

COMMITTEE ON INTERNATIONAL TRADE
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2765
(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 42-3001, Arizona Revised Statutes, is amended
3 to read:

4 42-3001. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Affix" and "affixed" include imprinting tax meter stamps on
7 packages and individual containers as authorized by the department.

8 2. "Brand family" has the same meaning prescribed in section
9 44-7111.

10 3. "Cavendish" means a tobacco product that is smoked from a pipe
11 and that meets one of the following criteria:

12 (a) Is described as cavendish, as containing cavendish or as a
13 cavendish blend on its packaging, labeling or promotional materials.

14 (b) Appears to have been processed or manufactured with an amount
15 of flavorings and humectants that exceeds twenty percent of the weight of
16 the tobacco contained in the product.

17 (c) Appears to be blended with or contain a tobacco product
18 described in subdivision (b) of this paragraph.

19 4. "Cider" means vinous liquor that is made from the normal
20 alcoholic fermentation of the juice of sound, ripe apples, pears or other
21 pome fruit, including flavored, sparkling and carbonated cider and cider
22 made from condensed apple, pear or other pome fruit must, and that
23 contains more than one-half of one percent of alcohol by volume but not
24 more than seven percent of alcohol by volume.

25 5. "Cigar" means any roll of tobacco wrapped in leaf tobacco or in
26 any substance containing tobacco other than any roll of tobacco that is a
27 cigarette, as defined in paragraph 6, subdivision (b) of this section.

28 6. "Cigarette" means either of the following:

29 (a) Any roll of tobacco wrapped in paper or any substance not
30 containing tobacco.

31 (b) Any roll of tobacco wrapped in any substance containing tobacco
32 that, because of its appearance, the type of tobacco used in the filler or
33 its packaging and labeling, is likely to be offered to or purchased by a
34 consumer as a cigarette described in subdivision (a) of this paragraph.
35 This subdivision shall be interpreted consistently with the classification
36 guidelines established by the federal alcohol and tobacco tax and trade
37 bureau.

38 7. "Consumer" means a person in this state that comes into
39 possession of any luxury subject to the tax imposed by this chapter and

1 that, on coming into possession of the luxury, is not a distributor
2 intending to sell or distribute the luxury, a retailer or a wholesaler.

3 8. "Craft distiller" means a distiller in the United States or in a
4 territory or possession of the United States that holds a license pursuant
5 to section 4-205.10.

6 9. "Distributor" means any person that manufactures, produces,
7 ships, transports or imports into this state or in any manner acquires or
8 possesses for the purpose of making the first sale of the following:

9 (a) Cigarettes without Arizona tax stamps affixed as required by
10 this article.

11 (b) Roll-your-own tobacco or other tobacco products on which the
12 taxes have not been paid as required by this chapter.

13 (c) VAPOR PRODUCTS.

14 (d) OTHER PRODUCTS THAT CONTAIN NICOTINE OR A NICOTINE ANALOG,
15 UNLESS THE PRODUCT IS REGULATED BY THE UNITED STATES FOOD AND DRUG
16 ADMINISTRATION UNDER CHAPTER V OF THE FEDERAL FOOD, DRUG, AND COSMETIC
17 ACT.

18 10. "Farm winery" has the same meaning prescribed in section 4-101.

19 11. "First sale" means the initial sale or distribution in
20 intrastate commerce or the initial use or consumption of cigarettes,
21 roll-your-own tobacco or other tobacco products.

22 12. "Luxury" means any article, object or device on which a tax is
23 imposed under this chapter.

24 13. "Malt liquor" means any liquid that contains more than one-half
25 of one percent alcohol by volume and that is made by the process of
26 fermentation and not distillation of hops or grains, but not including:

27 (a) Liquids made by the process of distillation of such substances.

28 (b) Medicines that are unsuitable for beverage purposes.

29 14. "Master settlement agreement" has the same meaning prescribed
30 in section 44-7101.

31 15. "Microbrewery" has the same meaning prescribed in section
32 4-101.

33 16. "NICOTINE ANALOG" MEANS A SUBSTANCE THAT HAS A CHEMICAL
34 STRUCTURE THAT IS SUBSTANTIALLY SIMILAR TO THE CHEMICAL STRUCTURE OF
35 NICOTINE OR THAT HAS, PURPORTS TO HAVE OR IS REPRESENTED TO HAVE AN EFFECT
36 ON THE CENTRAL NERVOUS SYSTEM THAT IS SIMILAR TO OR GREATER THAN THE
37 EFFECT OF NICOTINE ON THE CENTRAL NERVOUS SYSTEM. FACTORS RELEVANT TO
38 DETERMINING WHETHER A SUBSTANCE IS A NICOTINE ANALOG INCLUDE THE
39 MARKETING, ADVERTISING AND LABELING OF THE SUBSTANCE AND WHETHER THE
40 SUBSTANCE HAS BEEN MANUFACTURED, FORMULATED, SOLD, DISTRIBUTED OR MARKETED
41 WITH THE INTENT TO AVOID THE PROVISIONS OF THIS CHAPTER OR ANY OTHER
42 SECTION OF LAW APPLICABLE TO NICOTINE ANALOGS.

