

HOUSE BILL No. 2801

By Committee on Federal and State Affairs

Requested by Representative W. Carpenter on behalf of Phillip Near of Jump Start C-Stores

2-14

1 AN ACT concerning the regulation of consumable material and electronic
2 cigarettes; requiring manufacturers to submit certifications regarding
3 the status of products to the director of alcoholic beverage control of
4 the department of revenue; establishing fines and criminal penalties for
5 violations thereto.
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. (a) From and after October 1, 2024, and annually
9 thereafter, every manufacturer of consumable material and electronic
10 cigarettes that are sold in this state, whether directly or through a
11 distributor, wholesaler, retailer or similar intermediary or intermediaries,
12 shall certify under penalty of perjury, on a form and in the manner
13 prescribed by the director, that the manufacturer agrees to comply with this
14 section and that:

15 (1) The manufacturer has received a marketing authorization or
16 similar order for the consumable material or electronic cigarette from the
17 United States food and drug administration pursuant to 21 U.S.C. § 387j;
18 or

19 (2) the consumable material or electronic cigarette was marketed in
20 the United States as of August 8, 2016, the manufacturer submitted a
21 premarket tobacco product application for the consumable material or
22 electronic cigarette to the United States food and drug administration
23 pursuant to 21 U.S.C. § 387j on or before September 9, 2020, the
24 application was accepted for filing and the application either remains
25 under review by the United States food and drug administration or a final
26 decision on the application has not yet taken effect.

27 (b) A manufacturer shall submit a certification form that separately
28 lists each consumable material and electronic cigarette that such
29 manufacturer sells in this state.

30 (c) Each annual certification form required by subsections (a) and (b)
31 shall be accompanied by a:

32 (1) Copy of the marketing authorization or other order for the
33 consumable material or electronic cigarette issued by the United States
34 food and drug administration pursuant to 21 U.S.C. § 387j, or evidence

1 that the premarket tobacco product application for the consumable material
2 or electronic cigarette was submitted to the United States food and drug
3 administration, accepted for filing and a final authorization or order has
4 not yet taken effect; and

5 (2) payment of \$250 for each consumable material or electronic
6 cigarette certification form submitted for the first time and a payment of
7 \$100 annually thereafter for each consumable material or electronic
8 cigarette.

9 (d) A manufacturer required to submit a certification form pursuant to
10 subsections (a) and (b) shall notify the director within 30 days of any
11 material change to the certification form, including the issuance or denial
12 of a marketing authorization or other order by the United States food and
13 drug administration pursuant to 21 U.S.C. § 387j, or any other order or
14 action by the United States food and drug administration or a court of
15 competent jurisdiction that affects the ability of the consumable material or
16 electronic cigarette to be introduced or delivered into interstate commerce
17 for commercial distribution in the United States.

18 (e) On and after November 1, 2024, the director shall maintain and
19 make publicly available on the department of revenue's website a directory
20 that lists all consumable material and electronic cigarette manufacturers
21 and consumable material and electronic cigarettes for which certification
22 forms have been submitted and update the directory at least monthly to
23 ensure accuracy.

24 (f) The director shall provide manufacturers notice and an
25 opportunity to cure deficiencies before removing manufacturers or
26 products from the directory.

27 (1) The director may not remove the manufacturer or its products
28 from the directory until at least 30 days after the manufacturer has been
29 given notice of an intended action. Notice shall be sufficient and be
30 deemed immediately received by a manufacturer if the notice is sent either
31 electronically or by facsimile to an electronic mail address or facsimile
32 number, as the case may be and provided by the manufacturer in its most
33 recent certification filed under subsections (a) and (b).

34 (2) The consumable material or electronic cigarette manufacturer
35 shall have 15 business days from the date of service of the notice of the
36 director's intended action to establish that the consumable material or
37 electronic cigarette manufacturer or its products should be included in the
38 directory.

39 (g) If a product is removed from the directory, each retailer,
40 distributor, and wholesaler shall have 30 days from the day such product is
41 removed from the directory to sell or remove the product from its
42 inventory and return the product to the manufacturer for disposal. After 30
43 days from removal from the directory, the consumable material or

1 electronic cigarette of a manufacturer identified in the notice of removal
2 shall be deemed contraband and subject to seizure, forfeiture and
3 destruction, and may not be purchased or sold for retail sale in the state.
4 The cost of any such seizure, forfeiture and destruction shall be borne by
5 the person from whom the products are confiscated.

6 (h) From and after January 1, 2025, or on the date that the director
7 first makes the directory available for public inspection on the department
8 of revenue website, whichever is later, a person may not sell or offer for
9 sale in this state consumable material or an electronic cigarette that is not
10 included in the directory described in subsection (e), and a consumable
11 material or electronic cigarette manufacturer may not sell in this state,
12 whether directly or through a distributor, wholesaler, retailer or similar
13 intermediary or intermediaries, consumable material or an electronic
14 cigarette that is not included in the directory described by subsection (e).

15 (i) The following penalties shall apply to violations of this section:

16 (1) An importer, distributor or wholesaler who supplies or offers to
17 supply a retailer in this state with consumable material or an electronic
18 cigarette that is not included in the directory shall be subject to a civil
19 penalty of \$250 per day, starting from the date of notification of a
20 violation, for each product supplied or offered to be supplied in violation
21 of this section until such product is removed from the market or properly
22 listed on the directory.

