

2020 -- H 7841

LC004436

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

RELATING TO HEALTH AND SAFETY -- DEPARTMENT OF HEALTH

Introduced By: Representatives Casimiro, McNamara, Vella-Wilkinson, Bennett, and Noret

Date Introduced: February 26, 2020

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 1.12

4 THE RHODE ISLAND VAPOR PRODUCTS REGULATORY AND LICENSURE ACT OF

5 2020

6 **23-1.12-1. Short title.**

7 This act shall be known and may be cited as the "Rhode Island Vapor Products
8 Regulatory and Licensure Act of 2020."

9 **23-1.12-2. Application.**

10 This chapter applies to the following:

11 (1) The commercial manufacturing, bottling, selling, bartering, or importing of e-liquid in
12 this state;

13 (2) The sale, possession, and use of e-liquid products in this state; and

14 (3) The sale, possession, and use of any vapor product in this state.

15 **23-1.12-3. Purpose.**

16 The purpose of this chapter is to protect public health and safety by:

17 (1) Ensuring the safety and security of e-liquid and vapor products manufactured for sale
18 in this state;

19 (2) Ensuring that e-liquid and vapor products manufactured or sold in this state conforms

1 to appropriate standards related to labeling, marketing, and appearance; and

2 (3) Ensuring that e-liquid and vapor products are not contaminated or adulterated by the
3 inclusion of ingredients or other substances that might pose unreasonable threats to public health
4 and safety.

5 **23-1.12-4. Definitions.**

6 As used in this chapter:

7 (1) "Advertise" means the publication or dissemination of an advertisement.

8 (2) "Advertisement" means and includes any written or verbal statement, illustration, or
9 depiction which is calculated to induce sales of e-liquids or vapor products, including any written,
10 printed, graphic, or other material, billboard, sign, or other outdoor display, public transit card,
11 other periodical literature, publication, or in a radio or television broadcast, or in any other media;
12 except that such term shall not include:

13 (i) Any label affixed to any e-liquid or vapor product, or any individual covering, carton,
14 or other wrapper of such container that constitutes a part of the labeling under provisions of this
15 chapter.

16 (ii) Any editorial or other reading material (e.g., news release) in any periodical or
17 publication or newspaper for the publication of which no money or valuable consideration is paid
18 or promised, directly or indirectly, by any licensee, and which is not written by or at the direction
19 of the licensee.

20 (3) "Advertising sign" means any sign, poster, display, billboard, or any other stationary
21 or permanently affixed advertisement promoting the sale of e-liquids or vapor products which are
22 not manufactured, distributed, or sold on the same lot.

23 (4) "Applicant" means a person who applies for a permit under this chapter.

24 (5) "Delivery sale" means a sale of e-liquids or vapor products to a consumer in this state
25 in which the consumer submits the order for the sale:

26 (i) By telephone;

27 (ii) Over the Internet; or

28 (iii) Through the mail or another delivery system; and the e-liquids or vapor products are
29 shipped through a delivery service. "Delivery sale" does not include a sale of e-liquids or vapor
30 products not for personal consumption to a person who is a manufacturer, distributor, or retailer.

31 (6) "Delivery service" means a person, including the United States Postal Service, that is
32 engaged in the delivery of letters, packages, or containers.

33 (7) "Department" means the Rhode Island department of health.

34 (8) "Distributor" means a person who has a permit that:

1 (i) Distributes, sells, barter, or exchanges e-liquid or vapor products in this state for the
2 purpose of resale; or

3 (ii) Purchases e-liquid or vapor products directly from a manufacturer or distributor for
4 the purpose of resale in this state.

5 (9) "E-liquid" means a substance that:

6 (i) May or may not contain nicotine;

7 (ii) Is intended to be vaporized and inhaled using a vapor product; and

8 (iii) Is a legal substance under the laws of this state and the laws of the United States.

9 (iv) E-liquid does not include cannabis, THC or CBD as defined under the laws of this
10 state and the laws of the United States.

11 (10) "Employee" means a person who works directly in the service of another person
12 under an express or implied contract of hire, and the employer has the direct right to control the
13 details of work performance. The term does not include a person who works for any independent
14 subcontractor, temporary service provider, or an entity or person not under the direct full control
15 of the employer.

16 (11) "Health-related statement" means any statement related to health, and includes
17 statements of a curative or therapeutic nature that, expressly or by implication, suggest a
18 relationship between the consumption of e-liquids or vapor products and health benefits, or
19 effects on health.

20 (12) "Flavoring" means a food grade additive or synthetic flavoring substance that is used
21 to add flavor and that is not prohibited by the federal Food and Drug Administration as an
22 additive in vapor products.