43 ~~16.~~ 17. "Nonparticipating manufacturer" has the same meaning
44 prescribed in section 44-7111.

45 ~~17.~~ 18. "Other tobacco products" means tobacco products other than
46 cigarettes and roll-your-own tobacco.

1 ~~18.~~ 19. "Participating manufacturer" has the same meaning
2 prescribed in section 44-7111.

3 ~~19.~~ 20 "Person" means any individual, firm, partnership, joint
4 venture, association, corporation, municipal corporation, estate, trust,
5 club, society or other group or combination acting as a unit, and the
6 plural as well as the singular number.

7 ~~20.~~ 21. "Place of business":
8 (a) Means a building, facility site or location where an order is
9 received or where tobacco products are sold, distributed or transferred.

10 ~~Place of business~~

11 (b) Does not include a vehicle.

12 ~~21.~~ 22. "Retailer" means any person that comes into possession of
13 any luxury subject to the taxes imposed by this chapter for the purpose of
14 selling it for consumption and not for resale.

15 ~~22.~~ 23. "Roll-your-own tobacco" means any tobacco that, because of
16 its appearance, type, packaging or labeling, is suitable for use and
17 likely to be offered to or purchased by consumers as tobacco for making
18 cigarettes. This paragraph shall be interpreted consistently with the
19 term as used in section 44-7101. This paragraph shall be interpreted
20 consistently with the classification guidelines established by the federal
21 alcohol and tobacco tax and trade bureau.

22 ~~23.~~ 24. "Smoking tobacco":
23 (a) Means any tobacco that, because of its appearance, type,
24 packaging, labeling or promotion, is suitable for use and likely to be
25 offered to or purchased by consumers as tobacco for making cigarettes or
26 otherwise consumed by burning. ~~Smoking tobacco~~

27 (b) Includes pipe tobacco and roll-your-own tobacco.

28 ~~24.~~ 25. "Spirituous liquor":
29 (a) Means any liquid that contains more than one-half of one
30 percent alcohol by volume, that is produced by distillation of any
31 fermented substance and that is used or prepared for use as a beverage.

32 ~~Spirituous liquor~~

33 (b) Does not include medicines that are unsuitable for beverage
34 purposes.

35 ~~25.~~ 26. "Tobacco product manufacturer" has the same meaning
36 prescribed in section 44-7101.

37 ~~26.~~ 27. "Tobacco products" means all luxuries included in section
38 42-3052, paragraphs 5 through 9.

39 28. "VAPOR PRODUCT":
40 (a) MEANS A NONCOMBUSTIBLE PRODUCT THAT CONTAINS NICOTINE OR A
41 NICOTINE ANALOG AND THAT EMPLOYS A MECHANICAL HEATING ELEMENT, BATTERY OR
42 CIRCUIT, REGARDLESS OF SHAPE OR SIZE, THAT CAN BE USED TO HEAT A SOLUTION
43 CONTAINING NICOTINE OR A NICOTINE ANALOG.

44 (b) DOES NOT INCLUDE ANY PRODUCT THAT IS REGULATED BY THE UNITED
45 STATES FOOD AND DRUG ADMINISTRATION UNDER CHAPTER V OF THE FEDERAL FOOD,
46 DRUG, AND COSMETIC ACT.

1 5. Tobacco products that are sold by a distributor licensed under
2 section 42-3401 to a common carrier engaged in foreign passenger service
3 or to a retailer that sells tobacco products on the facilities of the
4 carrier that are dedicated to foreign passenger service.

5 6. Federally tax free tobacco products that are sold or given for
6 delivery directly from the manufacturer under internal revenue bond to a
7 veterans' home of this state or a hospital or domiciliary facility of the
8 United States department of veterans affairs for gratuitous issue to
9 veterans receiving hospitalization or domiciliary care. The taxes are not
10 imposed with respect to the use or consumption of the tobacco products by
11 the institution, veteran patients or domiciliaries.

12 7. Tobacco products that are sold by a manufacturer to a
13 distributor licensed under section 42-3401.

14 8. Tobacco products that are manufactured outside the United States
15 and that are sold by an importer to a distributor licensed under section
16 42-3401.

17 9. VAPOR PRODUCTS.

