

REFERENCE TITLE: vapor products; sales; directory

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SB 1212

Introduced by
Senator Shope

AN ACT

AMENDING TITLE 44, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 41;
RELATING TO VAPOR PRODUCTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 44, Arizona Revised Statutes, is amended by adding
3 chapter 41, to read:

4 CHAPTER 41

5 VAPOR PRODUCT DIRECTORY

6 ARTICLE 1. GENERAL PROVISIONS

7 44-8041. Vapor product directory; fees; vapor product; fund;
8 directory posting; violation; civil penalties;
9 unfair practices; classification; enforcement;
10 examinations; agent; annual report; rules;
11 definition

12 A. ON OR BEFORE AUGUST 1, 2024 AND ANNUALLY THEREAFTER, EACH
13 MANUFACTURER OF VAPOR PRODUCTS THAT ARE SOLD IN THIS STATE, WHETHER
14 DIRECTLY OR THROUGH A DISTRIBUTOR, RETAILER OR SIMILAR INTERMEDIARY OR
15 INTERMEDIARIES, SHALL CERTIFY UNDER PENALTY OF PERJURY TO THE ATTORNEY
16 GENERAL ON A FORM AND IN THE MANNER PRESCRIBED BY THE ATTORNEY GENERAL,
17 THAT EITHER:

18 1. THE MANUFACTURER HAS RECEIVED A MARKETING AUTHORIZATION OR
19 SIMILAR ORDER FOR THE VAPOR PRODUCT FROM THE UNITED STATES FOOD AND DRUG
20 ADMINISTRATION PURSUANT TO 21 UNITED STATES CODE SECTION 387j.

21 2. THE VAPOR PRODUCT WAS MARKETED IN THE UNITED STATES ON OR BEFORE
22 AUGUST 8, 2016, THE MANUFACTURER SUBMITTED A PREMARKET TOBACCO PRODUCT
23 APPLICATION FOR THE VAPOR PRODUCT TO THE UNITED STATES FOOD AND DRUG
24 ADMINISTRATION PURSUANT TO 21 UNITED STATES CODE SECTION 387j ON OR BEFORE
25 SEPTEMBER 9, 2020 AND THE APPLICATION EITHER REMAINS UNDER REVIEW BY THE
26 UNITED STATES FOOD AND DRUG ADMINISTRATION OR A FINAL DECISION ON THE
27 APPLICATION HAS NOT TAKEN EFFECT.

28 B. THE CERTIFICATION FORM PRESCRIBED IN SUBSECTION A OF THIS
29 SECTION SHALL REQUIRE A MANUFACTURER TO SEPARATELY LIST EACH VAPOR PRODUCT
30 THAT THE MANUFACTURER SELLS IN THIS STATE.

31 C. EACH ANNUAL CERTIFICATION FORM REQUIRED BY SUBSECTION A OF THIS
32 SECTION SHALL BE ACCOMPANIED BY BOTH OF THE FOLLOWING:

33 1. A COPY OF THE MARKETING AUTHORIZATION OR OTHER ORDER FOR THE
34 VAPOR PRODUCT ISSUED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION
35 PURSUANT TO 21 UNITED STATES CODE SECTION 387j OR A COPY OF THE ACCEPTANCE
36 LETTER THAT IS ISSUED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION
37 PURSUANT TO 21 UNITED STATES CODE SECTION 387j FOR THE FILED PREMARKET
38 TOBACCO PRODUCT APPLICATION AND A FINAL AUTHORIZATION OR ORDER HAS NOT
39 TAKEN EFFECT.

40 2. A FEE FOR EACH VAPOR PRODUCT IN AN AMOUNT TO BE DETERMINED BY
41 THE ATTORNEY GENERAL. THE FEE MAY BE REVISED PERIODICALLY.

42 D. THE ATTORNEY GENERAL SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146
43 AND 35-147, ALL FEES COLLECTED PURSUANT TO THIS SECTION IN THE VAPOR
44 PRODUCT FUND ESTABLISHED BY THIS SECTION.

1 E. THE VAPOR PRODUCT FUND IS ESTABLISHED CONSISTING OF MONIES
2 DEPOSITED PURSUANT TO THIS SECTION. THE ATTORNEY GENERAL SHALL ADMINISTER
3 THE FUND. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND ARE EXEMPT
4 FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF
5 APPROPRIATIONS. THE ATTORNEY GENERAL SHALL USE THE MONIES EXCLUSIVELY FOR
6 ADMINISTRATING AND ENFORCING THIS SECTION.

