2025-2026 General Assembly

SENATE BILL 257: 2026 Appropriations Act, Sec. 44.6: Vapor Product and Consumable Product Licensing and Registry Changes

Analysis of: S.L. 2026-41, Sec. 44.6
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Prepared by: Legislative Analysis Division Staff

Part IX of S.L. 2026-31 (Senate Bill 595), Section 44.6 of S.L. 2026-41 (Senate Bill 257), and Section 12.2 of S.L. 2026-61 (House Bill 268) collectively make several changes related to the registration, sale, and taxation of vapor products and consumable products, create new requirements for distributors and retailers of these products, and modify the enforcement of and penalties applicable to this industry. Specifically, these sections do the following as it relates to vapor products and consumable products:

- Make the following changes with respect to the registry, which is maintained by the Department of Revenue (Department) and requires every manufacturer of vapor products and consumable products to certify that its products are eligible to be sold at retail in this State:
  - Expand the universe of permissible vapor and consumable products that may appear on the registry, effective July 1, 2026. This expansion is accomplished through two main changes. First, the provision repeals the defined term "timely filed premarket tobacco product application," which previously limited permissible products to those for which an order was granted or a Premarket Tobacco Product Application was accepted for filing prior to September 9, 2020. At least four marketing authorizations have been issued since 2025, including the first authorization for flavored vapor products, so this change would allow the sale of products that received marketing authorizations by the Food and Drug Administration (FDA) within the last year. Second, the provision adds language to allow the registration of products that are commercially marketed and not subject to federal enforcement priority under a published FDA enforcement policy as long as the product is the subject of a filed and pending premarket application.
  - Require manufacturers to submit documentation to the Department certifying compliance with any changes to federal requirements for vapor and consumable products within 30 days of the date mandated for compliance with the federal requirements. Failure to submit is grounds for removal from directory. The requirement to submit documentation to the Department became effective July 7, 2026. This provision was further clarified in Section 12.2(b) of S.L. 2026-61, which became effective August 11, 2026. The consequence of removal from the directory for failure to substantiate is effective October 1, 2026.
  - Require the Department to make minor changes to the directory, such as including stock keeping unit numbers (SKUs) for products and publishing updates on the first day of every month. This provision is effective October 1, 2026.
- Make the following changes with respect to civil penalties, criminal offenses, and age verification requirements:

   - Effective October 1, 2026, accelerate civil penalties for violations of registry requirements as follows:
     - For first offenses, a penalty range of $500 to $750, a mandatory reinspection within 30 days, and a 30-day license suspension along with seizure, forfeiture, and destruction of property.
     - For second and subsequent offenses, a penalty range of $1,000 to $1,500 and license revocation.
   - Effective October 1, 2026, it is a Class 2 misdemeanor to sell or distribute consumable products containing nicotine analogues to persons under 18. Effective December 1, 2027, it is a Class 1 misdemeanor to allow entry of a person under the age of 21 in a specialty retailer of vapor products establishment.
   - Effective October 1, 2026, internet sales of products containing nicotine analogues require age verification. Effective December 1, 2027, specialty retailers of vapor products are required to verify age for entry into their establishments using a third-party age verification service that electronically scans identification.
- Make the following changes with respect to compliance and enforcement:
   - Shift compliance and enforcement provisions from the Department to a collective of various State and local law enforcement officials, and establish an interagency task force led by the State Bureau of Investigation (SBI), with the other agencies being the Department, the Department of Agriculture, the Secretary of State, the Alcohol Law Enforcement Division of the Department of Public Safety, the Department of Justice, and representatives of local law enforcement agencies. This provision became effective July 7, 2026.
   - Require at least one unannounced compliance check per year and follow-up checks within 30 days of a violation. This provision became effective July 7, 2026.
   - Require the applicable law enforcement entity to report violations to the Department for the purpose of maintaining a database of violations and imposing civil penalties. This provision became effective July 7, 2026.
- Make the following changes as it relates to the taxation, sale, and retailer licensure of these products:
   - Add a definition of "nicotine analogue" to the excise tax statutes, effective October 1, 2026. A nicotine analogue is a chemical compound similar in structure and effect to nicotine but is a distinct substance that is neither naturally occurring nicotine nor synthetic nicotine. The addition of this definition, which also impacts the definitions of "vapor product" and "consumable product," has at least two downstream substantive effects. First, it expands the excise tax base on tobacco products to include consumable products containing a nicotine analogue. Second, it effectively bans the retail sale of vapor and consumable products containing nicotine analogues. To be sold legally, vapor and consumable products must appear on the registry of approved products, which requires FDA approval or pending FDA action. Since the FDA does not regulate nicotine analogues, products containing nicotine analogues cannot appear on the registry and, therefore, may not be legally sold. These changes are also effective October 1, 2026.

- Create a new category of retail dealer for vapor products classified as a "specialty retailer of vapor products" that must register with the Department and pay a $1,000 per location license tax in addition to other applicable license requirements. These are dealers that primarily sell vapor products based on a certain percentage of their inventory, or floor and shelf space, consisting of vapor products or having the name of the store tied to vapor products. Under prior law, only dealers selling or storing non-tax-paid products or online sellers required to collect sales tax were required to be licensed. The addition of the term "specialty retailer of vapor products" is effective October 1, 2026, but the licensing requirement is not effective until July 1, 2027.