18 B. Subsection A, paragraphs 1 and 2 of this section do not apply
19 after the first day of the first calendar month beginning more than sixty
20 days after existing federal law is amended to permit state taxation of
21 cigarettes sold by or through federal military installations.

22 C. Sales of tobacco products by a licensed distributor to an
23 instrumentality of the United States government must be supported by a
24 separate sales invoice and a properly completed federal exemption
25 certificate. Each sales invoice must be numbered, be dated and show the
26 name of the seller, the name of the purchaser and the destination.

27 D. This section does not affect the imposition of transaction
28 privilege and use taxes pursuant to chapter 5 of this title to any
29 transactions described in subsection A of this section if the transaction
30 is otherwise subject to transaction privilege tax or use tax.

31 E. The exemptions and exclusions provided in subsection A of this
32 section do not affect the taxability under this chapter of tobacco
33 products that are sold, given or transferred to a person in this state
34 subsequent to the transactions described in subsection A of this section.

35 Sec. 4. Section 42-3405, Arizona Revised Statutes, is amended to
36 read:

37 42-3405. Tobacco and vapor product manufacturers, importers,
38 distributors and retailers; recordkeeping and
39 invoicing requirements; retention period

40 A. Except for retail transactions with consumers, each
41 manufacturer, importer and distributor of tobacco products AND EACH VAPOR
42 PRODUCT MANUFACTURER, IMPORTER AND DISTRIBUTOR shall maintain copies of
43 invoices or equivalent documentation for each facility and for each
44 transaction that involves the sale, purchase, transfer, consignment or
45 receipt of tobacco products AND VAPOR PRODUCTS within this state. The
46 invoices or equivalent documentation for each transaction shall be in the
47 form and manner prescribed by the department and shall indicate the name

1 and address of the other party and the quantity by brand style of the
2 tobacco products OR VAPOR PRODUCTS involved in the transaction.

3 B. A distributor of tobacco products OR VAPOR PRODUCTS shall issue
4 an invoice or equivalent documentation for each transaction that involves
5 the sale, purchase or consignment of tobacco products OR VAPOR PRODUCTS to
6 a retailer. The invoice or equivalent documentation must include the
7 license number of the distributor, which the retailer may use to ascertain
8 whether the license is current and valid.

9 C. Any retailer of tobacco products OR VAPOR PRODUCTS shall retain
10 all invoices or equivalent documentation received under subsection B of
11 this section.

12 D. Records required under this section shall be preserved on the
13 premises described in the relevant license in a manner as to ensure
14 accessibility for inspection at reasonable hours by authorized personnel
15 of the department. With the department's permission, persons with
16 multiple places of business may retain centralized records, but shall
17 transmit duplicates of the invoices or the equivalent documentation to
18 each place of business within three business days after a request by the
19 department.

20 E. The records required by this section shall be retained for a
21 period of four years after the date of the transaction.

22 F. On request, the department and the United States secretary of
23 the treasury or secretary's designee shall have access to records required
24 under this section and reports required under section 42-3462. The
25 department at its sole discretion may share the records and reports
26 required by this chapter with other law enforcement officials of federal
27 and state governments under conditions that assume the confidentiality of
28 taxpayer information contained in the records and reports.

29 Sec. 5. Title 42, chapter 3, article 10, Arizona Revised Statutes,
30 is amended by adding sections 42-3407, 42-3408 and 42-3409, to read:

31 42-3407. Vapor product manufacturer license; rules; fees;
32 certification; application; bond; product list;
33 civil penalties; violation; classification

34 A. FROM AND AFTER DECEMBER 31, 2026, A VAPOR PRODUCT MANUFACTURER
35 MAY NOT OFFER FOR SALE OR SELL VAPOR PRODUCTS, WHETHER DIRECTLY OR THROUGH
36 AN IMPORTER, DISTRIBUTOR OR RETAILER OR A SIMILAR INTERMEDIARY OR
37 INTERMEDIARIES, WITHOUT A VALID VAPOR PRODUCT MANUFACTURER LICENSE.

38 B. THE DEPARTMENT SHALL ADOPT RULES TO ADMINISTER THIS SECTION AND
39 ESTABLISH FEES FOR AN INITIAL VAPOR PRODUCT MANUFACTURER LICENSE AND THE
40 RENEWAL OF THE LICENSE. THE DEPARTMENT SHALL DEPOSIT, PURSUANT TO
41 SECTIONS 35-146 AND 35-147, THE FEES COLLECTED PURSUANT TO THIS SECTION IN
42 THE VAPOR PRODUCT MANUFACTURER LICENSING FUND ESTABLISHED BY SECTION
43 42-3409.