7 F. A MANUFACTURER THAT IS REQUIRED TO SUBMIT A CERTIFICATION FORM
8 PURSUANT TO SUBSECTION A OF THIS SECTION SHALL NOTIFY THE ATTORNEY GENERAL
9 WITHIN THIRTY DAYS AFTER ANY MATERIAL CHANGE TO THE CERTIFICATION FORM,
10 INCLUDING THE ISSUANCE OR DENIAL OF A MARKETING AUTHORIZATION OR OTHER
11 ORDER BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION PURSUANT TO 21
12 UNITED STATES CODE SECTION 387j, OR ANY OTHER ORDER OR ACTION BY THE
13 UNITED STATES FOOD AND DRUG ADMINISTRATION THAT AFFECTS THE ABILITY OF THE
14 VAPOR PRODUCT TO BE INTRODUCED OR DELIVERED INTO INTERSTATE COMMERCE FOR
15 COMMERCIAL DISTRIBUTION IN THE UNITED STATES.

16 G. BEGINNING OCTOBER 1, 2024, THE ATTORNEY GENERAL SHALL MAINTAIN
17 AND MAKE PUBLICLY AVAILABLE ON ITS WEBSITE A DIRECTORY THAT LISTS ALL
18 MANUFACTURERS AND VAPOR PRODUCTS FOR WHICH CERTIFICATION FORMS HAVE BEEN
19 SUBMITTED AND SHALL UPDATE THE DIRECTORY AT LEAST MONTHLY.

20 H. THE ATTORNEY GENERAL SHALL PROVIDE MANUFACTURERS NOTICE AND AN
21 OPPORTUNITY TO CURE DEFICIENCIES BEFORE REMOVING MANUFACTURERS OR VAPOR
22 PRODUCTS FROM THE DIRECTORY. THE ATTORNEY GENERAL MAY NOT REMOVE THE
23 MANUFACTURER OR ITS VAPOR PRODUCTS FROM THE DIRECTORY UNTIL AT LEAST
24 FIFTEEN DAYS AFTER THE MANUFACTURER HAS BEEN GIVEN NOTICE OF AN INTENDED
25 ACTION. NOTICE IS SUFFICIENT AND IS DEEMED IMMEDIATELY RECEIVED BY A
26 MANUFACTURER IF THE NOTICE IS SENT EITHER ELECTRONICALLY TO AN EMAIL
27 ADDRESS OR BY FAX TO A FAX NUMBER THAT IS PROVIDED BY THE MANUFACTURER IN
28 ITS MOST RECENT CERTIFICATION FORM FILED UNDER SUBSECTION A OF THIS
29 SECTION. AFTER THE DATE OF SERVICE OF THE NOTICE OF THE ATTORNEY
30 GENERAL'S INTENDED ACTION, THE MANUFACTURER HAS NOT MORE THAN FIFTEEN
31 BUSINESS DAYS TO ESTABLISH THAT THE MANUFACTURER OR ITS VAPOR PRODUCTS
32 SHOULD BE INCLUDED IN THE DIRECTORY. A DETERMINATION BY THE ATTORNEY
33 GENERAL TO NOT INCLUDE IN OR TO REMOVE FROM THE DIRECTORY A MANUFACTURER
34 OR A VAPOR PRODUCT IS SUBJECT TO REVIEW BY THE FILING OF AN APPEAL
35 PURSUANT TO TITLE 41, CHAPTER 6, ARTICLES 6 AND 10.

36 I. IF A VAPOR PRODUCT IS REMOVED FROM THE DIRECTORY, EACH RETAILER
37 AND DISTRIBUTOR HAS NOT MORE THAN TWENTY-ONE DAYS AFTER THE DAY THE VAPOR
38 PRODUCT IS REMOVED FROM THE DIRECTORY TO REMOVE THE VAPOR PRODUCT FROM ITS
39 INVENTORY AND RETURN THE VAPOR PRODUCT TO THE MANUFACTURER FOR DISPOSAL.
40 AFTER TWENTY-ONE DAYS AFTER REMOVAL FROM THE DIRECTORY, A MANUFACTURER'S
41 VAPOR PRODUCTS THAT ARE IDENTIFIED IN THE NOTICE OF REMOVAL ARE CONTRABAND
42 AND ARE SUBJECT TO SEIZURE, FORFEITURE AND DESTRUCTION AND MAY NOT BE
43 PURCHASED OR SOLD IN THIS STATE. THE PERSON FROM WHOM THE VAPOR PRODUCTS
44 ARE CONFISCATED SHALL PAY FOR THE COST OF THE SEIZURE, FORFEITURE AND
45 DESTRUCTION.

