

House Bill 1260 (COMMITTEE SUBSTITUTE)

By: Representatives Gaines of the 120<sup>th</sup>, Jones of the 47<sup>th</sup>, Burchett of the 176<sup>th</sup>, Dickey of the 145<sup>th</sup>, Smith of the 18<sup>th</sup>, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 10 of the Official Code of Georgia Annotated, relating to commerce and  
2 trade, so as to enact the "Georgia Nicotine Vapor Products Directory Act"; to provide for  
3 definitions; to require the establishment and maintenance of a directory of vapor products  
4 authorized for sale in this state; to prohibit the sale of any vapor product containing nicotine  
5 that is not listed in the directory; to provide for compliance checks and enforcement; to  
6 provide for seizure and destruction of contraband; to provide for civil penalties and  
7 enforcement; to provide procedures for the revocation and suspension of licenses for  
8 violations; to provide for statutory construction; to provide for rules and regulations; to  
9 require an annual report to the General Assembly; to provide for related matters; to provide  
10 an effective date; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is  
14 amended by enacting a new chapter to read as follows:

H. B. 1260 (SUB)

15 "CHAPTER 13C

16 10-13C-1.

17 This chapter shall be known and may be cited as the 'Georgia Nicotine Vapor Products  
18 Directory Act.'

19 10-13C-2.

20 As used in this chapter, the term:

21 (1) 'Consumable vapor product' shall have the same meaning as provided in Code  
22 Section 48-11-1.

23 (2) 'FDA' means the United States Food and Drug Administration.

24 (3) 'Licensee' means any vapor product dealer, vapor product distributor, vapor product  
25 importer, or vapor product manufacturer licensed under Chapter 11 of Title 48.

26 (4) 'Nicotine vapor product' means any consumable vapor product that contains any  
27 amount of nicotine and any vapor device developed or intended to deliver any  
28 consumable vapor product that contains nicotine.

29 (5) 'Sale' shall have the same meaning as provided in Code Section 48-11-1.

30 (6) 'Vapor device' shall have the same meaning as provided in Code Section 48-11-1.

31 (7) 'Vapor product' shall have the same meaning as provided in Code Section 48-11-1.

32 (8) 'Vapor product dealer' shall have the same meaning as provided in Code Section  
33 48-11-1.

34 (9) 'Vapor product distributor' shall have the same meaning as provided in Code Section  
35 48-11-1.

36 (10) 'Vapor product importer' shall have the same meaning as provided in Code Section  
37 48-11-1.

38 (11) 'Vapor product manufacturer' shall have the same meaning as provided in Code  
39 Section 48-11-1.

40 10-13C-3.

41 (a)(1) The Attorney General in consultation with the state revenue commissioner shall  
42 develop a process by which vapor product manufacturers can submit the certification  
43 required under subsection (b) of this Code section and any other information required  
44 under this chapter to both the Attorney General and the state revenue commissioner to be  
45 used to create the directory listing required under Code Section 10-13C-4 and for such  
46 other purposes as provided in this chapter. Such process may include a portal or  
47 software application accessible through an internet website. The certification and any  
48 other information submitted to the Attorney General using such process shall be deemed  
49 to have been provided to both the Attorney General and the state revenue commissioner.

50 (2) Notwithstanding any law to the contrary, the Attorney General and the state revenue  
51 commissioner shall be authorized to disclose to each other the certifications and any other  
52 information received under this chapter, Chapters 13 and 13A of this title, Title 16, and  
53 Title 48 for the purposes of determining compliance with and enforcing the provisions  
54 of this chapter, Chapters 13 and 13A of this title, Title 16, and Title 48. The Attorney  
55 General and state revenue commissioner may also share such information with other  
56 federal, state, or local courts or agencies for purposes of enforcing the provisions of this  
57 chapter, Chapters 13 and 13A of this title, Title 16, Title 48, or the corresponding laws  
58 of other states.

59 (b) Within 12 months of the effective date of this chapter, and annually thereafter, every  
60 vapor product manufacturer that sells nicotine vapor products in this state shall execute and  
61 deliver a certification to the Attorney General in a format prescribed by the Attorney  
62 General through rules and regulations. Such certification shall attest, under penalty of  
63 perjury, that such vapor product manufacturer is compliant with this chapter and Chapter  
64 11 of Title 48 and that, for each nicotine vapor product sold for retail sale in this state, it  
65 meets either of the following criteria:

66 (1) The vapor product manufacturer has submitted a premarket tobacco product  
67 application for the nicotine vapor product pursuant to 21 U.S.C. Section 387j to the FDA,  
68 and the application either remains under review by the FDA or has received a marketing  
69 denial order that has been and remains stayed by the FDA or court order, rescinded by  
70 the FDA, or vacated by a court; or

71 (2) The vapor product manufacturer has received a marketing granted order under 21  
72 U.S.C. Section 387j for the nicotine vapor product from the FDA.