44 C. A VAPOR PRODUCT MANUFACTURER LICENSE IS VALID FOR ONE YEAR,
45 UNLESS THE DEPARTMENT OR THE DEPARTMENT'S DESIGNEE SUSPENDS OR REVOKES THE
46 LICENSE, AND MUST BE RENEWED ANNUALLY. A VAPOR PRODUCT MANUFACTURER
47 LICENSE MAY NOT BE RENEWED IF THE VAPOR PRODUCT MANUFACTURER IS LIABLE FOR

1 ANY OUTSTANDING CIVIL PENALTIES PURSUANT TO THIS SECTION. THE DEPARTMENT
2 MAY RECEIVE AND REVIEW VAPOR PRODUCT MANUFACTURER LICENSE APPLICATIONS
3 ELECTRONICALLY.

4 D. EACH APPLICANT FOR A VAPOR PRODUCT MANUFACTURER LICENSE SHALL
5 FILE A CERTIFICATION AS PROVIDED IN THIS SECTION AS A CONDITION PRECEDENT
6 TO OBTAIN A LICENSE. WITHOUT FILING THE CERTIFICATION, THE VAPOR PRODUCT
7 MANUFACTURER MAY NOT BE ISSUED A VAPOR PRODUCT MANUFACTURER LICENSE AND
8 MAY NOT SELL ITS VAPOR PRODUCTS IN THIS STATE OR TO A CONSUMER IN THIS
9 STATE, WHETHER DIRECTLY OR THROUGH A DISTRIBUTOR OR RETAILER OR A SIMILAR
10 INTERMEDIARY OR INTERMEDIARIES.

11 E. A CERTIFICATION FILED UNDER THIS SECTION SHALL BE MADE UNDER
12 PENALTY OF PERJURY ON A FORM AND IN A MANNER PRESCRIBED BY THE DEPARTMENT.
13 THE CERTIFICATION MUST INCLUDE THE FOLLOWING:

14 1. THE NAME AND ADDRESS OF THE APPLICANT OR, IF THE APPLICANT IS A
15 FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY OR ASSOCIATION, THE NAME AND
16 ADDRESS OF EACH OF ITS MEMBERS OR, IF THE APPLICANT IS A CORPORATION, THE
17 NAME AND ADDRESS OF EACH OF ITS OFFICERS AND THE ADDRESS OF ITS PRINCIPAL
18 PLACE OF BUSINESS.

19 2. THE ADDRESS OF THE PRINCIPAL PLACE OF BUSINESS OF THE APPLICANT
20 THAT IS SEEKING A LICENSE.

21 3. EITHER OF THE FOLLOWING:

22 (a) A COPY OF THE PREVENT ALL CIGARETTE TRAFFICKING ACT OF 2009
23 REGISTRATION FORM, OR AN EQUIVALENT SUCCESSOR FORM, DESIGNATED BY THE
24 BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES OF THE UNITED STATES
25 DEPARTMENT OF JUSTICE AS SUBMITTED BY THE APPLICANT TO THE BUREAU OF
26 ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES AND AN ATTESTATION THAT THE
27 APPLICANT IS IN COMPLIANCE WITH, AND WILL CONTINUE TO COMPLY WITH, ALL
28 APPLICABLE REQUIREMENTS OF 15 UNITED STATES CODE SECTIONS 375 AND 376.

29 (b) A STATEMENT EXPLAINING WHY THE PREVENT ALL CIGARETTE
30 TRAFFICKING ACT OF 2009 IS NOT APPLICABLE TO THE APPLICANT AND THE
31 APPLICANT'S PRODUCTS.

32 4. AN ATTESTATION THAT THE APPLICANT WILL COMPLY WITH ALL
33 APPLICABLE LAWS OF THIS STATE AND ALL APPLICABLE LAWS OF THE JURISDICTION
34 THAT ENCOMPASSES THE APPLICANT'S PRINCIPAL PLACE OF BUSINESS.

35 5. A LIST OF EACH TYPE OR MODEL OF THE APPLICANT'S VAPOR PRODUCT
36 THAT IS SOLD OR OFFERED FOR SALE IN THIS STATE, INCLUDING FOR EACH VAPOR
37 PRODUCT THE VAPOR PRODUCT NAME, VAPOR PRODUCT CATEGORY, VOLUME OF NICOTINE
38 BY WEIGHT AND TOTAL VOLUME.