23 (13) "Manufacturer" means a person located inside of this state, including any repacker
24 and/or relabeler, that is engaged in manufacturing e-liquids or vapor products.

25 (14) "Manufacturing" means the process by which an e-liquid or vapor product is
26 fabricated, assembled, packaged or labeled, and is sealed in final packaging intended for
27 consumer use.

28 (15) "Market" or "marketing" means any act or process of promoting or selling of e-
29 liquids or vapor products, including, but not limited to, sponsorship of sporting events, point-of-
30 sale advertising, and promotion of products specifically designed to appeal to certain
31 demographics.

32 (16) "Minor" means an individual who is less than twenty-one (21) years of age.

33 (17) "Packaging" means any receptacle that contains e-liquid or a vapor product.

34 (18) "Permit" means a written authorization issued by the department entitling the holder

1 to manufacture, sell, or otherwise deal in e-liquid or vapor products, as provided in this chapter.

2 (19) "Permittee" means a person who holds a valid permit under this chapter, including
3 an agent of, employee of, or other person acting on behalf of, a permittee.

4 (20) "Retailer" means a person, other than a manufacturer or distributor, who in the
5 ordinary course of the person's regular trade or business:

6 (i) Acquires any form of e-liquid or vapor products for the purpose of resale to final end
7 consumer; and

8 (ii) Sells an e-liquid or a vapor product to another person for money or other
9 consideration.

10 (21) "Sale" or "Sell" means give away, barter, exchange or otherwise furnish any vapor
11 product to any individual of legal age.

12 (22) "Shipping documents" means a bill of lading, airbill, or any document used as
13 evidence that a delivery occurred by a delivery service.

14 (23) "Tamper evident package" means a package having at least one indicator or barrier
15 to entry that, if breached or missing, can reasonably be expected to provide visible evidence to
16 consumers that tampering has occurred.

17 (24) "Vapor product" means a powered vaporizer that converts e-liquid to a vapor
18 intended for inhalation.

19 **23-1.12-5. Duties of the department.**

20 The department has the following duties and responsibilities:

21 (1) To require the submission of information necessary to implement this chapter;

22 (2) To issue permits;

23 (3) To charge fees as set forth in this chapter. The fees charged under this chapter may
24 not exceed the actual costs incurred by the department; and

25 (4) To approve or deny a permit application made within sixty (60) days of receiving the
26 application.

27 **23-1.12-6. Permit requirements; Application.**

28 (a) A manufacturer, distributor, or retailer shall not sell e-liquid or vapor products in this
29 state without a permit issued by the department under this chapter.

30 (b) A manufacturing permit issued by the department is valid for five (5) years from the
31 date of issuance. An application for a manufacturing permit must include the following:

32 (1) The name, telephone number, and address of the applicant;

33 (2) The name, telephone number, and address of the manufacturing facility;

34 (3) The name, telephone number, title, and address of the person responsible for the

1 manufacturing facility;

2 (4) Verification that the facility will comply with applicable tobacco products good
3 manufacturing practices promulgated under 21 U.S.C. 387f(e) of the federal Food, Drug, and
4 Cosmetic Act;

5 (5) Verification that the manufacturer will comply with the applicable ingredient listing
6 required by 21 U.S.C. 387d(a)(1) of the federal Food, Drug, and Cosmetic Act;

7 (6) A nonrefundable initial application fee of one thousand dollars (\$1,000); and

8 (7) The fees collected under this subsection shall be deposited in the vapor products
9 compliance fund.

10 (c) A distributor of e-liquid or vapor products may not distribute e-liquid or vapor
11 products in this state without a valid permit issued by the department under this chapter. A
12 distributor permit issued by the department is valid for one year from the date of issuance.

13 (d) An application for a distributor permit must include the following:

14 (1) The name, telephone number, and address of the applicant;

15 (2) The name, telephone number, and address of the distribution facility;

16 (3) The name, telephone number, title, and address of the person responsible for the
17 distribution facility;

18 (4) A nonrefundable initial application fee of five hundred dollars (\$500); and

19 (5) The fees collected under this subsection shall be deposited in the vapor products
20 compliance fund.

21 (e) A retailer of e-liquid or vapor products may not sell e-liquid or vapor products in this
22 state without a valid permit issued by the department under this chapter. A retailer permit issued
23 by the department is valid for one year from the date of issuance.