73 (c) The certification under subsection (b) of this Code section shall require each vapor  
74 product manufacturer to set forth:

75 (1) The name under which the vapor product manufacturer transacts or intends to  
76 transact business;

77 (2) The license identification information for any license issued to the vapor product  
78 manufacturer by the state revenue commissioner under Chapter 11 of Title 48;

79 (3) The address of the location of the vapor product manufacturer's principal place of  
80 business;

81 (4) The vapor product manufacturer's email address;

82 (5) The brand name, category, such as e-liquid, power unit, device, e-liquid cartridge,  
83 e-liquid pod, or disposable, product name, and flavor of each nicotine vapor product that  
84 is sold in this state; and

85 (6) Such other information as may be required by the Attorney General pursuant to rules  
86 and regulations.

87 (d) In addition to the required certification under subsection (b) of this Code section, each  
88 vapor product manufacturer shall submit to the Attorney General for each nicotine vapor  
89 product a copy of:

90 (1) The cover page of the marketing granted order issued pursuant to 21 U.S.C.  
91 Section 387j; a copy of the acceptance letter issued by the FDA pursuant to 21 U.S.C.  
92 Section 387j for a timely filed premarket tobacco product application; or a document

93 issued by the FDA or by a court confirming that the premarket tobacco product  
94 application has received a denial order that is not yet in effect; and  
95 (2) A payment of \$1,000.00 for each nicotine vapor product the first time a vapor  
96 product manufacturer submits a certification for that nicotine vapor product and a  
97 payment of \$250.00 annually thereafter for each such nicotine vapor product.  
98 (e) The information submitted by the vapor product manufacturer pursuant to  
99 paragraph (1) of subsection (d) of this Code section shall be considered confidential  
100 commercial or financial information for purposes of Article 4 of Chapter 18 of Title 50.  
101 The vapor product manufacturer may redact certain confidential commercial or financial  
102 information provided under paragraph (1) of subsection (d) of this Code section, subject  
103 to approval by the Attorney General. The Attorney General and the state revenue  
104 commissioner shall not disclose such information except as required or authorized by law.  
105 (f) Any vapor product manufacturer that submits a certification pursuant to subsection (b)  
106 of this Code section shall notify the Attorney General within 30 days after any material  
107 change to such certification, including, but not limited to:  
108 (1) Issuance or denial of a marketing authorization or other order by the FDA pursuant  
109 to 21 U.S.C. Section 387j;  
110 (2) Any other order or action ordered by the FDA or any court that affects the quality of  
111 the nicotine requiring a vapor product manufacturer to remove a nicotine vapor product  
112 from the market either temporarily or permanently;  
113 (3) Any notice of action taken by the FDA affecting the ability of the nicotine vapor  
114 product to be introduced or delivered into interstate commerce for commercial  
115 distribution in the United States;  
116 (4) Any change in federal law or FDA policy which results in a nicotine vapor product  
117 no longer being exempt from federal enforcement oversight; or  
118 (5) Any other change deemed material by the Attorney General pursuant to the rules and  
119 regulations.

120 (g) The Attorney General may by rules and regulations establish a procedure to allow  
121 vapor product manufacturers to renew certifications without having to resubmit all the  
122 information required by this Code section.

123 10-13C-4.

124 (a) The Attorney General in consultation with the state revenue commissioner shall  
125 develop and maintain a directory listing all the nicotine vapor products for which a  
126 certification has been submitted to the Attorney General which comply with this Code  
127 section. Such directory listing shall include information as to the vapor product  
128 manufacturer that submitted the certification and may include the status of any marketing  
129 authorization, order, or other action of the FDA or any court provided under subsection (b)  
130 of Code Section 10-13C-3. The Attorney General shall make the directory available within  
131 14 months of the effective date of this chapter, on the Department of Law's public website.  
132 The Attorney General on at least a monthly basis shall update the directory as necessary  
133 to correct mistakes, ensure accuracy, and add or remove nicotine vapor products as may  
134 be necessary. The Attorney General shall establish by rules and regulations a process to  
135 provide licensees notice of the initial publication of the directory and changes made to the  
136 directory in the prior month.

