

1 AN ACT relating to vapor products.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 438.305 is amended to read as follows:

4 As used in KRS 438.305 to 438.340, unless the context requires otherwise:

- 5 (1) (a) "Alternative nicotine product" means a noncombustible product containing  
6 nicotine that is intended for human consumption, whether chewed, absorbed,  
7 dissolved, or ingested by any other means.
- 8 (b) "Alternative nicotine product" does not include any product regulated as a  
9 drug or device by the United States Food and Drug Administration under  
10 Chapter V of the Food, Drug, and Cosmetic Act;
- 11 (2) "Manufacturer" means any person who manufactures or produces tobacco products  
12 within or without this Commonwealth;
- 13 (3) "Nonresident wholesaler" means any person who purchases cigarettes or other  
14 tobacco products directly from the manufacturer and maintains a permanent  
15 location or locations outside this state at which Kentucky cigarette tax evidence is  
16 attached or from which Kentucky cigarette tax is reported and paid;
- 17 (4) "Proof of age" means a driver's license or other documentary or written evidence  
18 that the individual is eighteen (18) years of age or older;
- 19 (5) "Resident wholesaler" means any person who purchases at least seventy-five  
20 percent (75%) of all cigarettes or other tobacco products purchased by that person  
21 directly from the cigarette manufacturer on which the cigarette tax provided for in  
22 KRS 138.130 to 138.205 is unpaid, and who maintains an established place of  
23 business in this state at which the person attaches cigarette tax evidence or receives  
24 untaxed cigarettes;
- 25 (6) "Sample" means a tobacco product, alternative nicotine product, or vapor product  
26 distributed to members of the general public at no cost;
- 27 (7) "Subjobber" means any person who purchases tobacco products, on which the

1 Kentucky cigarette tax has been paid, from a wholesaler licensed pursuant to KRS  
2 138.195, and makes them available to a retail establishment for resale;

3 (8) (a) "Tobacco product" means any cigarette, cigar, snuff, smokeless tobacco  
4 product, smoking tobacco, chewing tobacco, and any kind or form of tobacco  
5 prepared in a manner suitable for chewing or smoking, or both, or any kind or  
6 form of tobacco that is suitable to be placed in a person's mouth.

7 (b) "Tobacco product" does not include any alternative nicotine product, vapor  
8 product, or product regulated as a drug or device by the United States Food  
9 and Drug Administration under Chapter V of the Food, Drug, and Cosmetic  
10 Act;~~and~~

11 (9) (a) "Vapor product" means any noncombustible product that employs a heating  
12 element, battery, power source, electronic circuit, or other electronic,  
13 chemical, or mechanical means, regardless of shape or size and including the  
14 component parts and accessories thereto, that can be used to deliver vaporized  
15 nicotine or other substances to users inhaling from the device. "Vapor  
16 product" includes but is not limited to any electronic cigarette, electronic  
17 cigar, electronic cigarillo, electronic pipe, or similar product or device and  
18 every variation thereof, regardless of whether marketed as such, and any vapor  
19 cartridge or other container of a liquid solution or other material that is  
20 intended to be used with or in an electronic cigarette, electronic cigar,  
21 electronic cigarillo, electronic pipe, or other similar product or device.

22 (b) "Vapor product" does not include any product regulated as a drug or device by  
23 the United States Food and Drug Administration under Chapter V of the Food,  
24 Drug, and Cosmetic Act, but does include a vapor product enhanced  
25 cartridge; and

26 (10) "Vapor product enhanced cartridge" means a vapor product cartridge or other  
27 container holding a solution or other material to be vaporized for inhalation that

1 is enhanced by material that adds:

2 (a) Nontobacco flavorings that are designed to sweeten or otherwise alter the  
 3 taste of the vaporized product so it no longer tastes like a typical cigarette or  
 4 tobacco product;

5 (b) Psychoactive or mood-altering substances;

6 (c) Any compounds from the cannabis plant, including delta-9-  
 7 tetrahydrocannabinol (THC) or cannabidiol (CBD); or

8 (d) Oils, compounds, or other chemicals that are intended to enhance the  
 9 delivery of substances included in paragraphs (a) to (c) of this subsection  
 10 into the lungs of the consumer.

11 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 438.305 TO 438.340 IS  
 12 CREATED TO READ AS FOLLOWS:

13 (1) (a) A retailer or manufacturer of a vapor product enhanced cartridge shall  
 14 register with the Department of Alcoholic Beverage Control.

15 (b) The registration fee for a retailer or manufacturer of vapor product  
 16 enhanced cartridges shall be five hundred dollars (\$500) per location  
 17 annually.

18 1. Registration fees paid into the State Treasury under this subsection  
 19 shall be credited to a revolving trust and agency account, as provided  
 20 in KRS 45.253, for the Department of Alcoholic Beverage Control.

21 2. These moneys shall be used solely for the administration and  
 22 enforcement of KRS 438.305 to 438.340.

23 3. Notwithstanding KRS 45.229, any moneys remaining in the fund at  
 24 the close of the fiscal year shall not lapse but shall be carried forward  
 25 into the succeeding fiscal year to be used for the purposes set forth in  
 26 subparagraph 2. of this paragraph.

27 (2) (a) A registered retailer or manufacturer of a vapor product enhanced cartridge

1 shall not sell the vapor product enhanced cartridge online, through catalog  
2 sales, or by phone. All sales of vapor product enhanced cartridges shall  
3 require an in-person purchase.

4 (b) It shall be unlawful for any person in the business of selling vapor product  
5 enhanced cartridges in another state or country to deliver or ship or cause  
6 to be delivered or shipped any vapor product enhanced cartridge directly to  
7 any Kentucky resident who does not hold a valid manufacturer or retailer  
8 registration issued by the Commonwealth of Kentucky.

9 (3) (a) No later than January 1, 2021, proof of age verification for purchasers of  
10 vapor product enhanced cartridges under this section shall require real-  
11 time age verification through an electronic third-party source.

12 (b) Every retailer of vapor product enhanced cartridges shall display at all  
13 times in a prominent place a printed card at least eight (8) inches by eleven  
14 (11) inches in size which shall show, in thirty (30) point or larger type,  
15 substantially as follows:

16 Persons under the age of eighteen (18) are subject to a fine of up to one  
17 hundred dollars (\$100) if they:

18 1. Enter the premises of a vapor product enhanced cartridges retailer to  
19 buy, or have provided to them vapor product enhanced cartridges.

20 2. Possess, purchase, attempt to purchase, or get another to purchase  
21 vapor product enhanced cartridges.

22 3. Misrepresent their age for the purpose of purchasing or obtaining  
23 vapor product enhanced cartridges.

24 (c) The fine referenced in paragraph (b) of this subsection shall be  
25 administered by the Department of Alcoholic Beverage Control using a civil  
26 enforcement procedure.

27 (4) A retailer or manufacturer of vapor product enhanced cartridges shall not permit

1        *a person under the age of eighteen (18) unaccompanied by a parent or guardian*  
2        *to remain on the premises.*

3        *(5) A violation of this section by a retailer or manufacturer of vapor product*  
4        *enhanced cartridges may result in a revocation of the retailer's or manufacturer's*  
5        *registration.*