

House Bill 864

By: Representatives Rich of the 97th, Greene of the 151st, Silcox of the 52nd, Cooper of the 43rd, Stephens of the 164th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 11 of Title 48 of the Official Code of Georgia Annotated, relating to taxes
2 on tobacco products, so as to provide for excise taxes to be levied on the sale of vapor
3 devices and consumable vapor products; to provide for the collection and remittance of such
4 taxes; to require licensure for persons dealing with vapor devices or consumable vapor
5 products and to provide for application and renewal of such licenses; to provide for appeals
6 of certain decisions made by the state revenue commissioner; to provide for civil and
7 criminal penalties; to provide for rules and regulations; to revise and provide for definitions;
8 to provide for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Chapter 11 of Title 48 of the Official Code of Georgia Annotated, relating to taxes on
12 tobacco products, is amended by revising paragraphs (6), (16), and (24) and by adding three
13 new paragraphs to Code Section 48-11-1, relating to definitions, as follows:

14 "(1) 'Alternative nicotine product' means any material that contains nicotine, but does
15 not contain tobacco, and is intended for human consumption, whether such material is
16 chewed, absorbed, dissolved, or ingested by any other means. Such term shall include,
17 but shall not be limited to, nicotine gel, pouches, gum, or dissolvable nicotine strips,
18 sticks, lozenges, or pellets. Such term shall not include little cigars, cigars, cigarettes,
19 loose or smokeless tobacco, consumable vapor products, or any product regulated as a
20 drug or device by the United States Food and Drug Administration under Chapter V of
21 the Federal Food, Drug, and Cosmetic Act."

22 "(6) 'Cigarette' means any roll or stick for smoking made wholly or in part of tobacco
23 when the cover of the roll is paper or any substance other than tobacco or when the stick
24 is heated in a device without combustion.

25 "(10.1) 'Consumable vapor product' means any liquid solution whether it contains
26 nicotine or not that is intended to be heated into an aerosol state and inhaled by an

27 individual. Such term shall include, but shall not be limited to, e-liquid, e-juice, vape
 28 juice, and cartridges that are prefilled with such a solution. Such term shall not include
 29 any alternative nicotine product, cigar, cigarette, loose or smokeless tobacco, perfumes,
 30 potpourri, or essential oil, or any product regulated as a drug or device by the United
 31 States Food and Drug Administration under Chapter V of the Federal Food, Drug, and
 32 Cosmetic Act."

33 "(16) 'Loose or smokeless tobacco' means granulated, plug cut, crimp cut, ready rubbed,
 34 and other smoking tobacco; snuff or snuff flour; cavendish; plug and twist tobacco;
 35 fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and
 36 sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as
 37 to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and
 38 smoking; alternative nicotine products; and any tobacco product intended for human
 39 consumption that is not otherwise defined by this chapter; but does not include
 40 consumable vapor products, cigarettes or cigars, or tobacco purchased for the
 41 manufacture of cigarettes or cigars by cigarette manufacturers or cigar manufacturers."

42 "(24) 'Vapor device' means any system or device developed or intended to deliver a
 43 consumable vapor product to an individual who inhales from the device. Such term shall
 44 include, but not be limited to, an electronic nicotine delivery system, an electronic
 45 cigarette, electronic cigar, electronic pipe, vape pen, vape tool, or electronic hookah.
 46 Such term shall not include a fragrance or essential oil diffuser, air freshener, or any
 47 product regulated as a drug or device by the United States Food and Drug Administration
 48 under Chapter V of the Federal Food, Drug, and Cosmetic Act.

49 (25) 'Vending machine' means any coin-in-the-slot device or other automated device that
 50 accepts payment and is used for the automatic merchandising of cigars, cigarettes, or
 51 loose or smokeless tobacco."

52 SECTION 2.

53 Said chapter is further amended by adding a new Code section to read as follows:

54 "48-11-2.1.