1 J. BEGINNING OCTOBER 1, 2024, OR ON THE DATE THAT THE ATTORNEY
2 GENERAL FIRST MAKES THE DIRECTORY AVAILABLE FOR PUBLIC INSPECTION ON ITS
3 WEBSITE, WHICHEVER IS LATER, A PERSON MAY NOT SELL OR OFFER FOR SALE A
4 VAPOR PRODUCT IN THIS STATE THAT IS NOT INCLUDED IN THE DIRECTORY AND A
5 MANUFACTURER MAY NOT SELL, EITHER DIRECTLY OR THROUGH A DISTRIBUTOR,
6 RETAILER OR SIMILAR INTERMEDIARY, A VAPOR PRODUCT IN THIS STATE THAT IS
7 NOT INCLUDED IN THE DIRECTORY.

8 K. A DISTRIBUTOR, RETAILER OR ANY OTHER PERSON THAT SELLS OR OFFERS
9 FOR SALE IN THIS STATE A VAPOR PRODUCT THAT IS NOT INCLUDED IN THE
10 DIRECTORY IS SUBJECT TO A CIVIL PENALTY FOR EACH VAPOR PRODUCT THAT IS
11 OFFERED FOR SALE IN VIOLATION OF THIS SECTION FOR EACH DAY OF THE
12 VIOLATION UNTIL THE VAPOR PRODUCT IS REMOVED FROM THE MARKET OR PROPERLY
13 LISTED IN THE DIRECTORY. THE PENALTIES ARE AS FOLLOWS:

14 1. FOR A FIRST VIOLATION, A CIVIL PENALTY OF NOT MORE THAN \$500.

15 2. FOR A SECOND VIOLATION WITHIN THIRTY-SIX MONTHS, A CIVIL PENALTY
16 OF AT LEAST \$750 BUT NOT MORE THAN \$1,000.

17 3. FOR A THIRD VIOLATION WITHIN THIRTY-SIX MONTHS, A CIVIL PENALTY
18 OF AT LEAST \$1,000 BUT NOT MORE THAN \$1,500.

19 4. FOR A FOURTH OR ANY SUBSEQUENT VIOLATION WITHIN THIRTY-SIX
20 MONTHS, A CIVIL PENALTY OF AT LEAST \$1,500 BUT NOT MORE THAN \$3,000.

21 L. A MANUFACTURER WHOSE VAPOR PRODUCTS ARE NOT LISTED IN THE
22 DIRECTORY AND ARE SOLD IN THIS STATE, WHETHER DIRECTLY OR THROUGH A
23 DISTRIBUTOR, RETAILER OR SIMILAR INTERMEDIARY, IS SUBJECT TO A CIVIL
24 PENALTY OF \$500 FOR EACH VAPOR PRODUCT OFFERED FOR SALE IN VIOLATION OF
25 THIS SECTION FOR EACH DAY OF THE VIOLATION UNTIL THE VAPOR PRODUCT IS
26 REMOVED FROM THE MARKET OR PROPERLY LISTED IN THE DIRECTORY.

27 M. IN ADDITION TO ANY OTHER PRESCRIBED PENALTIES:

28 1. A MANUFACTURER THAT FALSELY REPRESENTS ANY OF THE INFORMATION
29 THAT IS REQUIRED PURSUANT TO SUBSECTION A OF THIS SECTION IS GUILTY OF A
30 CLASS 3 MISDEMEANOR FOR EACH FALSE REPRESENTATION.

31 2. A VIOLATION OF THIS SECTION IS AN UNLAWFUL PRACTICE PURSUANT TO
32 SECTION 44-1522. THE ATTORNEY GENERAL MAY INVESTIGATE AND TAKE
33 APPROPRIATE ACTION PURSUANT TO CHAPTER 10, ARTICLE 7 OF THIS TITLE.

