



## **HB 11 – An Act Relating to Nicotine Products**

### **Frequently Asked Questions**

#### **When does the bill take effect?**

HB 11 takes effect on January 1, 2025.

#### **Who does the bill affect?**

Manufacturers, Wholesalers, and Retailers of vapor products.

#### **What are Vapor Products?**

“Vapor product” means any noncombustible product that employs a heating element, battery, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size and including the component parts and accessories thereto, that can be used to deliver vaporized nicotine or other substances to users inhaling from the device. “Vapor product” includes but is not limited to any device deemed to be an electronic nicotine delivery system by the United States Food and Drug Administration, any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and every variation thereof, regardless of whether marketed as such, and any vapor cartridge or other container of a liquid solution or other material that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar product or device.

#### **What is an Authorized Vapor Product?**

An “authorized vapor product” means a vapor product containing nicotine for which the manufacturer has obtained authorization or a certificate of safe harbor from the Food and Drug Administration (FDA). Therefore, any vapor product that contains a substance other than nicotine or which is not included on the FDA’s “Authorized Vapor Product” list and does not have an FDA certificate of safe harbor, is considered an unauthorized vapor product and is illegal to manufacture, distribute, or sell in the state of Kentucky.

#### **How can you determine if a product is an authorized vapor product?**

The list of FDA approved vapor products can be found at:

[https://digitalmedia.hhs.gov/tobacco/print\\_materials/CTP-250?locale=en](https://digitalmedia.hhs.gov/tobacco/print_materials/CTP-250?locale=en)

You can search a specific product on the FDA's searchable database which can be found at:

<https://www.accessdata.fda.gov/scripts/searchtobacco/>

## **What are my primary responsibilities under the law?**

### **Industry member responsibilities:**

Manufacturers are responsible for:

1. Providing wholesalers only authorized vapor products and the certificate of safe harbor for any product that has been granted one.
2. If safe harbor certification is removed from a product, notify the wholesalers and retailers that the product is no longer legal for sale in Kentucky.

Wholesalers are responsible for:

1. Only distributing authorized vapor products.
2. Providing the certificate of safe harbor for any product that has been granted one, if the product is not manufactured by a Kentucky-licensed resident manufacturer.
3. Verifying that a retailer is not listed in the noncompliant database before selling any vapor product to them.

Retailers are responsible for the following:

1. Indicating on annual business filings with the Secretary of State that the business is a retailer of authorized vapor products.
2. Refraining from selling unauthorized vapor products.
3. Only selling authorized vapor products to consumers who are 21 years of age or older.
4. Maintaining the certificates of safe harbor for any products they sell that do not appear on the FDA's approved product list, unless purchased from a Kentucky-licensed resident wholesaler.
5. Refraining from selling vapor products for two years if placed on the noncompliant retailer list.

### **Kentucky Department of Alcoholic Beverage Control Responsibilities:**

1. Maintaining an online database of vapor product retailers.
2. Maintaining an online database of noncompliant retailers.
3. Enforcing laws related to vapor products, selling to minors, and noncompliant retailer database restrictions.

## **What violations result in a Retailer being placed on the noncompliant database?**

1. Selling to minors (4<sup>th</sup> offense in 2 years)
2. Selling unauthorized vapor products (4<sup>th</sup> offense in 2 years)

*\*It is important to note that if violation fines are unpaid for longer than 60 days, the retailer loses the ability to sell vapor products.*