137 (b)(1) The Attorney General shall provide a vapor product manufacturer notice and an  
138 opportunity to cure deficiencies before removing its nicotine vapor products from the  
139 directory.

140 (2) The Attorney General shall not remove a vapor product manufacturer's nicotine vapor  
141 products from the directory until at least 15 days after the vapor product manufacturer has  
142 been given notice of an intended action. Notice shall be sufficient and deemed  
143 immediately received by a vapor product manufacturer if the notice is sent either  
144 electronically or by facsimile to an email address or facsimile number provided by the  
145 vapor product manufacturer in its most recent certification form.

146 (3) The vapor product manufacturer shall have 15 days from the date of service of the  
147 notice of the Attorney General's intended action to cure the deficiencies or otherwise  
148 establish that the vapor product manufacturer's nicotine vapor products should be  
149 included in the directory.

150 (4) A determination by the Attorney General not to include or to remove from the  
151 directory a nicotine vapor product shall be subject to judicial review in such manner as  
152 is provided by law for judicial review of contested cases under Chapter 13 of Title 50, the  
153 'Georgia Administrative Procedure Act.'

154 10-13C-5.

155 (a) If a nicotine vapor product is removed from the directory, each vapor product dealer  
156 and vapor product distributor shall have 30 days from the date notice is received that such  
157 nicotine vapor product has been removed from the directory to sell such nicotine vapor  
158 product or remove such nicotine vapor product from its inventory and return such nicotine  
159 vapor product to the vapor product manufacturer from whom it was acquired for a full  
160 refund. Each such nicotine vapor product manufacturer shall provide to the state revenue  
161 commissioner information regarding the return of such nicotine vapor product and how the  
162 returned nicotine vapor product was disposed of within 21 days after receipt.

163 (b) After 30 days following removal of a nicotine vapor product from the directory, it shall  
164 be unlawful to purchase or sell such nicotine vapor product identified in the notice of  
165 removal in this state and such nicotine vapor product shall be subject to seizure consistent  
166 with the provisions of Code Section 10-13C-9, except that no nicotine vapor products may  
167 be seized from a consumer who has made a bona fide purchase of such nicotine vapor  
168 product. Such prohibition on the purchase and sale of such nicotine vapor products shall  
169 not prohibit the vapor product manufacturer or vapor product distributor from providing  
170 a refund as provided in paragraphs (2) and (3) of subsection (c) of this Code section.

171 (c)(1) Except as provided in paragraphs (2) and (3) of this subsection, beginning on the  
172 date that the Attorney General first makes the directory available for public inspection  
173 on the Department of Law's public website, nicotine vapor products not included in the  
174 directory shall not be sold in this state.

175 (2) Each vapor product dealer shall have 60 days from the date that the Attorney General  
176 first makes the directory available for inspection on the Department of Law's public  
177 website to sell nicotine vapor products that were in its inventory and not included in the  
178 directory or to remove those nicotine vapor products from its inventory and return those  
179 nicotine vapor products to the vapor product manufacturer or vapor product distributor  
180 from whom it was acquired for a full refund.

181 (3) Each vapor product distributor shall have 60 days from the date that the Attorney  
182 General first makes the directory available for inspection on the Department of Law's  
183 public website to remove those nicotine vapor products intended for sale in this state from  
184 its inventory and return those nicotine vapor products to the vapor product manufacturer  
185 from whom it was acquired for a full refund.

186 (4) After 60 days following publication of the directory, nicotine vapor products not  
187 listed in the directory and intended for sale in this state are subject to seizure, forfeiture,  
188 storage, and destruction consistent with the provisions of Code Section 10-13C-9 and  
189 shall not be purchased or sold in this state except as provided in subsection (a) of this  
190 Code section.

191 10-13C-6.

192 Each vapor product dealer and vapor product distributor that sells or distributes vapor  
193 products in this state shall be subject to compliance checks for purposes of enforcing this  
194 chapter. Unannounced follow-up compliance checks conducted on or behalf of the  
195 Department of Revenue of all noncompliant vapor product dealers and vapor product  
196 distributors shall be conducted within 30 days after any violation of this Code section. The

197 state revenue commissioner shall publish the results of all compliance checks at least  
198 annually and shall make the results available to the public on request.

199 10-13C-7.