34 N. THE ATTORNEY GENERAL MAY ENFORCE THIS SECTION AND MAY DESIGNATE
35 AGENTS TO ENFORCE THIS SECTION, INCLUDING LOCAL LAW ENFORCEMENT, THE
36 DEPARTMENT OF LIQUOR LICENSES AND CONTROL OR THE DEPARTMENT OF REVENUE.
37 THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S DESIGNEES MAY EXAMINE THE
38 STOCK OF VAPOR PRODUCTS ON THE PREMISES AND THE BOOKS, PAPERS, INVOICES
39 AND OTHER RECORDS OF A PERSON THAT POSSESSES, CONTROLS OR OCCUPIES A
40 PREMISES WHERE VAPOR PRODUCTS ARE PLACED, STORED, SOLD OR OFFERED FOR
41 SALE. EACH PERSON THAT POSSESSES, CONTROLS OR OCCUPIES A PREMISES WHERE
42 VAPOR PRODUCTS ARE PLACED, SOLD OR OFFERED FOR SALE MUST ALLOW THE
43 ATTORNEY GENERAL AND THE ATTORNEY GENERAL'S DESIGNEES THE MEANS,
44 FACILITIES AND OPPORTUNITY FOR THE EXAMINATIONS AUTHORIZED BY THIS
45 SECTION.

1 O. A VAPOR PRODUCT OFFERED FOR SALE IN VIOLATION OF THIS SECTION IS
2 CONTRABAND AND MAY BE SEIZED WITHOUT A WARRANT BY THE ATTORNEY GENERAL OR
3 THE ATTORNEY GENERAL'S DESIGNEES OR EMPLOYEES OR BY ANY LAW ENFORCEMENT
4 OFFICER OF THIS STATE IF DIRECTED BY THE ATTORNEY GENERAL.

5 P. THE ATTORNEY GENERAL SHALL INVESTIGATE EACH COMPLAINT THAT IT
6 RECEIVES RELATING TO THIS CHAPTER. IN AN ACTION BROUGHT UNDER THIS
7 SECTION, THE ATTORNEY GENERAL MAY RECOVER ATTORNEY FEES AND REASONABLE
8 EXPENSES INCURRED IN INVESTIGATING AND PREPARING THE CASE.

9 Q. EACH DISTRIBUTOR AND RETAILER IS SUBJECT TO UNANNOUNCED
10 COMPLIANCE CHECKS FOR THE PURPOSES OF ENFORCING THIS SECTION. THE
11 COMPLIANCE CHECKS MAY BE CONDUCTED DURING NORMAL BUSINESS HOURS AND SHALL
12 INCLUDE THE REVIEW OF RECORDS RETAINED BY DISTRIBUTORS AND RETAILERS.
13 UNANNOUNCED FOLLOW-UP COMPLIANCE CHECKS OF A NONCOMPLIANT DISTRIBUTOR AND
14 RETAILER ARE REQUIRED WITHIN THIRTY DAYS AFTER A VIOLATION OF THIS
15 SECTION. THE ATTORNEY GENERAL SHALL PUBLISH THE RESULTS OF ALL COMPLIANCE
16 CHECKS AT LEAST ANNUALLY AND SHALL MAKE THE RESULTS AVAILABLE TO THE
17 PUBLIC ON REQUEST.

18 R. NOTWITHSTANDING ANY OTHER LAW, A NONRESIDENT OR FOREIGN
19 MANUFACTURER THAT HAS NOT REGISTERED AS A FOREIGN CORPORATION UNDER TITLE
20 10 OR A FOREIGN LIMITED PARTNERSHIP, A FOREIGN LIMITED LIABILITY COMPANY
21 OR A FOREIGN SERIES UNDER TITLE 29 SHALL APPOINT AND CONTINUALLY ENGAGE
22 WITHOUT INTERRUPTION THE SERVICES OF AN AGENT IN THE UNITED STATES TO ACT
23 AS AN AGENT FOR THE SERVICE OF PROCESS ON WHOM ALL PROCESS AND ANY ACTION
24 OR PROCEEDING AGAINST IT CONCERNING OR ARISING OUT OF THE ENFORCEMENT OF
25 THIS SECTION MAY BE SERVED IN ANY MANNER AUTHORIZED BY LAW. SERVICE UNDER
26 THIS SECTION CONSTITUTES LEGAL AND VALID SERVICE OF PROCESS ON THE
27 NONRESIDENT OR FOREIGN MANUFACTURER. THE NONRESIDENT OR FOREIGN
28 MANUFACTURER SHALL PROVIDE THE NAME, ADDRESS, TELEPHONE NUMBER AND PROOF
29 OF THE APPOINTMENT AND AVAILABILITY OF THE AGENT TO THE ATTORNEY GENERAL
30 IN A MANNER APPROVED BY THE ATTORNEY GENERAL. A NONRESIDENT OR FOREIGN
31 MANUFACTURER THAT DOES NOT COMPLY WITH APPOINTING AN AGENT PURSUANT TO
32 THIS SUBSECTION MAY NOT HAVE ITS VAPOR PRODUCTS LISTED OR RETAINED IN THE
33 DIRECTORY. THE APPOINTMENT OF THE SECRETARY OF STATE AS THE AGENT
34 PURSUANT TO SUBSECTION S OF THIS SECTION DOES NOT ALLOW THE NONRESIDENT OR
35 FOREIGN MANUFACTURER TO HAVE ITS VAPOR PRODUCTS INCLUDED OR RETAINED IN
36 THE DIRECTORY. THE NONRESIDENT OR FOREIGN MANUFACTURER SHALL:

