

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1365

(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

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 AT RETAIL IN THIS STATE,  
14 WHETHER DIRECTLY OR THROUGH A DISTRIBUTOR, RETAILER OR SIMILAR INTERMEDIARY  
15 OR INTERMEDIARIES, SHALL CERTIFY UNDER PENALTY OF PERJURY TO THE ATTORNEY  
16 GENERAL ON A FORM AND IN THE MANNER PRESCRIBED BY THE ATTORNEY GENERAL THAT  
17 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

1 UNITED STATES FOOD AND DRUG ADMINISTRATION OR A FINAL DECISION ON THE  
2 APPLICATION IS NOT OTHERWISE IN EFFECT.

3 B. THE CERTIFICATION FORM PRESCRIBED IN SUBSECTION A OF THIS SECTION  
4 SHALL REQUIRE A MANUFACTURER TO SEPARATELY LIST EACH VAPOR PRODUCT THAT THE  
5 MANUFACTURER SELLS AT RETAIL IN THIS STATE.

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

8 1. A COPY OF THE MARKETING AUTHORIZATION OR OTHER ORDER FOR THE  
9 VAPOR PRODUCT ISSUED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION  
10 PURSUANT TO 21 UNITED STATES CODE SECTION 387j OR A COPY OF THE ACCEPTANCE  
11 LETTER THAT IS ISSUED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION  
12 PURSUANT TO 21 UNITED STATES CODE SECTION 387j FOR THE FILED PREMARKET  
13 TOBACCO PRODUCT APPLICATION AND A FINAL AUTHORIZATION OR ORDER HAS NOT  
14 TAKEN EFFECT.

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

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

20 E. THE VAPOR PRODUCT FUND IS ESTABLISHED CONSISTING OF MONIES  
21 DEPOSITED PURSUANT TO THIS SECTION. THE ATTORNEY GENERAL SHALL ADMINISTER  
22 THE FUND. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND ARE EXEMPT  
23 FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF  
24 APPROPRIATIONS. THE ATTORNEY GENERAL SHALL USE THE MONIES EXCLUSIVELY FOR  
25 ADMINISTRATING AND ENFORCING THIS SECTION.

26 F. A MANUFACTURER THAT IS REQUIRED TO SUBMIT A CERTIFICATION FORM  
27 PURSUANT TO SUBSECTION A OF THIS SECTION SHALL NOTIFY THE ATTORNEY GENERAL  
28 WITHIN THIRTY DAYS AFTER ANY MATERIAL CHANGE TO THE CERTIFICATION FORM,  
29 INCLUDING THE ISSUANCE OR DENIAL OF A MARKETING AUTHORIZATION OR OTHER  
30 ORDER BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION PURSUANT TO 21  
31 UNITED STATES CODE SECTION 387j, OR ANY OTHER ORDER OR ACTION BY THE UNITED

1 STATES FOOD AND DRUG ADMINISTRATION THAT AFFECTS THE ABILITY OF THE VAPOR  
2 PRODUCT TO BE INTRODUCED OR DELIVERED INTO INTERSTATE COMMERCE FOR  
3 COMMERCIAL DISTRIBUTION IN THE UNITED STATES.

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

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

24 I. IF A VAPOR PRODUCT IS REMOVED FROM THE DIRECTORY, EACH RETAILER  
25 AND DISTRIBUTOR THAT HOLDS INVENTORY OF THE VAPOR PRODUCTS FOR RETAIL SALE  
26 IN THIS STATE HAS NOT MORE THAN THIRTY DAYS AFTER THE DAY THE VAPOR PRODUCT  
27 IS REMOVED FROM THE DIRECTORY TO REMOVE THE VAPOR PRODUCT FROM ITS  
28 INVENTORY AND RETURN THE VAPOR PRODUCT TO THE MANUFACTURER FOR DISPOSAL.  
29 AFTER THIRTY DAYS AFTER REMOVAL FROM THE DIRECTORY, A MANUFACTURER'S VAPOR  
30 PRODUCTS THAT ARE IDENTIFIED IN THE NOTICE OF REMOVAL ARE CONTRABAND AND  
31 ARE SUBJECT TO SEIZURE, FORFEITURE AND DESTRUCTION AND MAY NOT BE PURCHASED

1 OR SOLD AT RETAIL IN THIS STATE. THE PERSON FROM WHOM THE VAPOR PRODUCTS  
2 ARE CONFISCATED SHALL PAY FOR THE COST OF THE SEIZURE, FORFEITURE AND  
3 DESTRUCTION.

