

HOUSE BILL NO. HB0132

Nicotine products manufacturer licensing and reporting.

Sponsored by: Representative(s) Davis, Clouston, Connolly
and Lawley and Senator(s) Jones and Schuler

A BILL

for

1 AN ACT relating to nicotine products; requiring
2 manufacturers of nicotine products to obtain a license;
3 requiring manufacturers of electronic cigarettes and vapor
4 material to file certifications as specified; placing
5 restrictions on the sale and advertising of electronic
6 cigarettes and vapor material; requiring the department of
7 revenue to publish a directory of electronic cigarettes and
8 vapor material offered for sale in Wyoming by licensed
9 nicotine product manufacturers; prohibiting the sale of
10 nicotine products not included in the directory; requiring
11 biannual inspections of retailers, distributors and
12 wholesalers of electronic cigarettes and vapor material;
13 providing penalties; providing definitions; providing
14 rulemaking; making conforming amendments; and providing for
15 an effective date.

1

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

3

4 **Section 1.** W.S. 14-3-311 and 39-18-112 through
5 39-18-115 are created to read:

6

7 **14-3-311. Advertising and design restrictions; vapor**
8 **products.**

9

10 (a) No person shall market, advertise, sell or cause
11 to be sold an electronic cigarette or vapor material if the
12 electronic cigarette or vapor material's container,
13 packaging or advertising:

14

15 (i) Depicts a cartoon-like fictional character
16 that is primarily aimed at entertaining or enticing minors;

17

18 (ii) Imitates or mimics trademarks or images of
19 products that are typically marketed to minors;

20

21 (iii) Includes a symbol that is primarily used
22 to market products to minors; or

23

1 (iv) Includes an image of a celebrity in a
2 manner that entices minors to purchase the product.

3

4 (b) No person shall market, advertise, sell or cause
5 to be sold an electronic cigarette or vapor material that
6 has entertainment features, such as the ability to play
7 games, play music or other audio, display photographs or
8 video or any similar electronic entertainment features.

9

10 (c) Any person who violates subsection (a) or (b) of
11 this section is guilty of a misdemeanor punishable by a
12 fine or not more than seven hundred fifty dollars (\$750.00)
13 for a first violation, and by a fine of not more than one
14 thousand five hundred dollars (\$1,500.00) for each
15 subsequent violation. Each sale of an electronic cigarette
16 or vapor material that violates subsection (a) or (b) of
17 this section shall constitute a separate offense under this
18 subsection.

19

20 **39-18-112. Certification by manufacturers of**
21 **electronic cigarettes or vapor material.**

22

1 (a) Each nicotine product manufacturer that
2 manufactures electronic cigarettes or vapor material sold
3 at retail or to a consumer in this state, whether directly
4 or through a wholesaler, distributor, retailer or similar
5 intermediary, shall file a certification as required by
6 this section as a condition precedent to obtaining a
7 nicotine products manufacturer license under W.S.
8 39-16-106. The manufacturer shall not be issued a nicotine
9 product manufacturer license and shall not sell its
10 electronic cigarettes or vapor material in this state
11 unless the certification is filed as required by this
12 section.

13

14 (b) A certification filed under this section shall be
15 made on a form and in a manner prescribed by the
16 department. The certification shall include all of the
17 following:

18

19 (i) The name and address of the applicant, the
20 name and address of each of its members if the applicant is
21 a firm, partnership, limited liability company or
22 association or the name and address of each of its officers

1 and the address of its principal place of business if the
2 applicant is a corporation;

3

4 (ii) The location of the applicant's principal
5 place of business if different from the address required by
6 paragraph (i) of this subsection. If the applicant has
7 multiple establishments, the applicant shall provide a list
8 of all establishments operated by the applicant;

9

10 (iii) A copy of the federal Prevent All
11 Cigarette Trafficking Act registration form as submitted by
12 the applicant to the bureau of alcohol, tobacco, firearms
13 and explosives within the United States department of
14 justice and an attestation that the applicant is in
15 compliance with, and will continue to comply with, all
16 applicable requirements of 15 U.S.C. §§ 375 and 376, or a
17 statement explaining why the federal Prevent All Cigarette
18 Trafficking Act is not applicable to the applicant and its
19 products;

