retailer whose retail tobacco license has been suspended or revoked shall not sell any tobacco products.

(c) A violation of subsection (a) or (b) is a Class B misdemeanor.

SECTION 7. Tennessee Code Annotated, Section 67-4-1001(25), is amended by adding the language "or open-system vapor product" immediately following the language "tobacco product".

SECTION 8. Tennessee Code Annotated, Section 67-4-1001, is amended by adding the following as new subdivisions:

() "Closed-system vapor product":

(A) Means any vapor product that is prefilled with consumable material, sealed by the manufacturer, and not intended to be opened by the consumer; and

(B) Includes any cartridge that is prefilled with consumable material and sealed by the manufacturer;

() "Consumable material" means any liquid solution or other material containing nicotine that is depleted as a vapor product is used;

() "Open-system vapor product":

(A) Means any vapor product containing consumable material that can be opened by the consumer and refilled with consumable material; and

(B) Includes any bottle or other container of consumable material that is intended to be opened by the consumer;

() "Vapor product":

(A) Means any non-combustible device that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from consumable material;

(B) Includes any component or part of the device and any vapor cartridge or other container of consumable material that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device; and

(C) Does not include any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act;

SECTION 9. Tennessee Code Annotated, Section 67-4-1002, is amended by deleting the section and substituting instead the following:

Every dealer or distributor of tobacco products or vapor products defined in this part shall pay to the department, for exclusive state purposes, taxes in addition to all other taxes or fees for the privilege of selling cigarettes, tobacco products, and vapor products in this state.

SECTION 10. Tennessee Code Annotated, Section 67-4-1003, is amended by deleting the section and substituting instead the following:

(a) The tobacco tax and vapor product tax are declared to be a levy on the consumer, and the consumer is liable for the taxes and subject to the incidence of the taxes.

(b) The distributors shall add the amount of tobacco taxes levied to the price of cigarettes or other tobacco products and the amount of vapor product tax levied on the consumable material in a vapor product, and the distributor may state the amount of the taxes separately from the price of the cigarettes, other tobacco products, or vapor products on all price display signs, sales, or delivery slips, bills, and statements that advertise or indicate the price of the cigarettes, tobacco products, or vapor products.

(c) This section does not affect the method of collection of cigarette, tobacco, or vapor product taxes as now provided by existing law.

SECTION 11. Tennessee Code Annotated, Section 67-4-1005, is amended by designating the existing language as subsection (a) and adding the following as new subsections:

(b) The rate on all closed-system vapor products is five cents (5¢) per milliliter of consumable material and a proportionate tax at the like rate on all fractional parts thereof.

(c) The rate on all open-system vapor products is five percent (5%) of the wholesale cost price.

SECTION 12. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 13. For purposes of promulgating rules and issuing licenses, this act takes effect upon becoming law, the public welfare requiring it. For all other purposes, this act takes effect January 1, 2022, the public welfare requiring it.