Senate Bill 572

By: Senators Mullis of the 53rd, Kennedy of the 18th, Harbison of the 15th and Brass of the 28th

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 11 of Title 48 of the Official Code of Georgia Annotated, relating to taxes on tobacco and vaping products, so as to provide for the Attorney General to establish a vapor product directory; to require vapor product manufacturers to provide an attestation and certain information to the Attorney General; to provide for definitions; to prohibit illicit vapor products; to provide penalties for violations; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 11 of Title 48 of the Official Code of Georgia Annotated, relating to taxes on tobacco and vaping products, is amended by adding a new Code section to read as follows:

"48-11-14.1.

(a) Beginning September 1, 2024, every vapor product manufacturer that sells or intends to sell a vapor product in this state, whether directly or through a distributor, dealer, or importer, shall execute and deliver an attestation under the penalty of perjury to the Attorney General attesting that, as of the date of such attestation:

(1) The vapor product was available in the United States as of August 8, 2016, and the vapor product manufacturer has applied for a marketing order for such vapor product

pursuant to 21 U.S.C. § 387j by submitting a Premarket Tobacco Product Application on or before September 9, 2020, to the United States Food and Drug Administration (FDA), and the application remains pending with the FDA; or

(2) The vapor product manufacturer has received a marketing granted order or other authorization under the 21 U.S.C § 387j for such vapor product from the FDA.

(b) The vapor product manufacturer shall notify the Attorney General within 30 days of any material change to the attestation, including if the FDA has issued a marketing granted order or other authorization, issued a marketing denial order, or has ordered the vapor product manufacturer to remove the vapor product, either temporarily or permanently, from the United States market.

(c) The Attorney General shall develop a directory and shall:

(1) On or before December 1, 2024, make the directory available on the Attorney General's website for public inspection; and

(2) Update the directory as necessary to correct mistakes and to add or remove vapor product manufacturers or vapor products to ensure the directory's conformity with the requirements of this section.

(d) Every distributor and retailer licensed under Code Section 48-11-4 shall provide, and update as necessary, an email address to the Attorney General for the purpose of receiving any notifications as may be required by this Code section.

(e) Beginning January 1, 2025, it shall be unlawful for any vapor product manufacturer to knowingly, directly or indirectly, manufacture, distribute, sell, barter, or furnish in this state any vapor product that is not included in the directory provided for in subsection (c) of this Code section.

(f) A violation of any provision of this Code section may be subject to a civil penalty in an amount not to exceed the greater of 500 percent of the retail value of the vapor products or $5,000.00, and may result in the probation, suspension, or revocation by the commissioner of all licenses issued to the seller pursuant to Code Section 48-11-4. The

penalties provided by this subsection shall be in addition to any criminal or civil penalties that may otherwise be provided by law.

(g) Any vapor products that have been sold, offered for sale, or possessed for sale in this state in violation of this Code section shall be deemed contraband and such vapor products shall be subject to seizure and destruction.″

SECTION 2.

Said chapter is further amended by revising Code Section 48-11-29, which was previously reserved, to read as follows:

″48-11-29.

(a) As used in this Code section, the term:

(1) 'Counterfeit vapor product' means any vapor product that, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a legally marketed vapor product or is not manufactured by the manufacturer indicated on the product packaging, label, or container.

(2) 'Illicit vapor product' means:

(A) Any counterfeit vapor product;

(B) Any vapor product that was not manufactured, prepared, compounded, or processed by a person registered with the United States Food and Drug Administration pursuant to 21 U.S.C. § 387e; or

(C) Any vapor product not listed in the state's vapor product directory pursuant to Code Section 48-11-14.1.

(b) It shall be unlawful for any person to knowingly, directly or indirectly, manufacture, distribute, sell, barter, or furnish in this state an illicit vapor product.

(c) A violation of any provision of this Code section shall be punished by a civil penalty in an amount not to exceed the greater of 500 percent of the retail value of the vapor products or $5,000.00, and may result in the probation, suspension, or revocation by the

commissioner of all licenses issued to the seller pursuant to Code Section 48-11-4. The penalties provided by this Code section shall be in addition to any criminal or civil penalties that may otherwise be provided by law.

(d) Any vapor products that have been sold, offered for sale, or possessed for sale in this state in violation of Code section shall be deemed contraband and such vapor products shall be subject to seizure and destruction. ~~Reserved.~~"

SECTION 3.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 4.

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