24 (f) An application for a retailer permit must include the following:

25 (1) The name, telephone number, and address of the applicant;

26 (2) The name, telephone number, and address of the retail facility;

27 (3) The name, telephone number, title, and address of the person responsible for the retail
28 location;

29 (4) A nonrefundable initial application fee not to exceed twenty-five dollars (\$25.00); and

30 (5) The fees collected under this subsection shall be deposited in the vapor products
31 compliance fund.

32 **23-1.12-7. Permit transfer -- Notice of changes.**

33 (a) A permit may not be transferred:

34 (1) From the permit holder to another person; or

1 (2) From the location where the permit was approved or renewed to another location;
2 unless approved by the department.

3 (b) The department shall allow a permit to be transferred under subsection (a) of this
4 section if the permit has not been suspended or revoked and the new permit holder or location
5 meets the requirements under this chapter.

6 (c) If the information required for the initial or renewal permit changes, the permit holder
7 shall notify the department within ten (10) business days of the change. If any change in the
8 information required for an application results in a violation of this chapter, the department may
9 impose a penalty as provided in this chapter.

10 **23-1.12-8. Issuance of permits; Reasons for denial.**

11 (a) The department shall grant or deny a completed application for a permit within sixty
12 (60) days of receipt of the application. The department shall approve the application for issuance
13 of a permit if the department determines that all the requirements under this chapter have been
14 met.

15 (b) If the completed application for a permit is denied, the department must state the
16 reasons for the denial. If a completed application is denied under this section, the applicant may
17 reapply within thirty (30) days after the date of the denial. There is no application fee for a
18 reapplication under this subsection.

19 **23-1.12-9. Manufacturing, Labeling, Marketing and Safety requirements.**

20 (a) Manufacturers, distributors, and retailers shall comply with the following
21 requirements:

22 (1) An e-liquid container must use a child proof cap that has the child resistant
23 effectiveness set forth in the federal poison prevention packaging standards, 16 CFR 1
24 700.15(b)(1);

25 (2) An e-liquid container must use a tamper evident package. The tamper evident package
26 feature must be designed to and remain intact when handled in a reasonable manner during the
27 manufacture, distribution, and retail display of the e-liquid container;

28 (3) The label on an e-liquid container must meet the nicotine addictiveness warning
29 statement requirements set forth in 21 CFR 1143.3; and

30 (4) Retailers in this state shall display signage stating that "unaccompanied minors are not
31 allowed on the premises", "products are not for sale to minors", or "underage sales prohibited".

32 (b) A manufacturer, distributor, or retailer of e-liquids or vapor products shall not sell,
33 offer for sale, or distribute any e-liquid or vapor product with labeling or packaging made to be
34 attractive to minors. The labeling or packaging of an e-liquid or vapor product is attractive to a

1 minor if it uses packaging or labeling that does any of the following:

2 (1) Contains the terms "candy", "candies", "kandy", "kandeez", "bubble gum", "cotton

3 candy", "gummy bear", "cupcake", "soda pop", "lollipop", or "milkshake", or variants in spelling

4 of these terms;

5 (2) Depicts images of juice boxes, soft drinks, cereal, candy, or desserts;

6 (3) Depicts images of cartoons, toys, superheroes, children, and any other likeness to

7 images, characters, or phrases, such as "unicorn", that are or have been primarily marketed to

8 minors;

9 (4) Imitates or mimics trademark or trade dress of food products such as candy, cookies,

10 cereal, juice boxes, or soft drinks that are or have primarily been marketed towards minors;

11 (5) Depicts images or references to video games, movies, videos, or animated television

12 shows known to appeal to minors;

13 (6) Depicts the actual consumption of e-liquids or vapor products;

14 (7) Depicts a minor using e-liquids or vapor products;

15 (8) Makes any health, medicinal, or therapeutic claims about e-liquids or vapor products;

16 and

17 (9) Promotes overconsumption of e-liquids or vapor products.

18 (d) A manufacturer, distributor, or retailer of e-liquids or vapor products shall not

19 advertise or market any e-liquids or vapor products in a manner that does not adhere to the

20 following:

21 (1) All advertisements and marketing shall accurately and legibly identify the person

22 responsible for its content;

23 (2) Any advertising or marketing in broadcast, cable, radio, print, and digital

24 communications, or any event marketing or sponsorships, shall only be made where at least

25 eighty-five percent (85%) percent of the audience is reasonably expected to be twenty-one (21)

26 years of age or older, as determined by reliable, up-to-date audience composition data;

27 (3) All advertising shall be truthful and appropriately substantiated;

28 (4) Advertise or market in a manner that is materially false or untrue;

29 (5) Publish or disseminate advertising or marketing containing any statement concerning

