

2020 Regular Session

HOUSE BILL NO. 799

BY REPRESENTATIVE HUGHES

TOBACCO/TOBACCO PRODUCTS: Provides relative to e-liquid and vapor products

1 AN ACT

2 To amend and reenact R.S. 26:901(3) through (35) and to enact R.S. 26:901(36) through  
3 (40), 910.2, 911(E), 911.1, and 918(E), (F), and (G), relative to tobacco products; to  
4 provide relative to e-liquid and vapor products; to provide manufacturing, labeling,  
5 marketing and safety requirements; to provide relative to prohibited acts; to provide  
6 relative to delivery sales; to provide relative to civil penalties; and to provide for  
7 related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 26:901(3) through (35) are hereby amended and reenacted and R.S.  
10 26:901(36) through (40), 910.2, 911(E), 911.1, and 918(E), (F), and (G) are hereby enacted  
11 to read as follows:

12 §901. Definitions

13 As used in this Chapter, the following terms have the meaning ascribed to  
14 them in this Section, unless the context clearly indicates otherwise:

15 \* \* \*

16 (3) "Characterizing flavor" means a distinguishable flavor, taste, or other  
17 aroma other than tobacco, mint, or menthol, including but not limited to any fruit,  
18 chocolate, vanilla, honey, candy cocoa, dessert, alcoholic beverage, herb,  
19 wintergreen, or spice flavoring, that is imparted, prior to or during consumption, by  
20 use of a vapor product including liquid nicotine or any smoke or vapor emanating

1 from that device or product. An e-liquid or vapor product shall be deemed to have  
2 a characterizing flavor if the product is advertised or marketed as having or  
3 producing any such distinguishable flavor, taste or aroma.

4 ~~(3)~~ (4) "Cigar" includes any roll of tobacco for smoking, irrespective of size  
5 or shape, and irrespective of the tobacco being flavored, adulterated, or mixed with  
6 any other ingredients, where such roll has a wrapper made chiefly of tobacco.

7 ~~(4)~~ (5) "Cigarette" includes any roll for smoking made wholly or in part of  
8 tobacco, irrespective of size or shape and irrespective of the tobacco being flavored,  
9 adulterated, or mixed with any other ingredient, where such roll has a wrapper or  
10 cover made of paper, or any other material except where such wrapper is wholly or  
11 in greater part made of tobacco.

12 ~~(5)~~ (6) "Commissioner" means the commissioner of alcohol and tobacco  
13 control.

14 ~~(6)~~ (7) "Dealer" includes every person who manufactures or purchases  
15 cigars, cigarettes, alternative nicotine products, e-liquids, vapor products, or other  
16 tobacco products for distribution or resale ~~in~~ into or within this state. The term also  
17 means any person who imports cigars, cigarettes, alternative nicotine products,  
18 e-liquids, vapor products, or other tobacco products from any state or foreign country  
19 for distribution, sale, or consumption in this state.

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

22 (i) By telephone.

23 (ii) Over the Internet.

24 (iii) Through the mail or another delivery system and the e-liquids or vapor  
25 products are shipped through a delivery service.

26 (b) "Delivery sale" does not include a sale of e-liquid or vapor products not  
27 for personal consumption to a person who is a manufacturer, wholesale dealer, or  
28 retailer.

1           ~~(9)~~ "Delivery service" means a person, including but not limited to the United  
2           States Postal Service, that is engaged in the delivery of letters, packages, or  
3           containers.

4           ~~(7)~~ (10) "E-liquid" means a substance that does not include cannabis or CBD  
5           as defined under the laws of this state and the laws of the United States and which  
6           meets all of the following criteria:

7                   (a) May or may not contain nicotine.

8                   (b) Is intended to be vaporized and inhaled using a vapor product.

9                   (c) Is a legal substance under the laws of this state and the laws of the United  
10           States.

11           ~~(8)~~ (11) "Exporter license" means the stamping agent designation as set forth  
12           in R.S. 26:902(2)(a).

13           ~~(9)~~ (12) "Facility" means a part or portion of an establishment which is  
14           designed so as to impede a minor's access to a vending machine by walls or other  
15           separation in combination with signs designed to notify the public that persons under  
16           the age of eighteen are prohibited from the area.

