

ASSEMBLY BILL NO. 360—ASSEMBLYMAN HAFEN

MARCH 22, 2021

Referred to Committee on Revenue

SUMMARY—Revises provisions relating to vapor products.
(BDR 32-864)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to vapor products; requiring a manufacturer of vapor products sold in this State to certify that it has complied with certain federal requirements and submit a list of its vapor products sold in this State to the Department of Taxation; requiring the Department of Taxation to create and maintain a directory of certain vapor products; prohibiting the sale of vapor products not included in the directory maintained by the Department; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Before marketing a tobacco product that was not commercially marketed in the United States before February 15, 2007, or a modification of a tobacco product where the modified product was commercially marketed in the United States after February 15, 2007, federal law requires a manufacturer of such a tobacco product to obtain from the United States Secretary of Health and Human Services an order that the tobacco product is substantially similar to a tobacco product commercially marketed as of February 15, 2007, or an order of exemption. (21 U.S.C. § 387j(a)(2)(A)) **Section 2** of this bill requires a manufacturer of vapor products whose vapor products are sold in this State to execute and deliver to the Department of Taxation on or before April 30 of each year a certification that the manufacturer of vapor products is in compliance with these federal requirements with respect to each vapor product of the manufacturer to which those requirements apply. **Section 2** requires the manufacturer to include in this certification a list of each vapor product of the manufacturer that is sold in this State and to update this list at least 30 days before modifying the selection of vapor products sold in this State.

Section 3 of this bill requires the Department of Taxation to create and maintain a directory of vapor products which are listed in the certifications



19 submitted by vapor product manufacturers. **Section 3** prohibits the sale of vapor
20 products not included in the directory maintained by the Department.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 370 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2. 1.** *A manufacturer of vapor products whose vapor*
4 *products are sold in this State, whether directly or through a*
5 *distributor, retailer or similar intermediary, shall, not later than*
6 *April 30 of each year, execute and deliver to the Department, on a*
7 *form provided by the Department, a certification which certifies*
8 *under penalty of perjury that, as of the date of that certification,*
9 *the manufacturer of vapor products is in compliance with 21*
10 *U.S.C. § 387j and any regulations adopted pursuant thereto with*
11 *respect to each vapor product of the manufacturer sold in this*
12 *State to which 21 U.S.C. § 387j and any regulations adopted*
13 *pursuant thereto apply.*

14 *2. A manufacturer of vapor products shall include in its*
15 *certification pursuant to this section a list of each vapor product of*
16 *the manufacturer sold in this State, including, without limitation,*
17 *those vapor products to which 21 U.S.C. § 387j and any*
18 *regulations adopted pursuant thereto do not apply. The*
19 *manufacturer shall update that list at least 30 calendar days*
20 *before it adds to or modifies the selection of vapor products sold in*
21 *this State by executing and delivering a supplemental certification*
22 *to the Department.*

23 **Sec. 3. 1.** *The Department shall create and maintain on its*
24 *Internet website and otherwise make available for public*
25 *inspection a directory that lists all manufacturers of vapor*
26 *products that have provided current and accurate certifications*
27 *conforming to the requirements of section 2 of this act and all*
28 *vapor products that are listed in those certifications. The*
29 *Department shall not include or retain in the directory the vapor*
30 *product of any manufacturer that has failed to provide the*
31 *required certification or whose certification has been determined*
32 *by the Department to be not in compliance with the requirements*
33 *of section 2 of this act, unless the Department has determined that*
34 *the violation has been cured to its satisfaction.*

35 *2. The Department shall update the directory as necessary to*
36 *correct mistakes and to add or remove vapor products or a*
37 *manufacturer of vapor products to keep the directory in*
38 *conformity with the requirements of this section.*



3. *Any determination of the Department not to include in or to remove from the directory a vapor product or manufacturer of vapor products is a final decision for the purposes of judicial review.*

4. *It is unlawful for a person to sell or offer for sale vapor products not included in the directory.*

Sec. 4. NRS 370.440 is hereby amended to read as follows:

370.440 As used in NRS 370.440 to 370.503, inclusive, *and sections 2 and 3 of this act*, unless the context otherwise requires:

1. "Alternative nicotine product" has the meaning ascribed to it in NRS 370.008.

2. "Other tobacco product" has the meaning ascribed to it in NRS 370.0318.

3. "Retail dealer" means any person who is engaged in selling other tobacco products to ultimate consumers.

4. "Sale" means any transfer, exchange, barter, gift, offer for sale, or distribution for consideration of other tobacco products.

5. "Ultimate consumer" means a person who purchases one or more other tobacco products for his or her household or personal use and not for resale.

6. "Wholesale dealer of other tobacco products" means any person who:

(a) Maintains a place of business in this State, purchases other tobacco products from the manufacturer or a wholesale dealer and possesses, receives, sells or otherwise disposes of such other tobacco products to wholesale dealers or retail dealers within this State;

(b) Does not maintain a place of business in this State and sells or otherwise disposes of other tobacco products by any means, including, without limitation, through an Internet website, to wholesale dealers, retail dealers or ultimate consumers within this State; or

(c) Manufactures, produces, fabricates, assembles, processes, labels or finishes other tobacco products within this State.

7. "Wholesale price" means:

(a) Except as otherwise provided in paragraph (b), the price for which other tobacco products are sold to a wholesale dealer of other tobacco products, valued in money, whether paid in money or otherwise, without any discount or other reduction on account of any of the following:

(1) Trade discounts, cash discounts, special discounts or deals, cash rebates or any other reduction from the regular sales price;

(2) The cost of materials used, labor or service cost, interest charged, losses or any other expenses;



1 (3) The cost of transportation of the other tobacco products
2 before its purchase by the wholesale dealer of other tobacco
3 products;

4 (4) Any services that are a part of the sale, including, without
5 limitation, shipping, freight, warehousing, customer service,
6 advertising or any other service related to the sale; or

7 (5) The amount of any tax, not including any excise tax,
8 imposed by the United States upon or with respect to the other
9 tobacco product.

10 (b) For other tobacco products sold to a retail dealer or an
11 ultimate consumer by a wholesale dealer of other tobacco products
12 described in paragraph (c) of subsection 6, the established price for
13 which the other tobacco product is sold to the retail dealer or
14 ultimate consumer before any discount or other reduction is made.

