

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1725

Bill Subtitle: TO INFORM THE PUBLIC OF HEALTH RISKS CAUSED BY VAPOR PRODUCTS, E-LIQUID PRODUCTS, AND ALTERNATIVE NICOTINE PRODUCTS; AND TO ENSURE THE SAFETY OF ARKANSAS YOUTH

Basic Change:

Sponsors: Rep. L. Johnson, Sen. J. Petty, and Sen. J. Boyd

HB1725 prohibits the advertising, marketing, and selling of vapor products, alternative nicotine products, e-liquid products, or e-liquid containers in this state in a manner that is marketed to or known to a reasonable person to appeal primarily to children or minors.

This bill also prohibits any person from selling or offering for sale in this state any tobacco products, vapor products, alternative nicotine products, or e-liquid products that contain in whole or part any filthy, putrid, or decomposed substance, any added poisonous or deleterious substance that may render the product injurious to public health, or does not have an approved certification as required by Section 20-65-202.

HB1725 requires manufacturers of vapor products, alternative nicotine products, and e-liquid products to submit certification to ATC for vapor products, e-liquid products, and alternative nicotine products pertaining to FDA premarket tobacco product applications.

This bill also creates a directory maintained by the ATC Director listing all manufacturers that have provided certifications. After July 1, 2024, the ATC Director must make the directory available for public inspection on the ATC website. The initial manufacturer certification fee is one thousand dollars (\$1,000) for each brand family of vapor product, e-liquid product, or alternative nicotine product for processing the certifications and operating the directory. The annual certification fee is five hundred dollars (\$500) to offset the costs associated with maintaining the directory and satisfying the certification requirements.

Beginning on July 1, 2024, or on the date that ATC first makes the directory available for public inspection on its website, whichever is later, this bill prohibits any person or entity to sell, offer, or possess in Arkansas, or import for personal consumption in Arkansas, certain products that the person or entity knows is not included in the directory maintained by the ATC Director.

HB1725 requires ATC to give fifteen (15) day notice to a manufacturer to remove product from the directory and provides for notice mechanisms regarding when a wholesaler (60 days) or retailer (120 days) must remove certain products from their inventory once a product is removed from the directory.

HB1725 authorizes ATC to issue a one thousand dollar (\$1,000) civil penalty against a manufacturer for each product offered for sale in violation of the certification and directory requirements until the offending product is removed from the market or until the offending product is properly listed on the directory, beginning on and after July 1, 2024, or on the date that Arkansas Tobacco Control first makes the directory available for public inspection on its website.

HB1725 also authorizes ATC, in addition to any penalty prescribed by law, to issue a civil penalty of not less than seventy-five thousand dollars (\$75,000) but not more than two hundred fifty thousand dollars (\$250,000) for each false certification made by a person or entity that knowingly makes a false certification.

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This bill authorizes ATC to issue up to a five thousand dollar (\$5,000) civil penalty (mirroring language in Arkansas Code Annotated § 26-57-255) per each violation for other violations of the chapter.

Authorizes Arkansas Tobacco Control, in addition to the other fines and forfeitures, to issue a civil penalty based on a civil penalty calculation for vapor products, alternative nicotine products, or e-liquid products held, sold, or offered for sale and confiscated by Arkansas Tobacco Control under state law;

Revenue Impact:

HB1725 establishes an initial manufacturer certification fee of one thousand dollars (\$1,000) and a subsequent annual certification fee of five hundred dollars (\$500). Such fees are collected by ATC and submitted to the Arkansas Tobacco Control Revenue Fund to offset the costs incurred by ATC for processing the certifications and operating the directory under Section 20-65-202.

This bill also authorizes ATC to levy civil penalties up to \$5,000 per violation. Such civil penalties are collected by ATC and submitted to General Revenue.

Additionally, this bill authorized ATC to levy further civil penalties based on a calculation dependent upon the quantity of product confiscated by ATC:

(A) Twenty-five dollars (\$25.00) for each individual vapor product, alternative nicotine product, or e-liquid product up to twenty (20) individual vapor products, alternative nicotine products, or e-liquid products; and

(B) Fifty dollars (\$50.00) for each individual vapor product, alternative nicotine product, or e-liquid product in excess of twenty (20) individual vapor products, alternative nicotine products, or e-liquid products.

Such additional civil penalties are collected by ATC and submitted to the Arkansas Tobacco Control Revenue Fund to offset costs associated with disposing of confiscated product.

Taxpayer Impact:

Manufacturers of vapor products, alternative nicotine products, or e-liquid products will pay an initial certification fee of one thousand dollars (\$1,000) for each brand family of vapor products, alternative nicotine products, or e-liquid products.

Manufacturers of vapor products, alternative nicotine products, or e-liquid products will pay an annual certification fee of five hundred dollars (\$500) for each brand family of vapor products, alternative nicotine products, or e-liquid products.

Manufacturers may be subject to a civil penalty of one thousand dollars (\$1,000) daily for each vapor product, alternative nicotine product, or e-liquid product offered for sale in violation of Section 20-65-202 until the vapor product, alternative nicotine product, or e-liquid product is removed from the market or properly listed on the directory.

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Retailers, Wholesalers, and Manufactures may be subject to suspension of permit and civil penalties up to \$5,000 per violation for a violation of the chapter.

A person who is found to violate Section 20-65-202 may be subject to an additional civil penalty for vapor products, alternative nicotine products, or e-liquid products held, sold, or offered for sale and confiscated by Arkansas Tobacco Control:

(A) Twenty-five dollars (\$25.00) for each individual vapor product, alternative nicotine product, or e-liquid product up to twenty (20) individual vapor products, alternative nicotine products, or e-liquid products; and

(B) Fifty dollars (\$50.00) for each individual vapor product, alternative nicotine product, or e-liquid product in excess of twenty (20) individual vapor products, alternative nicotine products, or e-liquid products.

Resources Required:

ATCB rules would need to be promulgated. ATC Staff, law enforcement, and permit holders would need to be educated. ATCB does not anticipate the need for additional personnel at this time.

Time Required:

Adequate time is provided for implementation.

Procedural Changes:

Department employees will need to be educated and trained as well as the permittees. ATC's records management system and website will need to be updated and ATC forms will need to be created or updated.

Other Comments:

None.

Legal Analysis:

None.