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

21           ~~(10)~~ (14) A "knowing violation or failure" is a knowing or intentional  
22           engaging in conduct without a good faith belief that the conduct was consistent with  
23           the provisions of this Chapter.

24           ~~(11)~~ (15) "Manufacturer" means anyone engaged in the manufacture,  
25           production, or foreign importation of tobacco products who sells to wholesalers.

26           ~~(12)~~ (16) "Person" means any natural person, trustee, company, partnership,  
27           corporation, or other legal entity.

28           ~~(13)~~ (17) "Place of business" means the place where the tobacco orders,  
29           alternative nicotine products orders, or vapor products orders are received, or where

1 the taxable tobacco articles are sold, or if sold by a retail dealer upon a railroad train  
2 or on or from any other vehicle, the vehicle on which or from which the taxable  
3 articles or alternative nicotine products or vapor products are sold by the retail  
4 dealer. It also includes the establishment where vending machines are located.

5 ~~(14)~~ (18) "Purchase" means acquisition in any manner, for any consideration.  
6 The term shall include transporting or receiving product in connection with a  
7 purchase.

8 ~~(15)~~ (19) "Rebate or coupon" means any value-added promotion, preferred  
9 customer promotion, periodic promotion, off-invoice allowance, specially marked  
10 one-packed deals, special price promotions, market leader promotions, value leader  
11 promotions, or any other program or incentive whereby a wholesaler or retailer is  
12 required, either directly or indirectly, to pass an incentive on to a consumer and is  
13 reimbursed, either directly or indirectly, by a manufacturer, importer, or sales entity  
14 affiliate.

15 ~~(16)~~ (20) "Replacement cost" means the cost per unit at which the  
16 merchandise sold or offered for sale could have been bought by the seller at any time  
17 within thirty days prior to the date of sale or the date upon which it is offered for sale  
18 by the seller if bought in the same quantity as the seller's last purchase of the  
19 merchandise.

20 ~~(17)~~ (21) "Retail dealer" includes every dealer other than a wholesale dealer,  
21 or manufacturer who sells or offers for sale cigars, cigarettes, other tobacco products,  
22 alternative nicotine products, or vapor products, irrespective of quantity or the  
23 number of sales. If any person is engaged in the business of making sales both at  
24 retail and wholesale, "retailer" shall apply only to the retail portion of the business.

25 ~~(18)~~ (22) "Sale" or "sell" means any transfer, exchange, or barter in any  
26 manner or by any means for any consideration. The term shall include distributing  
27 or shipping product in connection with a sale. References to a sale "in" or "into" a  
28 state refer to the state of the destination point of the product in the sale, without  
29 regard to where title was transferred. References to sale "from" a state refer to the

1 sale of cigarettes that are located in that state to the destination in question without  
2 regard to where title was transferred.

3 ~~(19)~~ (23) "Sales entity affiliate" means an entity that sells cigarettes that it  
4 acquires directly from a manufacturer or importer and is affiliated with that  
5 manufacturer or importer as established by documentation received directly from  
6 that manufacturer or importer to the satisfaction of the attorney general. Entities are  
7 affiliated with each other if one, directly or indirectly through one or more  
8 intermediaries, controls or is controlled by or is under common control with the  
9 other.

10 ~~(20)~~ (24) "Secretary" means the secretary of the Department of Revenue and  
11 includes any of his duly authorized assistants.

12 ~~(21)~~ (25) "Self-service display" means any display that contains tobacco  
13 products, alternative nicotine products, or vapor products, and is located in an area  
14 openly accessible to the retail dealer's customers and from which such customers can  
15 readily access tobacco products, alternative nicotine products, or vapor products  
16 without the assistance of a salesperson. A display case that holds tobacco products,  
17 alternative nicotine products, or vapor products behind locked doors does not  
18 constitute a self-service display for purposes of this Chapter.

19 ~~(22)~~ (26) "Sell at retail", "sales at retail", and "retail sale" means any transfer  
20 for valuable consideration, made in the ordinary course of trade or in the usual  
21 conduct of the seller's business, of title to tangible movable property to the purchaser.

