

House Bill 577 (COMMITTEE SUBSTITUTE)

By: Representatives Gaines of the 120th, Ridley of the 6th, Dempsey of the 13th, Stephens of the 164th, Williams of the 168th, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, 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 nicotine vapor
4 products authorized for sale in this state; to prohibit the sale of any vapor product containing
5 nicotine that is not listed in the directory; to provide for compliance checks and enforcement;
6 to 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 for contingent effectiveness upon appropriation of funds; to repeal conflicting laws; and for
11 other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
15 amended by designating Code Sections 48-11-1 through 48-11-30 as Article 1 of Chapter 11
16 and enacting a new article to read as follows:

H. B. 577 (SUB)

17

"ARTICLE 218 48-11-40.

19 This article shall be known and may be cited as the 'Georgia Nicotine Vapor Products
20 Directory Act.'

21 48-11-41.22 As used in this article, the term:

23 (1) 'Directory' means the directory of nicotine vapor products the commissioner is
24 required to develop and maintain as provided in this article.

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

26 (3) 'Foreign business entity' means an entity formed under a law other than the law of
27 this state.

28 (4) 'Licensee' means any vapor product dealer, vapor product distributor, vapor product
29 importer, or vapor product manufacturer licensed under Article 1 of this chapter.

30 (5) 'Nicotine vapor product' means any consumable vapor product that contains any
31 amount of nicotine and any vapor device developed or intended to deliver any
32 consumable vapor product that contains nicotine. Such term shall not include a
33 consumable vapor product contained within an open system or any vapor device that
34 utilizes or is designed to utilize an open system.

35 (6) 'Timely filed premarket tobacco product application' means an application pursuant
36 to 21 U.S.C. Section 387j for a nicotine vapor product marketed in the United States as
37 of August 8, 2016, that was submitted to the FDA on or before September 9, 2020, and
38 accepted for filing.

39 48-11-42.

40 (a)(1) The commissioner shall develop a process by which vapor product manufacturers
41 can submit the certification required under subsection (b) of this Code section and any
42 other information required under this article to be used to create the directory listing
43 required under Code Section 48-11-43 and for such other purposes as provided in this
44 article. Such process may include a portal or software application accessible through an
45 internet website. The commissioner may allow a vapor product manufacturer to file a
46 single certification for all of its nicotine vapor products or require a separate certification
47 for each nicotine vapor product.

48 (2) Notwithstanding any law to the contrary, the commissioner shall be authorized to
49 disclose the certifications and any other information received pursuant to this chapter,
50 Chapters 13 and 13A of Title 10, and Title 16 with federal, state, or local courts or
51 agencies for purposes of enforcing the provisions of this chapter, Chapters 13 and 13A
52 of Title 10, and Title 16, or the corresponding laws of other states.

53 (b) Within 12 months of the effective date of this article, and annually thereafter, every
54 vapor product manufacturer that sells nicotine vapor products in this state or sells nicotine
55 vapor products to a licensee shall execute and deliver a certification to the commissioner
56 in a format prescribed by the commissioner through rules and regulations. In such
57 certification, the vapor product manufacturer shall attest, under penalty of perjury, as to
58 each nicotine vapor product:

59 (1) The vapor product manufacturer in offering such nicotine vapor product for sale in
60 this state or in selling such nicotine vapor product to a licensee for the purpose of selling
61 in it in this state is compliant with federal law and this chapter;

62 (2) The nicotine vapor product does not contain any substance or exceed the quantity of
63 any substance that is illegal to be sold in this state pursuant to federal law or the laws of
64 this state; and

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

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

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

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

76 (2) The license identification information for any license issued to the vapor product
77 manufacturer by the commissioner under Article 1 of this chapter;

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

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

81 (5) The brand name, category or type, product name, flavor, and description of each of
82 such vapor product manufacturer's nicotine vapor product that it seeks to have made part
83 of the directory; and

84 (6) Such other information as may be required by the commissioner pursuant to rules and
85 regulations.