55 (a) An excise tax, in addition to all other taxes of every kind imposed by law, is imposed
 56 upon the retail sale as such term is defined in Code Section 48-8-2 of any vapor device or
 57 consumable vapor product in this state on the sales price as such term is defined in Code
 58 Section 48-8-2 at the following rates:

59 (1) Vapor devices: 7 percent;

60 (2) Consumable vapor products: 7 percent; and

61 (3) Vapor devices that contain or are otherwise bundled with consumable vapor
 62 products: 7 percent.

63 (b) The excise tax imposed by subsection (a) of this Code section shall be levied and
 64 administered in the same manner as required for a retail sale of tangible personal property
 65 provided for in Article 1 of Chapter 8 of this title;

66 (c) The excise tax imposed by subsection (a) of this Code section shall not apply to:

67 (1) Retail sales outside this state;

68 (2) Retail sales to the federal government; or

69 (3) Any retail sale for which the taxation imposed by subsection (a) of this Code section
 70 is prohibited by the Constitution or statutes of the United States.

71 (d) A seller who knowingly and willfully violates the requirements of this Code section
 72 or Code Section 48-11-4.1 shall be assessed a civil penalty of not more than \$10,000.00 in
 73 addition to the amount of tax due and those civil penalties imposed for violations of
 74 Article 1 of Chapter 8 of this title.

75 (e) The department is authorized to adopt rules and regulations necessary for the
 76 enforcement and implementation of the provisions of this Code section."

77 **SECTION 3.**

78 Said chapter is further amended by revising subsection (f) of Code Section 48-11-4, relating
 79 to licensing of persons engaged in tobacco business, initial and annual fees, suspension and
 80 revocation, registration and inspection of vending machines, bond by distributor, jurisdiction,
 81 and licensing of promotional activities, as follows:

82 "(f) The jurisdiction of the commissioner in the administration of this chapter shall extend
 83 to every person using or consuming vapor devices, consumable vapor products, cigars,
 84 cigarettes, or loose or smokeless tobacco in this state and to every person dealing in vapor
 85 devices, consumable vapor products, cigars, cigarettes, or loose or smokeless tobacco in
 86 any way for business purposes and maintaining a place of business in this state. For the
 87 purpose of this chapter, the maintaining of an office, store, plant, warehouse, stock of
 88 goods, or regular sales or promotional activity, whether carried on automatically or by
 89 salespersons or other representatives, shall constitute, among other activities, the
 90 maintaining of a place of business. For the purpose of enforcement of this chapter and the
 91 rules and regulations promulgated under this chapter, notwithstanding any other provision
 92 of law, the commissioner or his or her duly appointed hearing officer is granted authority
 93 to conduct hearings which shall at all times be exercised in conformity with rules and
 94 regulations promulgated by the commissioner and consistent with Chapter 13 of Title 50,
 95 the 'Georgia Administrative Procedure Act.'"

96 **SECTION 4.**

97 Said chapter is further amended by adding two new Code sections to read as follows:

98 "48-11-4.1.

99 (a) A person shall not manufacture, fabricate, label, import, broker, consign, distribute,
100 deliver, or sell a vapor device or consumable vapor product in this state without first
101 obtaining a vapor license from the commissioner pursuant to this Code section.

102 (b) All such licenses shall be issued by the commissioner, who shall make rules and
103 regulations with respect to applications for and issuance of the licenses and for other
104 purposes of enforcing this chapter. The commissioner may refuse to issue any such license
105 when the commissioner has reasonable cause to believe that the applicant has willfully
106 withheld information requested of the applicant or required by the regulations to be
107 provided or reported or when the commissioner has reasonable cause to believe that the
108 information submitted in any application or report is false or misleading and is not given
109 in good faith.

110 (c)(1) The annual renewal fee for such license shall be \$10.00. There shall also be a first
111 year registration fee of \$250.00 for a seller of consumable vapor products. All renewal
112 applications shall be filed at least 30 days in advance of the expiration date shown on the
113 license.