22 ~~(23)~~ (27) "Sell at wholesale", "sales at wholesale", and "wholesale sales"  
23 mean any transfer for valuable consideration, made in the ordinary course of trade  
24 or the usual conduct of the seller's business, of title to tangible movable property to  
25 the purchaser for purposes of resale.

26 ~~(24)~~ (28) "Smokeless tobacco" means any finely cut, ground, powdered, or  
27 leaf tobacco that is intended to be placed in the oral or nasal cavity.

1           ~~(25)~~ (29) "Smoking tobacco" includes granulated, plug cut, crimp cut, ready  
2 rubbed, and any other kind and form of tobacco prepared in such manner as to be  
3 suitable for smoking in pipe or cigarette.

4           ~~(26)~~ (30) "Stamp" means the impression, device, stamp, label, or print  
5 manufactured or printed as prescribed by the secretary by the use of which the tax  
6 levied hereunder is paid. By way of extension, and not limitation, the term "stamp"  
7 means any impression or character affixed to or which shall be stamped upon  
8 commodities by metered stamping machine or device by use of which the tax levied  
9 hereunder is paid.

10           ~~(27)~~ (31) "Stamping agent" means a dealer that is authorized to affix tax  
11 stamps to packages or other containers of cigarettes under R.S. 47:843 et seq. or any  
12 dealer that is required to pay the excise tax or tobacco tax imposed pursuant to R.S.  
13 47:841 et seq. on cigarettes.

14           ~~(28)~~ (32) "State directory" or "directory" means the directory compiled by  
15 the attorney general under R.S. 13:5073, or, in the case of reference to another state's  
16 directory, the directory compiled under the similar law in that other state.

17           (33) "Tamper evident package" means a package having at least one indicator  
18 or entry barrier that if breached or missing can reasonably be expected to provide  
19 visible evidence to consumers that tampering has occurred.

20           ~~(29)~~ (34) "Tobacconist" means any bona fide tobacco retailer engaged in  
21 receiving bulk smoking tobacco for the purpose of blending such tobacco for retail  
22 sale at a particular retail outlet where fifty percent or more of the total purchases for  
23 the preceding twelve months were purchases of tobacco products, excluding  
24 cigarettes.

25           ~~(30)~~ (35) "Tobacco product" means any cigar, cigarette, smokeless tobacco,  
26 or smoking tobacco.

27           ~~(31)~~ (36) "Trade discount" means any discount immediately recognized by  
28 a wholesale dealer from the manufacturer, importer, or sales entity affiliate or by a  
29 retail dealer from a manufacturer, importer, sales entity affiliate, or wholesale dealer.

1 Trade discount does not include any off-invoice allowances that a wholesale dealer  
2 is required, either directly or indirectly, to pass on to a retail dealer or any rebates or  
3 coupons as defined in this Chapter that a wholesale or retail dealer is required to  
4 offer to the end consumer, but is reimbursed for, either directly or indirectly, by  
5 either the manufacturer, importer, sales entity affiliate, or wholesale dealer.

6 ~~(32)~~ (37) "Vapor product" means any non combustible product containing  
7 nicotine or other substances that employs a heating element, power source, electronic  
8 circuit, or other electronic, chemical or mechanical means, regardless of shape or  
9 size, that can be used to produce vapor from nicotine or other substances. "Vapor  
10 product" includes any electronic cigarette, electronic cigar, electronic cigarillo,  
11 electronic pipe, or similar product or device and any vapor cartridge or other  
12 container of nicotine in a solution or other form that is intended to be used with or  
13 in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or  
14 similar product or device. "Vapor product" does not include any of the following:

15 (a) Product that is a drug pursuant to 21 U.S.C. 321(g)(1).

16 (b) Device pursuant to 21 U.S.C. 321(h).

17 (c) Combination product described in 21 U.S.C. 353(g).

18 ~~(33)~~ (38) "Vending machine" means any mechanical, electric, or electronic  
19 self-service device which, upon insertion of money, tokens, or any other form of  
20 payment, automatically dispenses tobacco products, alternative nicotine products, or  
21 vapor products.