20

21 (iv) An attestation that the applicant will
22 comply with all applicable laws of Wyoming and of the

1 county and municipality of the applicant's principal place
2 of business;

3

4 (v) A list of each type or model of electronic
5 cigarette and vapor material that the applicant sells in
6 this state, including each product name, product category,
7 nicotine content and total volume of the product;

8

9 (vi) An attestation that the electronic
10 cigarettes and vapor material the applicant is selling
11 within the state, as well as all components or parts of the
12 products, were manufactured within the United States or
13 imported, regardless of whether the importation was
14 accomplished by the manufacturer or another entity. The
15 applicant shall also obtain and submit copies of:

16

17 (A) All customs and border patrol entry
18 forms submitted in the six (6) months immediately preceding
19 the date of the application for each import entry of the
20 products or any components or parts of the products;

21

22 (B) If requested by the department,
23 commercial invoices, cargo release results reports, bills

1 of lading and any other relevant document deemed necessary
2 by the department.

3

4 (vii) For an applicant with a principal place of
5 business outside the United States, a declaration and
6 notarized statement from each of the applicant's importers
7 that import electronic cigarettes and vapor material into
8 Wyoming that each importer accepts joint and several
9 liability with the applicant for all liability imposed
10 pursuant to this chapter, including any fees, costs,
11 attorney's fees and penalties. An importer who provides a
12 declaration and notarized statement under this paragraph
13 shall be provided the opportunity to consult with counsel
14 before providing the declaration and statement;

15

16 (viii) A list of any warning letters issued by
17 the United States food and drug administration during the
18 five (5) calendar years immediately preceding the date of
19 application that identified any electronic cigarette or
20 vapor material manufactured by the applicant as being
21 adulterated or misbranded under state or federal law and a
22 description of how and when each warning letter was
23 resolved;

1

2 (ix) Records reflecting the youth access
3 prevention policies the applicant has implemented with
4 respect to distributors and retailers that sell its
5 electronic cigarettes and vapor material in the state; and

6

7 (x) Any other information the department
8 requires for the purpose of administering this chapter or
9 any other applicable law.

10

11 (c) The applicant shall pay a one (1) time
12 nonrefundable fee of one hundred dollars (\$100.00) for each
13 type or model of electronic cigarette and vapor material
14 the first time it is included in the list of products
15 required by paragraph (b) (v) of this section.

16

17 (d) A nicotine product manufacturer shall not cause
18 to be sold at retail or to be consumed in this state any
19 electronic cigarette or vapor material not included in the
20 product list provided pursuant to paragraph (b) (v) of this
21 section.

22

1 (e) Each nicotine product manufacturer that obtains a
2 license under this chapter shall submit to the department:

3

4 (i) Notice of any changes to its product list
5 required under paragraph (b)(v) of this section not later
6 than thirty (30) days after making the changes;

7

8 (ii) Not less than one (1) time every six (6)
9 months:

10

11 (A) Confirmation that the information
12 submitted in its license application remains accurate; and

13

14 (B) All customs and border protection entry
15 forms submitted in the previous six (6) months.

16

17 (f) Submission of a false certification under this
18 section constitutes a deceptive, misleading or unfair
19 business practice prohibited by the Wyoming Consumer
20 Protection Act and the attorney general may seek any remedy
21 available under that act.

22

1 (g) The department may notify appropriate federal and
2 state agencies regarding false information submitted on a
3 certification form.

4

5 (h) A nicotine product manufacturer shall not be
6 certified under this section unless the manufacturer also
7 complies with the requirements of W.S. 39-18-113 through
8 39-18-115.

9

10 (j) Fees collected pursuant to this section are
11 continuously appropriated to the department to be expended
12 on the administration of this act.