200 (a) In addition to any other provision of law, a vapor product dealer or a vapor product  
201 distributor that has a nicotine vapor product that is not included in the directory and is  
202 available for sale or is offered for sale in this state shall be subject to a civil penalty as  
203 follows:

204 (1) A violation of a total quantity of 20 nicotine vapor products or less shall be  
205 punishable:

206 (A) For a first violation, no penalty if the nicotine vapor products are removed as  
207 provided in this chapter;

208 (B) For a second violation within a 12 month period, by a fine of ten times the retail  
209 value of the nicotine vapor products involved;

210 (C) For a third violation within an 18 month period, by a fine of 25 times the retail  
211 value of the nicotine vapor products involved; and

212 (D) For a fourth violation within a 24 month period, by a fine of 25 times the retail  
213 value of the nicotine vapor products involved and revocation of the license of the vapor  
214 product dealer or the vapor product distributor, as applicable, by the Department of  
215 Revenue pursuant to Code Section 48-11-6;

216 (2) A violation of a total quantity of more than 20 nicotine vapor products shall be  
217 punishable:

218 (A) For a first violation, no penalty if the nicotine vapor products are removed as  
219 provided in this chapter;

220 (B) For a second violation within a 12 month period, by a fine of \$10,000.00 or 50  
221 times the retail value for each nicotine vapor product involved, whichever is greater;

222 (C) For a third violation within an 18 month period, by a fine of \$20,000.00 or 50 times  
223 the retail value for each nicotine vapor product involved, whichever is greater, and a 60  
224 day suspension of the license of the vapor product dealer or the vapor product  
225 distributor, as applicable, by the Department of Revenue pursuant to Code Section  
226 48-11-6; and

227 (D) For a fourth violation within a 24 month period, by a fine of \$30,000.00 or 50  
228 times the retail value for each nicotine vapor product involved, whichever is greater,  
229 and revocation of the license of the vapor product dealer or the vapor product  
230 distributor, as applicable, by the Department of Revenue pursuant to Code Section  
231 48-11-6; and

232 (3) Notwithstanding paragraphs (1) and (2) of this subsection, a fourth violation of any  
233 quantity of nicotine vapor products shall result in a revocation of the license of the vapor  
234 product dealer or the vapor product distributor, as applicable, by the Department of  
235 Revenue pursuant to Code Section 48-11-6.

236 (b) A vapor product manufacturer whose nicotine vapor products are not listed in the  
237 directory and that causes the nicotine vapor products that are not listed to be sold in this  
238 state, whether directly or through a vapor product importer, vapor product distributor,  
239 vapor product dealer, or any other person, shall be subject to a civil penalty of \$10,000.00  
240 per day for each individual nicotine vapor product offered for sale in violation of this  
241 chapter until the offending nicotine vapor product is either removed from the market or  
242 properly listed on the directory. In addition, any vapor product manufacturer that falsely  
243 represents any information on the certification or that is required under this chapter to be  
244 provided to the Attorney General, the Department of Law, the state revenue commissioner,  
245 or the Department of Revenue shall be guilty of a misdemeanor for each false  
246 representation.

247 (c) A repeated violation of this Code section shall constitute a deceptive trade practice  
248 under Part 1 of Article 15 of Chapter 1 of Title 10, the 'Uniform Deceptive Trade Practices  
249 Act.'

250 10-13C-8.

251 In an action for any violation brought under this chapter, the state revenue commissioner  
252 may recover reasonable expenses incurred in investigating and preparing the case and  
253 attorneys' fees, unless such action is successfully appealed and reversed.

254 10-13C-9.

255 (a) Any nicotine vapor products offered for sale in violation of this chapter are declared  
256 to be contraband goods and may be seized by the state revenue commissioner, the state  
257 revenue commissioner's agents or employees, or any law enforcement of this state if  
258 directed by the state revenue commissioner to do so, without a warrant.

259 (b) Upon seizure, the person from whom the contraband property was seized, if known,  
260 shall be provided with a receipt identifying the contraband property seized and indicating  
261 from whom the contraband property was seized and the place of seizure. Such contraband  
262 shall be stored pending a hearing and appeal provided for in subsections (d) and (e) of this  
263 Code section.

264 (c) A copy of the receipt shall be:

265 (1) Filed with the Department of Revenue and shall be a public record open to public  
266 inspection; and

267 (2) Posted at the courthouse of the county in which the contraband was seized.