22 ~~(34)~~ (39) "Vending machine operator" means any person who controls the use  
23 of one or more vending machines as to the supply of cigarettes or any tobacco  
24 products in the machine or the receipts from cigarettes vended through such  
25 machines.

26 ~~(35)~~ (40) "Wholesale dealer" means a dealer whose principal business is that  
27 of a wholesaler, who sells cigarettes, cigars, other tobacco products, vapor products,  
28 or alternative nicotine products to retail dealers for the purpose of resale, who is a  
29 bona fide wholesaler, and fifty percent of whose total tobacco, vapor, and alternative

1 nicotine sales are to retail stores other than its own or those of its subsidiaries or  
2 parent companies within Louisiana. Wholesale dealer shall include any person in the  
3 state who acquires cigarettes solely for the purpose of resale in vending machines,  
4 provided such person services fifty or more cigarette vending machines in Louisiana  
5 other than his own, and a Louisiana dealer who was affixing cigarette and tobacco  
6 stamps as of January 1, 1974. If any person is engaged in the business of making  
7 sales at both wholesale and retail, "wholesaler" shall apply only to the wholesale  
8 portion of the business.

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10 §910.2. Manufacturing, labeling, marketing and safety requirements of e-liquid and  
11 vapor products

12 A. Dealers of e-liquid and vapor products shall comply with the following  
13 requirements:

14 (1) An e-liquid container shall use a child proof cap that has the child  
15 resistant effectiveness as set forth in the federal poison prevention packaging  
16 standards, 16 CFR 1700.15(b)(1).

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

21 (3) The label on an e-liquid container of any e-liquid containing nicotine shall  
22 meet the nicotine addictiveness warning statement requirements as set forth in 21  
23 CFR 1143.3.

24 B. Dealers of e-liquids or vapor products shall not sell, offer for sale, or  
25 distribute any e-liquid or vapor product with labeling or packaging attractive to  
26 minors. The labeling or packaging of an e-liquid or vapor product is attractive to a  
27 minor if it uses packaging or labeling that does any of, but not limited to the  
28 following:



(1) Contain the terms "candy", "candies", "kandy", "kandeez", "bubble gum", "cotton candy", "gummy bear", "cupcake", "soda pop", "lollipop", or "milkshake", or variants in the spelling of these terms.

(2) Depict images of juice boxes, soft drinks, cereal, candy, or deserts.

(3) Depict images of cartoons, toys, superheroes, children, and any other likeness to images, characters, or phrases, such as "unicorn" that are or have been primarily marketed to minors.

(4) Imitate or mimic trademark or trade dress of food products such as candy, cookies, cereal, juice boxes, or soft drinks that are or have primarily been marketed towards minors.

(5) Depict images or references to video games, movies, videos, or animated television shows known to appeal to minors.

(6) Depict a minor using e-liquid or vapor products.

(7) Make any health, medicinal, or therapeutic claims about e-liquid or vapor products.

(8) Promote over consumption of e-liquid or vapor products.

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§911. Acts prohibited

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E. Retail dealers of e-liquid or vapor products shall not do either of the following:

(1) Sell or offer for sale any e-liquid or vapor products containing a characterizing flavor unless all e-liquid or vapor products containing characterizing flavors are stored in and sold from an area in the place of business where persons under the age of eighteen years are prohibited.

(2) Sell or offer for sale any e-liquid or vapor product through the use of any unattended, self-service checkout counter, or mechanical device unless the purchaser submits to an authorized employee of the retailer a valid driver's license, selective service card, or other lawful identification which on its face establishes the age of the

purchaser as eighteen years or older and there is no reason to doubt the authenticity and correctness of the identification.

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§911.1. Delivery sales of e-liquid or vapor products

A. Except as provided in this Section, no e-liquid or vapor products as defined in R.S. 26:901, produced or manufactured inside or outside of this state, shall be sold or offered for sale in Louisiana, shipped, or transported into or within the state, except to the holder of a dealer's permit.

B. E-liquid or vapor products may be sold and shipped directly to a consumer, not for resale, provided that all taxes levied have been paid in full and all of the following apply:

(1) The dealer making a delivery sale holds a valid permit as required by this Chapter.

