

Regulation of Vapor Products, Alternative Nicotine Products, and E-liquid Products (Statement)

This act amends existing laws in Arkansas relating to the Arkansas Tobacco Products Tax Act of 1977, which regulates tobacco products, to include vapor products, alternative nicotine products, and e-liquid products.

A “vapor product” is defined as “an electronic oral device of any size or shape that contains a vapor of nicotine, e-liquid, or any another substance that when used or inhaled simulates smoking, regardless of whether a visible vapor is produced, including without limitation a device that:

- (A) Is composed of a heating element, battery, electronic circuit, chemical process, mechanical device, or a combination of heating element, battery, electronic circuit, chemical process, or mechanical device;
- (B) Works in combination with a cartridge, other container, or liquid delivery device containing nicotine or any other substance and manufactured for use with vapor products;
- (C) Is manufactured, distributed, marketed, or sold as any type or derivation of a vapor product, e-cigarette, e-cigar, e-pipe, or any other product name or descriptor; and
- (D) Does not include a product regulated as a drug or device by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., as it existed on January 1, 2015.”

An “alternative nicotine product” is defined as “a product that consists of or contains nicotine that can be ingested into the body by chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing, or by any other means.” However, an alternative nicotine product does not include a cigarette; a tobacco product; a vapor product; a product that is a drug under 21 U.S.C. § 321(g)(1); a product that is a device under 21 U.S.C. § 321(h); or a product that constitutes a combination drug, device, or biological product as described in 21 U.S.C. § 353(g).

An “e-liquid product” or “e-liquid” is defined as “a liquid product, which may or may not contain nicotine, that is vaporized and inhaled when using a vapor product, and that may or may not include without limitation propylene glycol, vegetable glycerin, nicotine from any source, and flavorings.”

Licenses and Permits

The act requires a license or permit for the sale of vapor products, alternative nicotine products, and e-liquid products.

The act adds a permit at a fee of \$100 for a “retail exclusive vapor product and alternative nicotine product store” meaning a retail store that generates 90% or more of its gross revenue from the sale and service of vapor products, alternative nicotine products, or e-liquid products.

The act amends the penalty for failure to have a license or permit to a Class A misdemeanor. The act amends the name on a permit to include the president or chief executive officer and the partnership or limited liability company when the permittee is a managing partner or managing

member of a limited liability company that is a partnership, limited liability company, or corporation.

The act adds a prohibition on a permittee or licensee who has unpaid fines or an unserved permit or license suspension to transfer, sell, or give of tobacco product, vapor product, alternative nicotine product, or e-liquid product inventory until all fines are paid in full and all suspensions are completed successfully.

Regulations

The act amends certain tobacco product regulations to require applicability to vapor products, alternative nicotine products, and e-liquid products.

Below is a list of the regulations that now apply to vapor products, alternative nicotine products, and e-liquid products:

- The definitions of invoice price, manufacturer, place of business, retailer, salesperson, warehouse, and wholesaler;
- The privilege to do business in Arkansas;
- The keeping of invoices for the purchase or sale of products;
- The penalty for failure to have a license or permit to do business in Arkansas;
- The prohibition for a retailer to purchase products from unregistered or unlicensed dealer;
- The common carrier obligations and restrictions;
- The wholesaler restrictions and criminal violations of wholesalers;
- The salesperson restrictions and criminal violations of salespersons;
- The retailer and vendor restrictions and criminal violations of retailer and vendor;
- The seizure, forfeiture, and disposition of products and other property;
- The order by a circuit court to seize property;
- The destruction of products upon conviction and the procedure involved;
- The membership of the Arkansas Tobacco Control Board to include wholesalers and retailers in all areas;
- The duties of the Arkansas Tobacco Control Board to include vapor products, alternative nicotine products, and e-liquid products; and
- The reports of wholesalers to the Arkansas Tobacco Control Board.

Child-Resistant Packaging and Safety Inspections

The act requires alternative nicotine products and e-liquid products that contain nicotine to have child-resistant packaging.

“Child-resistant packaging” is defined as “packaging that is designed or constructed to be:

- (A) Significantly difficult for children under five (5) years of age to:
 - (1) Open; or
 - (2) Obtain a toxic or harmful amount of the substance contained therein within a reasonable time; and
- (B) Not difficult for an average adult to use properly.”

“Child-resistant packaging” does not mean packaging that children cannot open or obtain a toxic or harmful amount within a reasonable time when tested in accordance with the method described in 16 C.F.R. § 1700.20, as it existed on January 1, 2015.

The act amends the health inspections to include vapor products, alternative nicotine products, and e-liquid products.

The act also adds duties to the Director of the Arkansas Tobacco Control Board to adopt safety and hygiene rules for persons that prepare or mix e-liquid products or alternative nicotine products.

The act prohibits the use of a tobacco product, vapor product, alternative nicotine product, and e-liquid product in or on the grounds of any school, child care facility, or healthcare facility.

Preemption & Agents of Arkansas Tobacco Control

The act creates a new section preempting county, municipal, or other local regulations regarding vapor products, alternative nicotine products, and e-liquid products that are more restrictive. The act also creates a new section regarding the selection and qualifications of enforcement agents of the Arkansas Tobacco Control. This section is identical to the provision that is repealed from a different Title of the Arkansas Code within this act.

Arkansas Tobacco Control Revenue Fund

The act creates a new fund on the books of the Treasurer of Arkansas called the "Arkansas Tobacco Control Revenue Fund." All permit and license fees will be deposited into the fund to be used for expenses of the Arkansas Tobacco Control Board in organization, maintenance, operation, and merchant education and training.

Criminal Violations

The act amends the existing criminal violation for a person to use tobacco products on the grounds of a school, child care facility, or healthcare facility to include vapor products, alternative nicotine products, and e-liquid products.

Repeal Certain Existing Law

The act repeals existing law concerning providing alternative nicotine products to minors, the selection and qualifications of enforcement agents of the Arkansas Tobacco Control, and the criminal offenses of providing minors with e-cigarettes and e-cigarette products, of purchase, use, or possession of e-cigarettes and e-cigarette products by minors, and of self-service displays and vending machines of e-cigarettes and e-cigarette products.

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