23 (2) A retailer, or any other person, who sells or offers for sale in this
24 state consumable material or an electronic cigarette that is not included in
25 the directory shall be subject to the following penalties:

26 (A) For a first violation, a written notice from the director;

27 (B) for a second violation within a 12-month period, a civil penalty of
28 \$100 per day, starting from the date of notification of a violation for each
29 product offered for sale in violation of this section until such product is
30 removed from the market or properly listed on the directory;

31 (C) for a third violation within a 12-month period, a civil penalty of
32 \$250, and the retailer shall be prohibited from selling consumable material
33 or electronic cigarettes for a period of 14 days;

34 (D) for a fourth violation within a 12-month period, a civil penalty of
35 \$500, and the retailer shall be prohibited from selling consumable material
36 or electronic cigarettes for a period of 60 days;

37 (E) for a fifth or subsequent violation within a 12-month period, a
38 civil penalty of \$750, and the retailer shall be prohibited from selling
39 consumable material or electronic cigarettes for a period of at least one
40 year;

41 (F) penalty provisions for a retailer under subparagraphs (A) through
42 (E) shall not apply to any retailer who acquired consumable material or an
43 electronic cigarette that is not included in the directory if such retailer

1 purchased such consumable material or electronic cigarette from a
2 distributor licensed pursuant to K.S.A. 79-3373, and amendments thereto.

3 (3) (A) A consumable material or electronic cigarette manufacturer
4 whose consumable material or electronic cigarettes are not listed in the
5 directory but sold in this state, whether directly or through a distributor,
6 wholesaler, retailer or similar intermediary or intermediaries, is subject to
7 a civil penalty of \$250 per day for each product offered for sale in
8 violation of this section until such product is removed from the market or
9 properly listed on the directory.

10 (B) Any manufacturer that falsely represents any of the information
11 required by subsections (a) and (b) shall be guilty of a class C nonperson
12 misdemeanor for each false representation.

13 (4) A violation of this section is a deceptive practice under the Kansas
14 consumer protection act.

15 (j) All fees and penalties collected by the director pursuant to this
16 section shall be used for the administration and enforcement of this
17 section.

18 (k) To enforce the provisions of this section, the director may
19 examine the books, papers, invoices and other records of any individual in
20 possession, control or occupancy of any premises where consumable
21 material or electronic cigarettes are placed, stored, sold or offered for sale,
22 including the stock of consumable material and electronic cigarettes on the
23 premises. Every individual in the possession, control or occupancy of any
24 premises where consumable material or electronic cigarettes are placed,
25 sold or offered for sale shall give the director the means, facilities and
26 opportunity for the examinations authorized by this section.

27 (l) Each retailer and wholesaler that sells or distributes consumable
28 material or electronic cigarettes in this state may be subject to
29 unannounced compliance checks annually for purposes of enforcing this
30 section. At least 15% of retailers and wholesalers operating in Kansas shall
31 be subject to compliance checks each year. Unannounced follow-up
32 compliance checks of all noncompliant retailers and wholesalers shall be
33 conducted within 30 days after any violation of this section. The director
34 shall publish the results of all compliance checks at least annually and
35 shall make the results available to the public upon request.

36 (m) (1) Any nonresident manufacturer of consumable material or
37 electronic cigarettes that has not registered to do business in the state as a
38 foreign corporation or business entity shall, as a condition precedent to
39 being included in the directory created in this section, appoint and
40 continually engage the services of an agent in Kansas to act as agent for
41 the service of process on whom all process, and any action or proceeding
42 against it concerning or arising out of the enforcement of this section, may
43 be served in any manner authorized by law. Such service shall constitute

1 legal and valid service of process on the manufacturer. The manufacturer
2 shall provide the name, address, telephone number and proof of the
3 appointment and availability of such agent to the director.

4 (2) The manufacturer shall provide notice to the director 30 calendar
5 days prior to termination of the authority of an agent and proof to the
6 satisfaction of the director of the appointment of a new agent not less than
7 five calendar days prior to the termination of an existing agent
8 appointment. In the event an agent terminates an agency appointment, the
9 manufacturer shall notify the director of the termination within five
10 calendar days and include proof of the appointment of a new agent to the
11 satisfaction of the director.

12 (3) Any manufacturer whose consumable material or electronic
13 cigarettes are sold in this state and who has not appointed and engaged the
14 services of an agent as required by this section shall be deemed to have
15 appointed the secretary of state as such manufacturer's agent for service of
16 process. The appointment of the secretary of state as agent shall not satisfy
17 the condition precedent required in subsection (a) for inclusion or retention
18 in the directory.

19 (n) A determination by the director to not include or to remove a
20 manufacturer, consumable material or an electronic cigarette from the
21 directory shall be subject to review by the filing of a civil action for
22 prospective declaratory or injunctive relief.

23 (o) The director may promulgate rules necessary to effect the
24 purposes of this section.

25 (p) On and after July 1, 2025, and annually thereafter, the director
26 shall provide a report to the legislature regarding the status of the
27 directory, manufacturers and products included in the directory, revenue
28 and expenditures related to administration and enforcement activities
29 undertaken pursuant to this section.

30 (q) As used in this section:

31 (1) "Director" means the director of the alcoholic beverage control of
32 the department of revenue.

33 (2) "Electronic cigarette" means the same as defined in K.S.A. 79-
34 3301, and amendments thereto.

35 (3) "Consumable material" means the same as defined in K.S.A. 79-
36 3399, and amendments thereto.

37 Sec. 2. This act shall take effect and be in force from and after its
38 publication in the statute book.