(2) The dealer uses an age verification system that establishes the purchaser is of legal age or older.

(3) The purchaser is of legal age or older to purchase e-liquid or vapor products in Louisiana.

(4) The dealer obtains the electronic mail address of the purchaser.

(5) The dealer ships the e-liquid or vapor products only to the purchaser.

(6) Before e-liquid or vapor products are shipped in a delivery sale, the dealer shall be paid in full for the purchase and shall accept payment from the purchaser by any of the following:

(i) A check drawn on an account in the purchaser's name.

(ii) A credit card issued in the purchaser's name.

(iii) A debit card issued in the purchaser's name.

(7) The e-liquid or vapor product is registered, labeled, and packaged in accordance with all applicable provisions of the laws and regulations of this state and the federal government.

1           (8) The package in which an e-liquid or vapor product is shipped is  
2           prominently labeled as containing e-liquid or vapor products.

3           (9) The package in which an e-liquid or vapor product is shipped is received  
4           by a person eighteen years of age or older. A person receiving a package of e-liquid  
5           or vapor product shall present proof of age as provided in R.S. 26:911(A)(1) at the  
6           time of delivery.

7           (10) The packaging contains an invoice indicating the date of shipment,  
8           providing a full and complete description of all items included in the shipment, and  
9           stating the price thereof.

10           C. Prior to selling or shipping any e-liquid or vapor products directly to a  
11           consumer in Louisiana, a dealer domiciled outside of Louisiana shall apply to the  
12           state office of alcohol and tobacco control for a permit to engage in delivery sales of  
13           e-liquid and vapor products on an application form promulgated by the  
14           commissioner. The permit shall be renewed on an annual basis and updated within  
15           thirty days of any change of any information contained on the application form. The  
16           annual fee for such permit shall be seventy-five dollars.

17           (1) The annual application for authority to make delivery sales to consumers  
18           in Louisiana shall include the express agreement of the out-of-state dealer to pay all  
19           excise, sales, and use taxes assessed by the state of Louisiana and any political  
20           subdivision thereof on e-liquid and vapor products sold and shipped pursuant to this  
21           Section. The annual application for authority to make delivery sales to consumers  
22           in Louisiana shall also include an express acknowledgment that the dealer has read,  
23           understands and consents to the provisions of this Section.

24           (2) Any dealer who makes delivery sales to a consumer in Louisiana pursuant  
25           to this Section shall file an annual statement with the office of alcohol and tobacco  
26           control indicating the total amount of delivery sales made in the state for the  
27           preceding twelve months. The statement shall include the date, name brand, quantity  
28           and price of each e-liquid and vapor product sold directly to a consumer in  
29           Louisiana.

1           D. All excise, sales, and use taxes due to the state of Louisiana and any  
2           political subdivision thereof shall be remitted in the time and manner required by  
3           Title 47 of the Louisiana Revised Statutes of 1950 or any regulation promulgated in  
4           accordance therewith.

5           E. The commissioner of the office of alcohol and tobacco control or an agent  
6           of the commissioner may inspect the books and records of any dealer making  
7           delivery sales in Louisiana at any time if the commissioner has reason to suspect a  
8           violation of this Section.

9           F. Any dealer who makes a delivery sale of e-liquid or vapor products in  
10          Louisiana consents to the jurisdiction of the state of Louisiana.

11          G. Any dealer who makes a delivery sale of e-liquid or vapor products in  
12          Louisiana may be vicariously liable for any violation of this Section made by the  
13          dealer's employee or agent.

14          H. In addition to prosecution under any criminal laws this state or having any  
15          permit or authority granted under this Title suspended or revoked, a dealer who  
16          makes a delivery sale of e-liquid or vapor products in violation of this Section or any  
17          rule lawfully promulgated pursuant to this Section shall be subject to a civil penalty  
18          of not more than twenty-five thousand dollars, the seizure of any e-liquid or vapor  
19          products, or both. The commissioner of the office of alcohol and tobacco control  
20          may initiate and maintain a civil action in a court of competent jurisdiction to enjoin  
21          any violation of this Section and to recover the civil penalty assessed together with  
22          all costs and attorney fees incurred by the State incidental to such action.