114 (2) The prescribed fee shall accompany every application to obtain or renew a license
115 and shall apply for any portion of the annual period.

116 (3) Each vapor license shall be valid for 12 months beginning on the date of issue for the
117 initial license, and the first day of the month of issue for subsequent licenses, and shall
118 expire on the last day of the month preceding the month in which the initial license was
119 issued. Any person licensed under the provisions of this Code section who is also
120 licensed under Code Section 48-11-4 or Chapter 2 of Title 3 to sell alcoholic beverages
121 may, upon written request to the commissioner, arrange to have the licenses renewed on
122 the same date each year. Any person who follows the proper procedure for a renewal of
123 its vapor license, including filing the application for renewal at least 30 days in advance
124 of the expiration date of its existing license, shall be allowed to continue operating under
125 the existing license until the commissioner has issued the new license or denied the
126 application for renewal.

127 (4) Each vapor license shall be subject to suspension or revocation for violation of any
128 of the provisions of this chapter or of any rule or regulation of the commissioner.

129 (d) A separate license shall be required for each place of business. Each vapor license
130 shall be exhibited in the place of business for which it is issued in the manner prescribed
131 by the commissioner.

132 (e) The commissioner shall require each person licensed under this Code section to file
133 with the commissioner a bond in an amount of not less than \$1,000.00 to guarantee the
134 proper performance of the duties and the discharge of liabilities under this chapter. The

135 bond shall run concurrently with the license but shall remain in full force and effect for a
136 period of one year after the expiration or revocation of the license unless the commissioner
137 certifies that all obligations due the state arising under this chapter have been paid.

138 (f) After notice and opportunity for hearing, the commissioner may revoke a license issued
139 to any person pursuant to this Code section for violation of any provision of this chapter
140 or of any rule or regulation of the commissioner made pursuant to this chapter. Any person
141 aggrieved by the suspension of or refusal to renew its license may apply to the
142 commissioner for a hearing as provided in subsection (a) of Code Section 48-11-18; and
143 any person aggrieved by the action of the commissioner in revoking or refusing to renew
144 its license after hearing may further appeal to the courts as provided in subsection (b) of
145 Code Section 48-11-18. No legal proceedings or other action by the commissioner shall
146 be barred or abated by the suspension, revocation, or expiration of any license issued under
147 this Code section.

148 (g) For the purpose of enforcement of this Code section and Code Section 48-11-4.1 and
149 the rules and regulations promulgated pursuant to those Code sections, notwithstanding any
150 other provision of law, the commissioner or his or her duly appointed hearing officer is
151 granted authority to conduct hearings which shall at all times be exercised in conformity
152 with rules and regulations promulgated by the commissioner and consistent with Chapter
153 13 of Title 50, the 'Georgia Administrative Procedure Act.'

154 48-11-4.2.

155 (a) It shall be unlawful to sell a vapor device or consumable vapor product without a valid
156 license required pursuant to Code Section 48-11-4.1.

157 (b) It shall be unlawful to sell a vapor device or consumable vapor product to any person
158 by any means other than an in-person, face-to-face sale.

159 (c) A seller of a vapor device or consumable vapor product shall request proper
160 identification from each person attempting to purchase a vapor device or consumable vapor
161 product. Any person attempting to purchase a vapor device or consumable vapor product
162 shall provide proper identification to the seller at the time of such purchase. For purposes
163 of this subsection, the term 'proper identification' means any document issued by a
164 governmental agency containing a description of the person or such person's photograph,
165 or both, and giving such person's date of birth and includes without being limited to a
166 passport, military identification card, driver's license, or identification card authorized
167 under Code Sections 40-5-100 through 40-5-104.

168 (d) The violation of any provision of this Code section shall be punishable as a
169 misdemeanor as provided in Code Section 16-1-10."

170

SECTION 5.

171 All laws and parts of laws in conflict with this Act are repealed.