30 a brand or product that is inconsistent with any statement on the labeling thereof;

31 (6) Advertise or market e-liquids or vapor products on an advertising sign within one

32 thousand feet (1,000) of a day care center, schools offering instruction in kindergarten or any of

33 grades one through twelve (12), inclusive, playground, or youth center. This shall not apply to the

34 placement of advertising signs inside a licensed premises and which are not readable by normal

1 unaided vision from a public place or the public way; provided, that such advertising signs do not
2 advertise e-liquids or vapor products in a manner intended to encourage persons under the age of
3 twenty-one (21) years to consume e-liquids or vapor products; and

4 (7) Publish or disseminate advertising or marketing containing any health-related
5 statement that is untrue in any particular manner or tends to create a misleading impression as to
6 the health benefits of consumption.

7 **23-1.12-10. Record requirements and prohibitions.**

8 (a) Any person selling e-liquids or vapor products to a consumer in this state shall have a
9 valid retailer permit under this chapter.

10 (b) A permit holder under this chapter shall retain all invoices for at least two (2) years.

11 (c) A manufacturer may use flavoring as an ingredient in e-liquid and a distributor, or
12 retailer may sell e-liquid containing flavors as defined in this chapter.

13 (d) A retailer shall not sell more than two (2) vapor products or five (5) bottles or
14 packages of e-liquids in one transaction to a final consumer under this chapter.

15 **23-1.12-11. Identification and use by minors.**

16 (a) Before a retailer sells an e-liquid or vapor product to any purchaser, the person
17 selling, offering for sale, giving, or furnishing the e-liquid or vapor product shall verify that the
18 purchaser is of legal age by:

19 (1) For any sale by a brick and mortar retailer in this state, examining from any person
20 that appears to be under twenty-seven (27) years of age a government-issued photographic
21 identification that establishes the person is of legal age and verifying the identification presented
22 using third-party identification fraud detection software, technology or scanner that confirms the
23 authenticity of said identification; or

24 (2) For any delivery sale by a retailer to a purchaser in this state, performing an age
25 verification through an independent, third-party age verification software, service or technology
26 that compares information available from public records to the personal information entered by
27 the purchaser during the ordering process that establishes the purchaser is of legal age or older.

28 (b) A minor shall not purchase e-liquids or vapor products from any person and shall not
29 present to any retailer or other person any form of identification that falsely represents the minor's
30 appearance, identity or age.

31 (c) A minor shall not possess an e-liquid or vapor product.

32 (d) If a minor violates subsections (b) or (c) of this section, he or she is guilty of a petty
33 offense and the court may impose a sentence of twenty-five (25) hours of community service and
34 a fine of fifty dollars (\$50.00) for a first violation. A second violation by a minor of subsections

1 (b) or (c) of this section that occurs within twelve (12) months after the first violation is
2 punishable by a fine of seventy-five dollars (\$75.00) and fifty (50) hours of community service. A
3 third or subsequent violation by a minor of subsections (b) or (c) of this section that occurs within
4 twelve (12) months after the first violation is punishable by a two hundred dollar (\$200) fine and
5 fifty (50) hours of community service and shall result in a suspension of the minor's driver's
6 license for a period not to exceed six (6) months, if applicable.

7 **23-1.12-12. Delivery sales.**

8 (a) A retailer may not make a delivery sale of e-liquid or vapor products without a retail
9 permit under this chapter.

10 (b) A retailer may not ship e-liquids or vapor products without first making a good faith
11 effort to verify the age of the purchaser of the e-liquids.

12 (c) Before e-liquids or vapor products are shipped in a delivery sale, a retailer must be
13 fully paid for the purchase and shall accept payment from the purchaser:

14 (1) By a check drawn on an account in the purchaser's name;

15 (2) By a credit card issued in the purchaser's name; or

16 (3) By a debit card issued in the purchaser's name.

17 (d) A retailer may ship e-liquids or vapor products only to a purchaser.

18 (e) A retailer taking a delivery sale order may request the electronic mail address of the
19 purchaser.

20 (f) Any retailer who completes delivery sales without a valid retail permit under this
21 chapter shall be considered an illegal sale under this chapter.

22 **23-1.12-13. Penalties and suspension -- Compliance with federal laws.**

23 (a) If a manufacturer, distributor, or retailer violates this chapter, the manufacturer,
24 distributor, or retailer may be reprimanded, assessed a civil penalty, or have the manufacturer's
25 permit, distributor's permit, or retailer's permit revoked, as set forth herein.