39 6. A NOTARIZED ATTESTATION THAT THE APPLICANT'S VAPOR PRODUCTS, AS
40 WELL AS ALL COMPONENTS OR PARTS OF VAPOR PRODUCTS, FULLY COMPLY WITH THE
41 REQUIREMENTS OF THE UNITED STATES CUSTOMS AND BORDER PROTECTION, INCLUDING
42 ACCURATE ENTRY SUMMARY FORMS, OR EQUIVALENT SUCCESSOR FORMS, AND THAT THE
43 APPLICANT IS NOT IN VIOLATION OF 18 UNITED STATES CODE SECTION 541, 542 OR
44 545. THE DEPARTMENT MAY REQUEST THAT THE APPLICANT PROVIDE ADDITIONAL
45 RELEVANT DOCUMENTS, INCLUDING COPIES OF OTHER UNITED STATES CUSTOMS AND
46 BORDER PROTECTION FORMS, COMMERCIAL INVOICES, CARGO RELEASE RESULTS
47 REPORTS AND AIRWAY BILLS OR BILLS OF LADING.

1 7. FOR AN APPLICANT WITH A PRINCIPAL PLACE OF BUSINESS LOCATED
2 OUTSIDE OF THE UNITED STATES, A DECLARATION, IN A FORM PRESCRIBED BY THE
3 DEPARTMENT, FROM EACH OF THE APPLICANT'S IMPORTERS INTO THE UNITED STATES
4 OF ANY OF THE APPLICANT'S BRANDS TO BE SOLD OR OFFERED FOR SALE IN THIS
5 STATE, THAT THE IMPORTER ACCEPTS JOINT AND SEVERAL LIABILITY WITH THE
6 APPLICANT FOR ALL LIABILITY IMPOSED IN ACCORDANCE WITH THIS SECTION,
7 INCLUDING ANY FEES, COSTS, ATTORNEY FEES AND PENALTIES IMPOSED UNDER THIS
8 CHAPTER.

9 8. ANY OTHER INFORMATION AS THE DEPARTMENT MAY REQUIRE FOR THE
10 PURPOSE OF ADMINISTERING THIS CHAPTER.

11 F. A VAPOR PRODUCT MANUFACTURER MAY NOT CAUSE TO BE SOLD OR OFFER
12 FOR SALE AT RETAIL IN THIS STATE OR TO A CONSUMER IN THIS STATE ANY TYPE
13 OR MODEL OF VAPOR PRODUCT THAT IS NOT INCLUDED IN THE VAPOR PRODUCT LIST
14 PROVIDED WITH THE VAPOR PRODUCT MANUFACTURER'S CERTIFICATION WITHOUT FIRST
15 FILING AN AMENDED CERTIFICATION ON A FORM AND IN A MANNER PRESCRIBED BY
16 THE DEPARTMENT.

17 G. EACH VAPOR PRODUCT MANUFACTURER THAT OBTAINS A LICENSE UNDER
18 THIS SECTION SHALL SUBMIT TO THE DEPARTMENT:

19 1. WITHIN THIRTY DAYS OF ANY CHANGES TO THE VAPOR PRODUCT
20 MANUFACTURER'S VAPOR PRODUCT LIST SUBMITTED WITH THE CERTIFICATION
21 REQUIRED BY THIS SECTION, A NOTICE OF THE CHANGES.

22 2. EVERY SIX MONTHS, AN ATTESTATION THAT CONFIRMS THE INFORMATION
23 SUBMITTED IN THE VAPOR PRODUCT MANUFACTURER'S LICENSE APPLICATION REMAINS
24 ACCURATE. THE DEPARTMENT MAY REQUEST THAT THE VAPOR PRODUCT MANUFACTURER
25 PROVIDE ADDITIONAL RELEVANT DOCUMENTS RELATED TO THE ATTESTATION.

26 H. SUBMISSION OF AN APPLICATION OR CERTIFICATION THAT CONTAINS
27 FALSE INFORMATION IS A VIOLATION OF TITLE 44, CHAPTER 10, ARTICLE 7 AND IS
28 SUBJECT TO REMEDIES AVAILABLE UNDER TITLE 44, CHAPTER 10, ARTICLE 7. THE
29 DEPARTMENT MAY NOTIFY APPROPRIATE FEDERAL AND STATE AGENCIES REGARDING
30 FALSE INFORMATION SUBMITTED ON AN APPLICATION OR CERTIFICATION FORM.