37 1. PROVIDE NOTICE TO THE ATTORNEY GENERAL AT LEAST THIRTY CALENDAR
38 DAYS BEFORE THE TERMINATION OF THE AGENT'S AUTHORITY.

39 2. PROVIDE PROOF TO THE ATTORNEY GENERAL IN A MANNER APPROVED BY
40 THE ATTORNEY GENERAL OF THE APPOINTMENT OF A NEW AGENT AT LEAST FIVE
41 CALENDAR DAYS BEFORE THE TERMINATION OF AN EXISTING AGENT APPOINTMENT.

42 3. IF AN AGENT TERMINATES AN AGENCY APPOINTMENT, NOTIFY THE
43 ATTORNEY GENERAL OF THE TERMINATION WITHIN FIVE CALENDAR DAYS AND SHALL
44 INCLUDE PROOF OF THE APPOINTMENT OF A NEW AGENT TO THE ATTORNEY GENERAL IN
45 A MANNER APPROVED BY THE ATTORNEY GENERAL.

1 S. A NONRESIDENT OR FOREIGN MANUFACTURER WHOSE VAPOR PRODUCTS ARE
2 SOLD IN THIS STATE AND THAT HAS NOT APPOINTED AND ENGAGED AN AGENT AS
3 PRESCRIBED BY SUBSECTION R OF THIS SECTION IS DETERMINED TO HAVE APPOINTED
4 THE SECRETARY OF STATE AS THE AGENT AND MAY BE PROCEEDED AGAINST IN COURTS
5 OF THIS STATE BY SERVICE OF PROCESS ON THE SECRETARY OF STATE.

6 T. BEGINNING JANUARY 31, 2025 AND ANNUALLY THEREAFTER, THE ATTORNEY
7 GENERAL SHALL PROVIDE A REPORT TO THE PRESIDENT OF THE SENATE AND THE
8 SPEAKER OF THE HOUSE OF REPRESENTATIVES REGARDING THE STATUS OF THE
9 DIRECTORY, MANUFACTURERS AND VAPOR PRODUCTS INCLUDED IN THE DIRECTORY,
10 REVENUE AND EXPENDITURES RELATED TO THE ADMINISTRATION OF THIS SECTION AND
11 ENFORCEMENT ACTIVITIES PURSUANT TO THIS SECTION.

12 U. THE ATTORNEY GENERAL MAY ADOPT RULES NECESSARY TO ADMINISTER
13 THIS SECTION.

14 V. FOR THE PURPOSES OF THIS SECTION, "VAPOR PRODUCT":

15 1. MEANS A NONCOMBUSTIBLE PRODUCT CONTAINING NICOTINE FROM ANY
16 SOURCE THAT EMPLOYS A MECHANICAL HEATING ELEMENT, BATTERY OR CIRCUIT,
17 REGARDLESS OF SHAPE OR SIZE, THAT CAN BE USED TO HEAT A LIQUID NICOTINE
18 SOLUTION TO PRODUCE AN AEROSOL OR VAPOR.

19 2. INCLUDES A CONSUMABLE NICOTINE SOLUTION SUITABLE FOR USE IN A
20 VAPOR PRODUCT WHETHER SOLD WITH THE VAPOR PRODUCT OR SEPARATELY.

21 3. DOES NOT INCLUDE ANY PRODUCT THAT IS REGULATED BY THE UNITED
22 STATES FOOD AND DRUG ADMINISTRATION UNDER SUBCHAPTER V OF THE FEDERAL
23 FOOD, DRUG, AND COSMETIC ACT.