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

89 (1)(A) The cover page of the marketing granted order issued pursuant to 21 U.S.C.
90 Section 387j;

- 91 (B) 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
- 93 (C) A document issued by the FDA or by a court confirming that the premarket
94 tobacco product 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 the 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 commissioner. The commissioner shall not disclose such information
104 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 commissioner within 30 days after any material change
107 to such certification as to any nicotine vapor product, 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 by the FDA or a court or any action required by the FDA concerning
111 the content or quality of the nicotine used in a nicotine vapor product requiring a vapor
112 product manufacturer to remove such nicotine vapor product from the market either
113 temporarily or permanently;
- 114 (3) Any notice of action taken by the FDA affecting the ability of the nicotine vapor
115 product to be introduced or delivered into interstate commerce for commercial
116 distribution in the United States; or

117 (4) Any other change deemed material by the commissioner pursuant to the rules and
118 regulations.

119 (g) The commissioner may by rules and regulations establish a procedure to allow vapor
120 product manufacturers to renew certifications without having to resubmit all the
121 information required by this Code section, if there has not been any change as to such
122 information.

123 48-11-43.

124 (a) The commissioner shall develop and maintain a directory listing all the nicotine vapor
125 products for which a certification has been submitted that complies with this article. Such
126 directory listing shall include information as to the vapor product manufacturer that
127 submitted the certification and may include the status of any marketing authorization,
128 order, or other action of the FDA or any court provided under subsection (b) of Code
129 Section 48-11-42. The commissioner shall make the directory available on the
130 department's public website within 14 months of the effective date of this article. The
131 commissioner on at least a monthly basis shall update the directory to correct mistakes,
132 ensure accuracy, and add or remove nicotine vapor products as may be necessary. The
133 commissioner shall establish by rules and regulations a process to provide any vapor
134 product manufacturer that submits a certification pursuant to Code Section 48-11-42 and
135 all licensees notice of the initial publication of the directory and changes made to the
136 directory in the prior month.

137 (b)(1) The commissioner shall provide a vapor product manufacturer with notice of any
138 deficiencies in the submitted certification and an opportunity to cure such deficiencies
139 before removing a nicotine vapor product of such vapor product manufacturer from the
140 directory.

141 (2) The commissioner shall not remove from the directory a nicotine vapor product of
142 such vapor product manufacturer until at least 15 days after the vapor product

143 manufacturer has been given notice of such intended action. Notice shall be sufficient
144 and deemed immediately received by a vapor product manufacturer if the notice is sent
145 either electronically or by facsimile to an email address or facsimile number provided by
146 the vapor product manufacturer in its most recent certification form for such nicotine
147 vapor product.

148 (3) The vapor product manufacturer shall have 15 days from the date of service of the
149 notice of the commissioner's intended action provided pursuant to paragraph (2) of this
150 subsection to cure any deficiencies or otherwise establish to the satisfaction of the
151 commissioner that such nicotine vapor product of such vapor product manufacturer
152 should be included in the directory.

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

157 48-11-44.

158 (a) Beginning on the date that the commissioner first makes the directory available on the
159 department's public website, nicotine vapor products not included in the directory shall not
160 be sold or purchased in this state except as provided in this Code section.

161 (b)(1) Each vapor product dealer shall have six months from the date that the
162 commissioner first makes the directory available on the department's public website to
163 sell nicotine vapor products that were in its inventory and not included in the directory
164 or to remove those nicotine vapor products from its inventory and return those nicotine
165 vapor products to the vapor product manufacturer or vapor product distributor from
166 whom it was acquired for a full refund.

167 (2) Each vapor product distributor shall have six months from the date that the
168 commissioner first makes the directory available on the department's public website to

169 remove those nicotine vapor products intended for sale or purchase in this state from its
170 inventory and return those nicotine vapor products to the vapor product manufacturer
171 from whom it was acquired for a full refund.

172 (3) After six months following publication of the directory, nicotine vapor products not
173 listed in the directory and intended for sale or purchase in this state shall be subject to
174 seizure, forfeiture, storage, and destruction consistent with the provisions of Code
175 Section 48-11-48 and shall not be sold or purchased in this state except as otherwise
176 provided in this article.