13

14 **39-18-113. Agent for service of process.**

15

16 (a) Any nonresident manufacturer of electronic
17 cigarettes or vapor material that has not registered to do
18 business in this state as a foreign corporation or business
19 entity shall, as a condition precedent to receiving a
20 license under W.S. 39-18-106 and in addition to any
21 requirements under the Wyoming Business Corporation Act,
22 appoint and continually engage the services of an agent in
23 this state to act as agent for the service of process for

1 legal actions concerning or arising out of the enforcement
2 of this chapter and who may be served in any manner
3 authorized by law. Service to an agent appointed under this
4 subsection shall constitute legal and valid service of
5 process on the manufacturer. The manufacturer shall provide
6 the agent's name, address, telephone number and proof of
7 the appointment and availability to the department and the
8 secretary of state.

9

10 (b) The manufacturer shall provide notice to the
11 department not less than thirty (30) calendar days before
12 the termination of the authority of an agent. The
13 manufacturer shall also provide proof to the department of
14 the appointment of a new agent not less than five (5)
15 calendar days before the termination of an existing agent
16 appointment.

17

18 **39-18-114. Bond requirement; nonresident or foreign**
19 **manufacturers.**

20

21 (a) Any nonresident or foreign manufacturer of
22 electronic cigarettes or vapor material that has not
23 registered to do business in this state as a foreign

1 corporation or business entity shall, as a condition of
2 receiving a license under W.S. 39-18-106, submit to the
3 department a surety bond or other cash security payable to
4 the state in the amount of twenty-five thousand dollars
5 (\$25,000.00). The bond or cash security shall be posted by
6 a corporate surety located within the United States.

7
8 (b) The bond required by subsection (a) of this
9 section shall be conditioned on the manufacturer's
10 performance of all requirements and obligations imposed by
11 this chapter. A corporate surety on a manufacturer's bond
12 shall be liable up to the amount of the bond, and the
13 department may execute the surety bond, for the payment of
14 fines and penalties imposed on the manufacturer under this
15 chapter and for the cost of seizure and destruction of
16 products sold in violation of this chapter. If the
17 department executes on the surety bond, it may require the
18 manufacturer to provide an additional bond as a condition
19 of retaining the manufacturer or its products in the
20 directory created by W.S. 39-18-115.

21
22 (c) A corporate surety shall be released and
23 discharged from liability to the state sixty (60) days from

1 the date after the corporate surety lodges a written
2 request to be released and discharged from its duties with
3 the department. This provision shall not apply to relieve,
4 release or discharge the corporate surety from liability
5 already accrued or that shall accrue before the expiration
6 of the sixty (60) day period. The department shall, upon
7 receiving a request under this subsection, notify the
8 manufacturer who furnished the bond. Unless the
9 manufacturer files a new bond and a new corporate surety
10 with the department before the sixty (60) day period has
11 expired, the department shall cancel the manufacturer's
12 nicotine product manufacturer license.

13

14 **39-18-115. Directory of electronic cigarette or vapor**
15 **material.**

16

17 (a) Beginning on October 1, 2026, the department
18 shall maintain and make publicly available on the
19 department's official website a directory that lists all
20 electronic cigarettes and vapor material included in the
21 product lists submitted by licensed nicotine product
22 manufacturers pursuant to W.S. 39-18-112.

23

1 (b) Beginning on January 1, 2027, electronic
2 cigarettes and vapor material not included in the directory
3 shall not be sold for retail sale or to a consumer in this
4 state, either directly or through an importer, distributor,
5 wholesaler, retailer or similar intermediary.

6
7 (c) Any person who sells an electronic cigarette or
8 vapor material in violation of this section is guilty of a
9 misdemeanor punishable by a fine of not more than seven
10 hundred fifty dollars (\$750.00) for a first violation, and
11 by a fine of not more than one thousand five hundred
12 dollars (\$1,500.00) for each subsequent violation. Each
13 sale of an electronic cigarette or vapor material in
14 violation of this section shall constitute a separate
15 offense under this subsection.

16
17 (d) A second or subsequent violation of this section
18 shall constitute a deceptive, misleading or unfair trade
19 practice prohibited by the Wyoming Consumer Protection Act
20 and the attorney general may seek any remedy available
21 under that act. Each sale of an electronic cigarette or
22 vapor material shall constitute a separate offense under
23 this subsection.