31 I. ANY NONRESIDENT OR FOREIGN VAPOR PRODUCT MANUFACTURER THAT HAS
32 NOT REGISTERED TO DO BUSINESS IN THIS STATE AS A FOREIGN CORPORATION OR
33 BUSINESS ENTITY, AS A CONDITION PRECEDENT TO RECEIVING A VAPOR PRODUCT
34 MANUFACTURER LICENSE, SHALL APPOINT AND CONTINUALLY ENGAGE WITHOUT
35 INTERRUPTION THE SERVICES OF AN AGENT IN THIS STATE TO ACT AS AGENT FOR
36 THE SERVICE OF PROCESS ON WHOM ALL PROCESS, AND ANY ACTION OR PROCEEDING
37 AGAINST THE VAPOR PRODUCT MANUFACTURER CONCERNING OR ARISING OUT OF THE
38 ENFORCEMENT OF THIS SECTION OR PROVISIONS RELATING TO THE SALE OF THE
39 VAPOR PRODUCT MANUFACTURER'S VAPOR PRODUCTS IN THIS STATE, MAY BE SERVED
40 IN ANY MANNER AUTHORIZED BY LAW. SERVICE ON THE AGENT CONSTITUTES LEGAL
41 AND VALID SERVICE OF PROCESS ON THE VAPOR PRODUCT MANUFACTURER. THE VAPOR
42 PRODUCT MANUFACTURER SHALL PROVIDE THE NAME, ADDRESS, TELEPHONE NUMBER AND
43 PROOF OF THE APPOINTMENT AND AVAILABILITY OF THE AGENT TO THE DEPARTMENT.
44 THE VAPOR PRODUCT MANUFACTURER SHALL NOTIFY THE DEPARTMENT AT LEAST THIRTY
45 CALENDAR DAYS BEFORE TERMINATING THE AUTHORITY OF AN AGENT AND PROVIDE
46 PROOF TO THE SATISFACTION OF THE DEPARTMENT OF A NEW AGENT'S APPOINTMENT
47 AT LEAST FIVE CALENDAR DAYS BEFORE TERMINATING THE EXISTING AGENT'S

1 APPOINTMENT. IF AN AGENT TERMINATES AN APPOINTMENT, THE VAPOR PRODUCT
2 MANUFACTURER SHALL NOTIFY THE DEPARTMENT OF THE TERMINATION WITHIN FIVE
3 CALENDAR DAYS AND INCLUDE PROOF TO THE SATISFACTION OF THE DEPARTMENT OF A
4 NEW AGENT'S APPOINTMENT.

5 J. ANY NONRESIDENT OR FOREIGN VAPOR PRODUCT MANUFACTURER THAT HAS
6 NOT REGISTERED TO DO BUSINESS IN THIS STATE AS A FOREIGN CORPORATION OR
7 BUSINESS ENTITY, AS A CONDITION PRECEDENT TO RECEIVING A VAPOR PRODUCT
8 MANUFACTURER LICENSE, SHALL SUBMIT TO THE DEPARTMENT A SURETY BOND OR
9 OTHER CASH SECURITY PAYABLE TO THIS STATE IN THE AMOUNT OF \$25,000. THE
10 BOND SHALL BE POSTED BY A CORPORATE SURETY LOCATED WITHIN THE UNITED
11 STATES. THE BOND SHALL BE CONDITIONED ON THE PERFORMANCE BY THE VAPOR
12 PRODUCT MANUFACTURER OF THE REQUIREMENTS PRESCRIBED BY THIS SECTION. A
13 SURETY ON A VAPOR PRODUCT MANUFACTURER'S BOND IS LIABLE FOR UP TO THE
14 AMOUNT OF THE BOND, AND THIS STATE MAY EXECUTE ON THE SURETY BOND FOR THE
15 PAYMENT OF FEES AND CIVIL PENALTIES IMPOSED ON THE VAPOR PRODUCT
16 MANUFACTURER UNDER THIS SECTION AND FOR THE COSTS OF SEIZURE AND
17 DESTRUCTION OF VAPOR PRODUCTS SOLD OR OFFERED FOR SALE IN VIOLATION OF
18 THIS SECTION. IF THIS STATE EXECUTES ON THE SURETY BOND, THE DEPARTMENT
19 MAY REQUIRE THE VAPOR PRODUCT MANUFACTURER TO PROVIDE AN ADDITIONAL BOND
20 BEFORE RETAINING THE VAPOR PRODUCT MANUFACTURER OR THE VAPOR PRODUCT
21 MANUFACTURER'S VAPOR PRODUCTS ON THE LISTS ON THE DEPARTMENT'S WEBSITE. A
22 SURETY ON A BOND FURNISHED BY A VAPOR PRODUCT MANUFACTURER AS PROVIDED IN
23 THIS SECTION SHALL BE RELEASED AND DISCHARGED FROM LIABILITY TO THIS
24 STATE, ACCRUING ON THE BOND AFTER SIXTY DAYS FROM THE DATE ON WHICH THE
25 SURETY PROVIDES A WRITTEN REQUEST TO BE RELEASED AND DISCHARGED TO THE
26 DEPARTMENT. THIS SUBSECTION DOES NOT RELIEVE, RELEASE OR DISCHARGE THE
27 SURETY FROM LIABILITY ALREADY ACCRUED OR THAT WILL ACCRUE BEFORE THE
28 SIXTY-DAY PERIOD EXPIRES. THE DEPARTMENT, ON RECEIVING ANY SUCH REQUEST,
29 SHALL NOTIFY THE VAPOR PRODUCT MANUFACTURER THAT FURNISHED THE BOND.
30 UNLESS THE VAPOR PRODUCT MANUFACTURER, ON OR BEFORE THE SIXTY-DAY PERIOD
31 EXPIRES, FILES WITH THE DEPARTMENT A NEW BOND, WITH THE SURETY APPROVED BY
32 AND ACCEPTABLE TO THE DEPARTMENT, THE DEPARTMENT SHALL CANCEL THE VAPOR
33 PRODUCT MANUFACTURER'S VAPOR PRODUCT MANUFACTURER LICENSE.