23          I. The office of alcohol and tobacco control may share any information  
24          obtained under this Section with any other state agency or department or the federal  
25          government as may be necessary for the enforcement of applicable state and federal  
26          laws and regulations.

27          J. In addition to the provisions of this Section, the commissioner may  
28          promulgate regulations in accordance with the Administrative Procedure Act relative  
29          to delivery sales of e-liquid and vapor products into and within this state as needed

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to ensure compliance with the laws of the state and the prevention of access to

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underage persons.

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§918. Civil penalties

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E. Notwithstanding any other provision of this Chapter to the contrary, the

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commissioner may suspend a permit or penalize any person involved in the sale of

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any product not authorized by this Chapter.

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F. Notwithstanding any other provision of this Chapter to the contrary, the

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commissioner may suspend a permit or penalize any person involved in the sale of

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e-liquid or vapor products to any person under eighteen years of age.

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G. The commissioner may promulgate rules in accordance with the

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Administrative Procedure Act to implement the provisions of this Section.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 799 Original

2020 Regular Session

Hughes

**Abstract:** Provides manufacturing, labeling, marketing, and safety requirements; specifies which acts are prohibited; provides civil penalties; and provides procedures and guidelines for delivery sales with regard to e-liquid and vapor products and defines "characterizing flavor", "delivery sale", "delivery service", "health related statement", and "tamper evident package".

Present law provides definitions relative to tobacco products.

Proposed law retains present law definitions relative to tobacco products and adds definitions for "characterizing flavor", "delivery sale", "delivery service", "health-related statement", and "tamper evident package".

Proposed law provides manufacturing, labeling, marketing, and safety requirements for e-liquid and vapor products that include but are not limited to ensuring that the e-liquid container has a child proof cap and use tamper evident packaging as well as ensuring that the label includes the nicotine addictiveness warning statement and is not being made attractive to minors.

Present law provides for the prohibition of specific acts regarding the sale of tobacco products, alternative nicotine products, and vapor products.

Present law also provides for the prohibition of specific acts with regard to the wholesale dealer, the retail dealer, and the manufacturer.

Proposed law retains present law and prohibits a retail dealer of e-liquid or vapor products from selling or offering for sale any e-liquid or vapor product containing a characterizing flavor unless stored in an area where people under 18 years of age are prohibited.

Proposed law also prohibits retail dealers from selling or offering for sale any e-liquid or vapor product through the use of a self-service checkout counter or the equivalent unless the purchaser shows an authorized employee valid identification proving that the purchaser is 18 years of age or older.

Proposed law provides for procedures and guidelines with regard to the delivery sales of e-liquid and vapor products.

Proposed law provides that e-liquid and vapor products can only be sold or offered for sale by a holder of a dealer's permit.

Proposed law provides that any dealer who makes a delivery sale of e-liquid or vapor products in La. consents to the jurisdiction of this state.

Proposed law allows the dealer to be held vicariously liable for any violation of proposed law made by the dealer's employee or agent.

Present law authorizes the commissioner of alcohol and tobacco control to impose civil penalties that include the revocation or suspension of a permit issued under the authority of Title 26 and the imposition a monetary fine.

Proposed law provides that present law civil penalties are applicable to any person involved in the sale of any product not authorized by present law and any person involved in the sale of e-liquid or vapor products to any person under 18 years of age.

Proposed law also provides that a dealer in violation of proposed law provisions or any rules promulgated by the commission of alcohol and tobacco control is subject to a civil penalty of not more than \$25,000, the seizure of any e-liquid or vapor products, or both.

Proposed law allows the commissioner of alcohol and tobacco to share any information obtained under proposed law with any other state agency or department, or the federal government as may be necessary for the enforcement of applicable state and federal laws and regulations.

Proposed law authorizes the commissioner of alcohol and tobacco control to promulgate rules to implement proposed law provisions.

(Amends R.S. 26:901(3) through (35); Adds R.S. 26:901(36) through (40), 910.2, 911(E), 911.1, and 918(E), (F), and (G))