

SENATE FILE NO. SF0107

E-cigarette and vapor material directory.

Sponsored by: Senator(s) Landen, Baldwin, Boner, Ellis,
Pappas and Schuler and Representative(s)
Brown, Chadwick, Davis, Oakley and
Zwonitzer, Dn

A BILL

for

1 AN ACT relating to taxation and revenue; requiring
2 manufacturers of electronic cigarettes and vapor material
3 to file certifications as specified; creating a product
4 directory; prohibiting the sale of electronic cigarettes
5 and vapor material that are not included in the product
6 directory; providing penalties; making conforming
7 amendments; requiring rulemaking; requiring reports; and
8 providing for an effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 39-24-101 is created to read:

13

14

CHAPTER 24

1 ELECTRONIC CIGARETTES AND VAPOR MATERIAL

2

3 **39-24-101. Electronic cigarette and vapor material**
4 **directory; certification; penalties; confiscation.**

5

6 (a) By October 1, 2024 and annually thereafter, every
7 manufacturer of electronic cigarettes or vapor material
8 that are sold for retail sale in this state, whether
9 directly or through a distributor, wholesaler, retailer or
10 similar intermediary, shall certify on a form prescribed by
11 the department and under penalty of perjury that the
12 manufacturer agrees to comply with this chapter and that:

13

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

18

19 (ii) The electronic cigarette or vapor material
20 was marketed in the United States as of August 8, 2016, the
21 manufacturer submitted a premarket tobacco product
22 application for the electronic cigarette or vapor material
23 to the United States food and drug administration pursuant

1 to 21 U.S.C. § 387j on or before September 9, 2020 and the
2 application either remains under review by the United
3 States food and drug administration or a final decision on
4 the application has not taken effect.

5

6 (b) A manufacturer shall submit a certification form
7 to the department that separately lists each electronic
8 cigarette and vapor material that is sold in this state.
9 Any manufacturer who falsely represents any of the
10 information required by subsection (a) or (b) of this
11 section shall be guilty of a misdemeanor punishable by a
12 fine of not more than seven hundred fifty dollars (\$750.00)
13 for each false representation.

14

15 (c) Each annual certification form required by
16 subsections (a) and (b) of this section shall be
17 accompanied by a copy of the marketing authorization or
18 other order for the electronic cigarette or vapor material
19 issued by the United States food and drug administration
20 pursuant to 21 U.S.C. § 387j or evidence that the premarket
21 tobacco product application for the electronic cigarette or
22 vapor material was submitted to the United States food and

1 drug administration and a final authorization or order is
2 not in effect.

3

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

16

17 (e) Beginning October 1, 2024, the department shall
18 maintain and make publicly available on their website a
19 directory that lists all electronic cigarette and vapor
20 material manufacturers and electronic cigarettes and vapor
21 material for which certification forms have been submitted
22 and shall update the directory at least monthly to ensure
23 accuracy.

1

2 (f) Beginning October 1, 2024, or on the date the
3 department first makes the directory available on its
4 website, whichever is later, a person shall not sell or
5 offer for sale an electronic cigarette or vapor material in
6 this state that is not included in the directory, and an
7 electronic cigarette or vapor material manufacturer shall
8 not sell, either directly or through a distributor,
9 wholesaler, retailer or similar intermediary, an electronic
10 cigarette or vapor material in this state that is not
11 included in the directory described by this section.

12

13 (g) The department shall provide manufacturers notice
14 and opportunity to cure deficiencies, such as errors in the
15 certification form or other violations of this chapter,
16 before taking any action against sellers or their
17 electronic cigarettes or vapor materials, including
18 removing manufacturers or products from the directory. The
19 department shall not take any action against a manufacturer
20 or their products for noncompliance until not less than
21 thirty (30) business days after the manufacturer has been
22 given written notice of the intended action.

23

1 (h) If a product is removed from the directory, each
2 manufacturer, retailer, distributor and wholesaler shall
3 have thirty (30) business days from the date the product is
4 removed from the directory to sell or remove the product
5 from its inventory. After thirty (30) business days
6 following removal from the directory, the electronic
7 cigarettes or vapor material of a manufacturer identified
8 in the notice of removal are contraband, are subject to
9 seizure, forfeiture and destruction and shall not be
10 purchased or sold in the state. The cost of seizure,
11 forfeiture and destruction shall be borne by the person
12 from whom the products are confiscated.

13

14 (j) A second or subsequent violation of this section
15 shall constitute an unfair and deceptive trade practice in
16 violation of W.S. 40-12-105(xv).