34 K. A VAPOR PRODUCT MANUFACTURER LICENSE IS NONTRANSFERABLE. IF A
35 VAPOR PRODUCT MANUFACTURER CEASES TO DO BUSINESS BY REASON OF
36 DISCONTINUATION, SALE OR TRANSFER OF THE VAPOR PRODUCT MANUFACTURER'S
37 BUSINESS, THE VAPOR PRODUCT MANUFACTURER SHALL NOTIFY THE DEPARTMENT IN
38 WRITING AT THE TIME THE DISCONTINUANCE, SALE OR TRANSFER TAKES EFFECT.

39 L. VAPOR PRODUCTS OFFERED FOR SALE IN VIOLATION OF THIS SECTION,
40 INCLUDING OFFERING FOR SALE VAPOR PRODUCTS MANUFACTURED BY A BUSINESS THAT
41 DOES NOT HOLD A VALID VAPOR PRODUCT MANUFACTURER LICENSE, ARE SUBJECT TO
42 SEIZURE. ALL VAPOR PRODUCTS THAT ARE SEIZED AS A VIOLATION OF THIS
43 SECTION ARE FORFEITED TO THIS STATE AND SHALL BE DESTROYED CONSISTENT WITH
44 SECTION 42-1124.

45 M. A VAPOR PRODUCT MANUFACTURER SHALL HAVE ESTABLISHED SUFFICIENT
46 CONTACT WITH THIS STATE FOR THE EXERCISE OF PERSONAL JURISDICTION OVER THE

1 VAPOR PRODUCT MANUFACTURER IN ANY MATTER OR ISSUE ARISING UNDER THIS
2 SECTION OR RELATED TO THE SALE OF VAPOR PRODUCTS.

3 N. THE DEPARTMENT SHALL MAINTAIN AND MAKE PUBLICLY AVAILABLE ON THE
4 DEPARTMENT'S OFFICIAL WEBSITE LISTS OF BOTH OF THE FOLLOWING:

5 1. ALL VAPOR PRODUCT MANUFACTURERS THAT ARE LICENSED PURSUANT TO
6 THIS SECTION.

7 2. ALL VAPOR PRODUCTS INCLUDED IN THE VAPOR PRODUCT LISTS SUBMITTED
8 BY VAPOR PRODUCT MANUFACTURERS THAT ARE LICENSED PURSUANT TO THIS SECTION.

9 O. FROM AND AFTER DECEMBER 31, 2026, VAPOR PRODUCTS THAT ARE NOT
10 INCLUDED ON THE LICENSED VAPOR PRODUCT MANUFACTURER'S VAPOR PRODUCT LIST
11 MAY NOT BE SOLD OR OFFERED FOR RETAIL SALE TO A CONSUMER IN THIS STATE,
12 EITHER DIRECTLY OR THROUGH AN IMPORTER, DISTRIBUTOR OR RETAILER OR A
13 SIMILAR INTERMEDIARY OR INTERMEDIARIES.

14 P. A RETAILER SHALL PURCHASE VAPOR PRODUCTS ONLY FROM A DISTRIBUTOR
15 OR LICENSED VAPOR PRODUCT MANUFACTURER THAT IS LICENSED PURSUANT TO THIS
16 SECTION.

17 Q. A DISTRIBUTOR SHALL PURCHASE VAPOR PRODUCTS ONLY FROM A VAPOR
18 PRODUCT MANUFACTURER THAT IS LICENSED PURSUANT TO THIS SECTION.

19 R. ANY BUSINESS OPERATING AS A VAPOR PRODUCT MANUFACTURER WITHOUT A
20 VAPOR PRODUCT MANUFACTURER LICENSE:

21 1. FOR A FIRST VIOLATION, SHALL PAY A CIVIL PENALTY OF \$2,500.

22 2. FOR A SECOND VIOLATION WITHIN A THIRTY-SIX MONTH PERIOD, SHALL
23 PAY A CIVIL PENALTY OF \$5,000 AND IS GUILTY OF A CLASS 2 MISDEMEANOR.