268 (d) Any person desiring to make claim to the contraband property shall file a claim with  
269 the state revenue commissioner within ten days from the day of seizure. The state revenue  
270 commissioner, within 30 days of receipt of any such claim, shall afford the claimant a  
271 hearing in which to show entitlement to the seized items. The burden of proof at such

272 hearing shall be upon the claimant to establish a claim as to the items seized and to show  
273 compliance with or justification for noncompliance with this chapter. The state revenue  
274 commissioner shall enter a written order granting or denying the claim within 30 days from  
275 the date of the hearing.

276 (e) An appeal from the state revenue commissioner's order may be taken to the Superior  
277 Court of Fulton County by filing with the state revenue commissioner, within 15 days from  
278 the date of the decision, a copy of the petition for review filed in the Superior Court of  
279 Fulton County. The proceedings on the petition for review shall be governed by Chapter 3  
280 of Title 5 except as provided otherwise in this Code section. The appeal shall be based  
281 upon the record made before the state revenue commissioner. The state revenue  
282 commissioner shall transmit the record and appropriate documents to the superior court  
283 within 30 days after the date the petition for review is received. The superior court shall  
284 review the record for errors of law, violation of constitutional or statutory provisions,  
285 violation of the statutory authority of the agency, lawfulness of the procedure, lack of any  
286 evidence to support the state revenue commissioner's decision, and arbitrariness and abuse  
287 of discretion. However, the court shall not substitute its judgment as to the weight of  
288 evidence on questions of fact.

289 (f) The cost of such seizure, forfeiture, storage, and destruction shall be borne by the  
290 person from whom the nicotine vapor products determined to be contraband are  
291 confiscated.

292 10-13C-10.

293 (a) Any nonresident vapor product manufacturer that has not registered to do business in  
294 this state as a foreign corporation or business entity shall, as a condition precedent to being  
295 included in the directory created by the Attorney General pursuant to Code Section  
296 10-13C-4, appoint and continually engage without interruption the services of an agent in  
297 this state to act as agent for the service of process on whom all process, and any action or

298 proceeding against it concerning or arising out of the enforcement of this chapter, may be  
299 served in any manner authorized by law. Such service shall constitute legal and valid  
300 service of process on the vapor product manufacturer. The vapor product manufacturer  
301 shall provide the name, address, telephone number, and proof of the appointment and  
302 availability of such agent to the Attorney General.

303 (b) The vapor product manufacturer shall provide notice to the Attorney General 30 days  
304 prior to termination of the authority of an agent and shall further provide proof to the  
305 satisfaction of the Attorney General of the appointment of a new agent no less than five  
306 days prior to the termination of an existing agent appointment. In the event an agent  
307 terminates an agency appointment, the vapor product manufacturer shall notify the  
308 Attorney General of the termination within five days and shall include proof to the  
309 satisfaction of the Attorney General of the appointment of a new agent.

310 (c) Any vapor product manufacturer whose nicotine vapor products are sold in this state  
311 that has not appointed and engaged the services of an agent as required by this Code  
312 section shall be deemed to have appointed the Secretary of State as its agent for service of  
313 process. The appointment of the Secretary of State as agent shall not satisfy the condition  
314 precedent required in subsection (a) of this Code section to be included or retained in the  
315 directory.

316 10-13C-11.

317 (a) Nothing in this chapter shall be construed as limiting the state revenue commissioner  
318 in the exercise of his or her authority, as provided under Chapter 11 of Title 48, to suspend  
319 or refuse to renew a license for violations of Chapters 13 and 13A of this title, Title 16,  
320 Title 48, or any other provisions of law and any rules or regulations promulgated  
321 thereunder.

322 (b) The Attorney General and the state revenue commissioner shall have joint authority  
323 to enforce compliance with this chapter.

324 10-13C-12.  
325 Starting on January 31 of the first year after the year in which this chapter becomes  
326 effective, and annually thereafter, the Attorney General and state revenue commissioner  
327 shall provide a joint report to the General Assembly regarding the status of the directory,  
328 the nicotine vapor products included in the directory, revenue, and expenditures related to  
329 administration of this chapter, and enforcement activities undertaken pursuant to this  
330 chapter."

331 **SECTION 2.**

332 This Act shall become effective only if funds are specifically appropriated for the purposes  
333 of this Act in an appropriations Act making specific reference to this Act and shall become  
334 effective when funds so appropriated become available for expenditure.

335 **SECTION 3.**

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