17

18 (k) Each retailer and wholesaler shall keep complete
19 and accurate records of all e-cigarettes and vapor material
20 purchased and sold for three (3) years. The records shall
21 be in the form prescribed by the department and shall be
22 available for inspection by the department at any
23 reasonable time. The department may investigate and examine

1 the stock of e-cigarettes and vapor material upon any
2 premises where they are stored or sold.

3

4 (m) Each seller, retailer, distributor and wholesaler
5 that sells or distributes electronic cigarettes or vapor
6 material in this state shall be subject to an unannounced
7 compliance check biannually for purposes of enforcing this
8 section. Unannounced follow-up compliance checks of all
9 noncompliant sellers, retailers, distributors and
10 wholesalers shall be conducted within thirty (30) days
11 after any violation of this chapter. The department shall
12 publish the results of all compliance checks on their
13 website not less than biannually and shall make the results
14 available to the public upon request.

15

16 (n) A retailer, distributor, or wholesaler who sells
17 or offers for sale an electronic cigarette or vapor
18 material in this state that is not included in the
19 directory shall be subject to a fine of five hundred
20 dollars (\$500.00) per product. In addition, following a
21 second or subsequent violation, the department may suspend
22 or revoke the license of any wholesaler violating any
23 provision of this article after a hearing. No license shall

1 be issued to a wholesaler for two (2) years following
2 revocation of his license.

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4 (o) Regarding agents for service of process:

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6 (i) Any nonresident manufacturer of electronic
7 cigarettes or vapor material that has not registered to do
8 business in the state as a foreign corporation or business
9 entity shall, as a condition precedent to being included in
10 the directory created in this section, appoint and
11 continually engage without interruption the services of an
12 agent in this state to act as agent for the service of
13 process on whom all process, and any action or proceeding
14 against it concerning or arising out of the enforcement of
15 this section, may be served in any manner authorized by
16 law. Such service shall constitute legal and valid service
17 of process on the manufacturer. The manufacturer shall
18 provide the name, address, telephone number and proof of
19 the appointment and availability of such agent to the
20 department;

21

22 (ii) The manufacturer shall provide notice to
23 the department thirty (30) calendar days prior to

1 termination of the authority of an agent and shall further
2 provide proof to the satisfaction of the department of the
3 appointment of a new agent no less than five (5) calendar
4 days prior to the termination of an existing agent
5 appointment. In the event an agent terminates an agency
6 appointment, the manufacturer shall notify the department
7 of the termination within five (5) calendar days and shall
8 include proof to the satisfaction of the department of the
9 appointment of a new agent;

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11 (iii) Any manufacturer whose electronic
12 cigarettes or vapor material are sold in this state who has
13 not appointed and engaged the services of an agent as
14 required by this section shall be deemed to have appointed
15 the secretary of state as its agent for service of process.
16 The appointment of the secretary of state as agent shall
17 not satisfy the condition precedent required in subsection
18 (a) of this section to be included or retained in the
19 directory.

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21 (p) The department may promulgate any rules necessary
22 to implement the provisions of this chapter.

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1 (q) Beginning January 1, 2025 and annually
2 thereafter, the department shall provide a report to the
3 joint revenue interim committee regarding the status of the
4 directory, manufacturers and products included in the
5 directory, revenue and expenditures related to the
6 administration of this section and enforcement activities
7 undertaken pursuant to this section.

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9 (r) As used in this section:

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11 (i) "Marketing authorization" means an order
12 issued by the United States food and drug administration
13 authorizing an electronic cigarette or vapor material to be
14 introduced or delivered for introduction into interstate
15 commerce;

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17 (ii) "Pre-market tobacco product" means:

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19 (A) Any tobacco product (including those
20 products in test markets) that was not commercially
21 marketed in the United States as of February 15, 2007; or

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1 (B) Any modification of a tobacco product
2 where the modified product was commercially marketed in the
3 United States after February 15, 2007.

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5 **Section 2.** W.S. 39-11-101(a)(xviii) is amended to
6 read:

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8 **39-11-101. Definitions.**

9

10 (a) As used in this act unless otherwise specifically
11 provided:

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13 (xviii) "This act" means W.S. 39-11-101 through
14 ~~39-23-111~~ 39-24-101.

15

16 **Section 3.** This act is effective immediately upon
17 completion of all acts necessary for a bill to become law
18 as provided by Article 4, Section 8 of the Wyoming
19 Constitution.

20

21 (END)