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

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

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

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

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

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

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

1 M. IN ADDITION TO ANY OTHER PRESCRIBED PENALTIES:

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

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

8 N. THE ATTORNEY GENERAL MAY ENFORCE THIS SECTION AND MAY DESIGNATE  
9 AGENTS TO ENFORCE THIS SECTION, INCLUDING LOCAL LAW ENFORCEMENT, THE  
10 DEPARTMENT OF LIQUOR LICENSES AND CONTROL OR THE DEPARTMENT OF REVENUE.  
11 THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S DESIGNEES MAY EXAMINE THE  
12 STOCK OF VAPOR PRODUCTS ON THE PREMISES AND THE BOOKS, PAPERS, INVOICES AND  
13 OTHER RECORDS OF A PERSON THAT POSSESSES, CONTROLS OR OCCUPIES A PREMISES  
14 WHERE VAPOR PRODUCTS ARE PLACED, STORED, SOLD AT RETAIL OR OFFERED FOR  
15 RETAIL SALE. EACH PERSON THAT POSSESSES, CONTROLS OR OCCUPIES A PREMISES  
16 WHERE VAPOR PRODUCTS ARE PLACED, SOLD AT RETAIL OR OFFERED FOR RETAIL SALE  
17 MUST ALLOW THE ATTORNEY GENERAL AND THE ATTORNEY GENERAL'S DESIGNEES THE  
18 MEANS, FACILITIES AND OPPORTUNITY FOR THE EXAMINATIONS AUTHORIZED BY THIS  
19 SECTION.

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

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

28 Q. EACH DISTRIBUTOR AND RETAILER IS SUBJECT TO UNANNOUNCED  
29 COMPLIANCE CHECKS FOR THE PURPOSES OF ENFORCING THIS SECTION. THE  
30 COMPLIANCE CHECKS MAY BE CONDUCTED DURING NORMAL BUSINESS HOURS AND SHALL  
31 INCLUDE THE REVIEW OF RECORDS RETAINED BY DISTRIBUTORS AND RETAILERS.

1 UNANNOUNCED FOLLOW-UP COMPLIANCE CHECKS OF A NONCOMPLIANT DISTRIBUTOR AND  
2 RETAILER ARE REQUIRED WITHIN THIRTY DAYS AFTER A VIOLATION OF THIS SECTION.  
3 THE ATTORNEY GENERAL SHALL PUBLISH THE RESULTS OF ALL COMPLIANCE CHECKS AT  
4 LEAST ANNUALLY AND SHALL MAKE THE RESULTS AVAILABLE TO THE PUBLIC ON  
5 REQUEST.

6 R. NOTWITHSTANDING ANY OTHER LAW, A NONRESIDENT OR FOREIGN  
7 MANUFACTURER THAT HAS NOT REGISTERED AS A FOREIGN CORPORATION UNDER TITLE  
8 10 OR A FOREIGN LIMITED PARTNERSHIP, A FOREIGN LIMITED LIABILITY COMPANY OR  
9 A FOREIGN SERIES UNDER TITLE 29 SHALL APPOINT AND CONTINUALLY ENGAGE  
10 WITHOUT INTERRUPTION THE SERVICES OF AN AGENT IN THE UNITED STATES TO ACT  
11 AS AN AGENT FOR THE SERVICE OF PROCESS ON WHOM ALL PROCESS AND ANY ACTION  
12 OR PROCEEDING AGAINST IT CONCERNING OR ARISING OUT OF THE ENFORCEMENT OF  
13 THIS SECTION MAY BE SERVED IN ANY MANNER AUTHORIZED BY LAW. SERVICE UNDER  
14 THIS SECTION CONSTITUTES LEGAL AND VALID SERVICE OF PROCESS ON THE  
15 NONRESIDENT OR FOREIGN MANUFACTURER. THE NONRESIDENT OR FOREIGN  
16 MANUFACTURER SHALL PROVIDE THE NAME, ADDRESS, TELEPHONE NUMBER AND PROOF OF  
17 THE APPOINTMENT AND AVAILABILITY OF THE AGENT TO THE ATTORNEY GENERAL IN A  
18 MANNER APPROVED BY THE ATTORNEY GENERAL. A NONRESIDENT OR FOREIGN  
19 MANUFACTURER THAT DOES NOT COMPLY WITH APPOINTING AN AGENT PURSUANT TO THIS  
20 SUBSECTION MAY NOT HAVE ITS VAPOR PRODUCTS LISTED OR RETAINED IN THE  
21 DIRECTORY. THE APPOINTMENT OF THE SECRETARY OF STATE AS THE AGENT PURSUANT  
22 TO SUBSECTION S OF THIS SECTION DOES NOT ALLOW THE NONRESIDENT OR FOREIGN  
23 MANUFACTURER TO HAVE ITS VAPOR PRODUCTS INCLUDED OR RETAINED IN THE  
24 DIRECTORY. THE NONRESIDENT OR FOREIGN MANUFACTURER SHALL:

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

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

30 3. IF AN AGENT TERMINATES AN AGENCY APPOINTMENT, NOTIFY THE ATTORNEY  
31 GENERAL OF THE TERMINATION WITHIN FIVE CALENDAR DAYS AND SHALL INCLUDE

1 PROOF OF THE APPOINTMENT OF A NEW AGENT TO THE ATTORNEY GENERAL IN A MANNER  
2 APPROVED BY THE ATTORNEY GENERAL.

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

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

14 U. THE ATTORNEY GENERAL MAY ADOPT RULES NECESSARY TO ADMINISTER THIS  
15 SECTION.

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

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

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

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

26 Amend title to conform

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