177 (c)(1) If a nicotine vapor product is removed from the directory, each vapor product
178 dealer and vapor product distributor shall have 30 days from the date notice is received
179 that such nicotine vapor product has been removed from the directory to sell such
180 nicotine vapor product or remove such nicotine vapor product from its inventory and
181 return such nicotine vapor product to the vapor product manufacturer from whom it was
182 acquired for a full refund. Each such nicotine vapor product manufacturer shall provide
183 to the commissioner information regarding the return of such nicotine vapor product
184 within 21 days after receipt.

185 (2) After 30 days following removal of a nicotine vapor product from the directory, it
186 shall be unlawful to purchase or sell such nicotine vapor product identified in the notice
187 of removal in this state and such nicotine vapor product shall be subject to seizure
188 consistent with the provisions of Code Section 48-11-48. Such prohibition on the
189 purchase and sale of such nicotine vapor products shall not prohibit the vapor product
190 manufacturer or vapor product distributor from providing a refund pursuant to this Code
191 section.

192 48-11-45.

193 Each vapor product dealer and vapor product distributor that sells or distributes vapor
194 products in this state shall be subject to compliance checks by the department for purposes

195 of enforcing this article. Unannounced follow-up compliance checks conducted on behalf
196 of the department of all noncompliant vapor product dealers and vapor product distributors
197 shall be conducted within 30 days after any violation of this Code section. The
198 commissioner on an annual basis shall make available on the department's public website
199 the results of all compliance checks.

200 48-11-46.

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

205 (1) A violation of a total quantity of 20 nicotine vapor product units or less shall be
206 punishable:

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

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

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

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

217 (2) A violation of a total quantity of more than 20 nicotine vapor product units shall be
218 punishable:

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

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

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

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

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

236 For purposes of this subsection, each unit of a nicotine vapor product that may be sold
237 individually shall be counted separately to determine the quantity of nicotine vapor
238 products.

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

247 provided to the commissioner or the department shall be guilty of a misdemeanor for each
248 false representation.

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

252 48-11-47.

253 In an action for any violation brought under this chapter, the commissioner may recover
254 reasonable expenses incurred in investigating and preparing the case and attorneys' fees if
255 successful in the initial action, unless such action is successfully appealed and reversed.

256 48-11-48.

257 (a) Any nicotine vapor products offered for sale or sold in violation of this article are
258 declared to be contraband goods and shall be seized by the commissioner, the
259 commissioner's agents or employees, or any law enforcement officer of this state if directed
260 by the commissioner to do so.

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

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

267 (1) Filed with the department and shall be a public record open to public inspection; and

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

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

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

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

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

291 48-11-49.

292 (a) Any nonresident vapor product manufacturer that has not registered to do business in
293 this state as a foreign business entity shall, as a condition precedent to being included in
294 the directory, appoint and continually engage without interruption the services of an agent
295 in this state to act as agent for the service of process on whom all process, and any action
296 or proceeding against it concerning or arising out of the enforcement of this article, may
297 be served in any manner authorized by law. Such service shall constitute legal and valid

298 service of process on the vapor product manufacturer. The vapor product manufacturer
299 shall provide the name, address, telephone number, and proof of the appointment and
300 availability of such agent to the commissioner.

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

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

314 48-11-50.

315 Nothing in this article shall be construed as limiting the commissioner in the exercise of
316 his or her authority, as provided under Article 1 of this chapter, to suspend or refuse to
317 renew a license for violations of Chapters 13 and 13A of Title 10, Title 16, Title 48, or any
318 other provisions of law and any rules or regulations promulgated thereunder.

319 48-11-51.

320 Starting on January 31 of the first year after the year in which this article becomes
321 effective, and annually thereafter, the commissioner shall provide a report to the General
322 Assembly regarding the status of the directory, the nicotine vapor products included in the

323 directory, revenue, and expenditures related to administration of this article, and
324 enforcement activities undertaken pursuant to this article."

325 **SECTION 2.**

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

329 **SECTION 3.**

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