1

2 **Section 2.** W.S. 39-18-101(a)(v)(D) and by creating a
3 new paragraph (xii), 39-18-106(a) and by creating new
4 subsections (d) through (g) and 39-18-108(c) by creating a
5 new paragraph (xiii) and by creating a new subsection (f)
6 are amended to read:

7

8 **39-18-101. Definitions.**

9

10 (a) As used in this ~~article~~chapter:

11

12 (v) "Wholesaler" means any person who:

13

14 (D) Sells or distributes for sale or resale
15 cigarettes or nicotine products over the internet or
16 through any other means of direct or indirect mail
17 solicitation or delivery to any person in this state.

18

19 (xii) "Nicotine product manufacturer" means any
20 person who manufactures, fabricates, assembles, processes
21 or labels a finished nicotine product for sale in this
22 state. "Nicotine product manufacturer" shall not include a
23 cigarette manufacturer.

1

2 **39-18-106. Licensing; permits.**

3

4 (a) Every wholesaler, cigarette importer, nicotine
5 manufacturer and cigarette manufacturer who sells or offers
6 to sell nicotine products in this state ~~must~~shall have a
7 license to do so issued by the department. No license or
8 renewal of a license shall be granted under this section
9 unless the wholesaler states in writing, under penalty for
10 false swearing, that he shall comply fully with W.S.
11 9-4-1201 through 9-4-1209. The license fee is ten dollars
12 (\$10.00) per year or fraction thereof and is valid through
13 June 30 in each year. The license will be granted only to
14 wholesalers who own or operate the place from which sales
15 are made and additional licenses must be obtained for each
16 separate location. The licenses are transferable pursuant
17 to rules and regulations promulgated by the department.

18

19 (d) No license for a nicotine product manufacturer
20 who manufactures electronic cigarettes or vapor material
21 shall be granted, maintained or renewed unless the
22 manufacturer satisfies the requirements of W.S. 39-18-112
23 through 39-18-115.

1

2 (e) Retailers shall purchase cigarettes and nicotine
3 products only from a wholesaler, nicotine product
4 manufacturer or cigarette importer who is licensed under
5 this chapter.

6

7 (f) Wholesalers and cigarette importers shall
8 purchase cigarettes and nicotine products only from a
9 wholesaler or cigarette manufacturer who is licensed under
10 this chapter.

11

12 (g) A person licensed under this chapter shall be
13 deemed to have sufficient minimum contacts with the state
14 pursuant to W.S. 5-1-107 and shall consent to the exercise
15 of personal jurisdiction over the manufacturer in the
16 courts of this state in any matter or issue arising under
17 this chapter or related to the sale of cigarettes or a
18 nicotine product.

19

20 **39-18-108. Enforcement.**

21

22 (c) Penalties. The following shall apply:

23

1 (xiii) Beginning January 1, 2027, any nicotine
2 product held or offered for retail sale in this state that
3 is manufactured by a person that has not received a
4 nicotine product manufacturer license as provided by this
5 chapter shall be considered contraband goods and may be
6 seized without a warrant by the department or any law
7 enforcement officer in this state when directed to do so by
8 the department. The cost of the seizure and destruction or
9 disposal shall be borne by the person from whom the
10 products are confiscated.

11
12 (f) Each retailer, distributor and wholesaler that
13 sells or distributes electronic cigarettes or vapor
14 material in this state is subject to unannounced compliance
15 checks for the purpose of enforcing this section.
16 Unannounced follow-up compliance checks of all noncompliant
17 retailers, distributors and wholesalers shall be conducted
18 within thirty (30) days after any violation of this
19 chapter. The department shall publish the results of all
20 compliance checks on its website not less than annually and
21 shall make the results available to the public upon
22 request.

23

1 **Section 3.** The department of revenue shall promulgate
2 all rules necessary to implement this act.

3

4 **Section 4.** This act is effective immediately upon
5 completion of all acts necessary for a bill to become law
6 as provided by Article 4, Section 8 of the Wyoming
7 Constitution.

8

9

(END)