24 3. FOR A THIRD OR SUBSEQUENT VIOLATION WITHIN A THIRTY-SIX MONTH
25 PERIOD, SHALL PAY A CIVIL PENALTY OF \$10,000, IS GUILTY OF A CLASS 1
26 MISDEMEANOR AND IS INELIGIBLE TO BE LICENSED AS A VAPOR PRODUCT
27 MANUFACTURER FOR A PERIOD OF THIRTY-SIX MONTHS AFTER THE DATE OF A THIRD
28 VIOLATION.

29 S. A VAPOR PRODUCT MANUFACTURER THAT IS LICENSED UNDER THIS SECTION
30 AND THAT VIOLATES THIS SECTION:

31 1. FOR A FIRST VIOLATION, SHALL PAY A CIVIL PENALTY OF \$2,500.

32 2. FOR A SECOND VIOLATION WITHIN A THIRTY-SIX MONTH PERIOD, SHALL
33 PAY A CIVIL PENALTY OF \$5,000 AND IS GUILTY OF A CLASS 2 MISDEMEANOR, AND
34 THE VAPOR PRODUCT MANUFACTURER LICENSE SHALL BE SUSPENDED FOR THIRTY DAYS.

35 3. FOR A THIRD OR SUBSEQUENT VIOLATION WITHIN A THIRTY-SIX MONTH
36 PERIOD, SHALL PAY A CIVIL PENALTY OF \$10,000 AND IS GUILTY OF A CLASS 1
37 MISDEMEANOR, AND THE VAPOR PRODUCT MANUFACTURER LICENSE SHALL BE REVOKED.
38 A VAPOR PRODUCT MANUFACTURER LICENSE REVOKED PURSUANT TO THIS PARAGRAPH IS
39 INELIGIBLE TO RECEIVE OR RENEW A VAPOR PRODUCT MANUFACTURER LICENSE FOR A
40 PERIOD OF THIRTY-SIX MONTHS AFTER THE DATE OF THE THIRD VIOLATION.

41 T. THE DEPARTMENT SHALL DEPOSIT CIVIL PENALTIES COLLECTED PURSUANT
42 TO SUBSECTIONS R AND S OF THIS SECTION IN THE VAPOR PRODUCT MANUFACTURER
43 LICENSING FUND ESTABLISHED BY SECTION 42-3409.

44 42-3408. Delegation of authority; compliance reporting

45 A. THE DEPARTMENT MAY:

1 1. DELEGATE THE ENFORCEMENT AND COMPLIANCE INSPECTIONS REQUIRED
2 UNDER THIS ARTICLE TO ANY COUNTY OR LAW ENFORCEMENT AGENCY THAT ACCEPTS
3 THIS DELEGATION.

4 2. COLLABORATE WITH AND USE THE FINDINGS OF OTHER STATE AGENCIES TO
5 CARRY OUT THE OBLIGATIONS OF THIS ARTICLE AND TO ENSURE THAT THE
6 COMPLAINTS RECEIVED BY OTHER AGENCIES OR A DELEGATED LICENSING AUTHORITY
7 ARE FORWARDED TO THE DEPARTMENT FOR TIMELY INVESTIGATION AND ACTION.

8 B. A DELEGATED LICENSING AUTHORITY OR ANY LAW ENFORCEMENT AGENCY OR
9 OTHER LOCAL ENTITY CONDUCTING COMPLIANCE CHECKS TO ASSESS RETAIL TOBACCO
10 VENDOR COMPLIANCE WITH THE LEGAL AGE FOR SALES OF TOBACCO PRODUCTS AND
11 VAPOR PRODUCTS SHALL REPORT THE COMPLIANCE CHECK RESULTS TO THE
12 DEPARTMENT.

13 42-3409. Vapor product manufacturer licensing fund

14 THE VAPOR PRODUCT MANUFACTURER LICENSING FUND IS ESTABLISHED
15 CONSISTING OF LICENSING FEES AND CIVIL PENALTIES COLLECTED PURSUANT TO
16 SECTION 42-3407. THE DEPARTMENT SHALL ADMINISTER THE FUND. MONIES IN THE
17 FUND ARE SUBJECT TO LEGISLATIVE APPROPRIATION. MONIES IN THE FUND SHALL BE
18 USED FOR THE ENFORCEMENT OF SECTION 42-3407.

19 Sec. 6. Effective date

20 This act is effective from and after December 31, 2026.

21 Sec. 7. Severability

22 If a provision of this act or its application to any person or
23 circumstance is held invalid, the invalidity does not affect other
24 provisions or applications of the act that can be given effect without the
25 invalid provision or application, and to this end the provisions of this
26 act are severable."

27 Amend title to conform

And, as so amended, it do pass

TONY RIVERO
CHAIRMAN

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