26 (b) Any provision in this chapter that requires a manufacturer to comply with the federal
27 Food, Drug, and Cosmetic Act or a federal rule promulgated under the federal Food, Drug, and
28 Cosmetic Act is under the sole jurisdiction of the federal Food and Drug Administration. If the
29 federal Food and Drug Administration seeks court enforcement of any section of the federal
30 Food, Drug, and Cosmetic Act cited in this chapter and a civil monetary penalty is assessed
31 against the manufacturer, the act or omission for which the penalty was assessed constitutes a
32 violation of this chapter.

33 (c) The department may assess a civil penalty against a manufacturer, distributor, or
34 retailer for a violation of this chapter in an amount that does not exceed five thousand dollars

1 (\$5,000). A civil penalty may be assessed in addition to other penalties allowed under this
2 chapter, provided, however, that a retailer may not be penalized under this subsection and
3 subsection (d) of this section for the same transaction giving rise to the violation of the chapter.

4 (d) For sales to minors, the following civil penalties apply:

5 (1) If a retailer knowingly and intentionally sells e-liquid or vapor products to a minor or
6 knowingly, intentionally, or negligently fails to verify the age of a purchaser as required in this
7 chapter and sells the person and e-liquid or a vapor product, a civil judgment for an infraction
8 committed under this subsection must be imposed. The first violation in a thirty-six (36) month
9 period shall result in a two hundred fifty dollar (\$250) penalty, a second violation in a thirty-six
10 (36) month period shall result in a fifteen hundred dollar (\$1,500) penalty, a third violation and
11 subsequent violations in a thirty-six (36) month period shall result in a three thousand dollar
12 (\$3,000) penalty under this chapter or revocation of retailer's license.

13 (2) If an employee knowingly and intentionally sells e-liquid or vapor products to a
14 minor, or knowingly, intentionally, or negligently fails to verify the age of a purchaser as required
15 in this chapter, a civil judgment for an infraction committed under this subsection must be
16 imposed. The first violation in a twenty-four (24) month period shall result in a one hundred fifty
17 dollar (\$150) penalty for the employee, a second violation in a twenty-four (24) month period
18 shall result in a three hundred dollar (\$300) penalty for the employee, and a third violation in a
19 twenty-four (24) month period shall result in a one thousand dollar (\$1,000) penalty for the
20 employee.

21 (e) It is not a defense that the underage person to whom an e-liquid or vapor product was
22 sold or distributed did not inhale or otherwise consume the e-liquid or use the vapor product.

23 (f) The following defenses are available to a retail permit holder or employee accused of
24 selling or distributing e- liquids or vapor products to a person who is a minor:

25 (1) The purchaser produced a government-issued photographic identification bearing the
26 purchaser's photograph showing that the purchaser was of legal age to make the purchase and the
27 third-party identification fraud detection scanner technology or software utilized confirmed the
28 authenticity of the purchaser's identification;

29 (2) The third-party age verification software or technology system used by the retailer
30 confirmed that the purchaser was of above the age of twenty-one (21); and

31 (3) The appearance of the purchaser was such that an ordinary prudent person would
32 believe that the purchaser does not appear to be under twenty-seven (27) years of age.

33 (g) Civil penalties collected under this chapter must be deposited in the vapor products
34 compliance fund.

1 **23-1.12-14. Illegal third-party sales.**

2 (a) Any person who sells an e-liquid or a vapor product without a proper permit shall be
3 subject to the following penalties:

4 (1) The first violation shall result in a minimum of a one thousand dollar (\$1,000)
5 penalty;

6 (2) A second violation shall result in a minimum of a five thousand dollar (\$5,000)
7 penalty; and

8 (3) A third violation shall result in a ten thousand dollar (\$10,000) penalty.

9 (b) Any violation of this section that occurs on school property shall be considered an
10 aggravating factor and shall at a minimum be considered a misdemeanor under the laws of this
11 state.

12 **23-1.12-15. Vapor products compliance fund.**

13 (a) The vapor products compliance fund is hereby created as a special fund under state
14 law.

15 (b) The vapor products compliance fund shall be utilized by the department for
16 enforcement of this chapter.

17 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY -- DEPARTMENT OF HEALTH

1 This act would regulate the manufacture, distribution and retail sale of vapor products in
2 Rhode Island. This act would provide the department of health with the authority to oversee the
3 permitting for manufacturing, distribution and retail sale of vapor products. Also, this act would
4 set forth labeling, marketing, safety and record-keeping requirements for manufacturers,
5 distributors and retailers of vapor products. Also, this act prohibits the sale of vapor products to
6 minors and provides penalties for non-compliance.

7 This act would take effect upon passage.

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