



State of Wisconsin
2023 - 2024 LEGISLATURE

LRBa0769/1
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**SENATE AMENDMENT 1,
TO SENATE BILL 268**

November 13, 2023 - Offered by Senator WANGGAARD.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 1: after “enforcement” insert “, granting rule-making
3 authority,”.

4 **2.** Page 24, line 21: after that line insert:

5 “SECTION 64m. 995.15 of the statutes is created to read:

6 **995.15 Electronic vaping device directory. (1)** In this section:

7 (a) “Department” means the department of revenue.

8 (b) “Electronic vaping device” has the meaning given in s. 134.65 (1a) (b).

9 **(2)** No later than July 1, 2025, and annually thereafter, every manufacturer
10 of electronic vaping devices that are sold in this state, either directly by the
11 manufacturer or through a distributor, wholesaler, retailer, or similar intermediary,
12 shall certify to the department, on a form and in the manner prescribed by the

1 department, that the manufacturer shall comply with this section and that either of
2 the following apply:

3 (a) The manufacturer has received a marketing authorization or similar order
4 for the electronic vaping device from the U.S. food and drug administration pursuant
5 to 21 USC 387j.

6 (b) The electronic vaping device was marketed in the United States as of
7 August 8, 2016, the manufacturer submitted a pre-market tobacco product
8 application for the electronic vaping device to the U.S. food and drug administration
9 pursuant to 21 USC 387j on or before September 9, 2020, and the application either
10 remains under review by the U.S. food and drug administration or a final decision
11 on the application has not otherwise taken effect.

12 **(3)** At the time a manufacturer of electronic vaping devices submits the form
13 under sub. (2), a manufacturer of electronic vaping devices shall submit, in the
14 manner prescribed by the department, a form that separately lists each of the
15 manufacturer's electronic vaping devices that are available for sale in this state. The
16 manufacturer shall submit with the form, and in each year thereafter, a payment
17 equal to the number of devices listed on the form, multiplied by \$500.

18 **(4)** The submissions to the department under subs. (2) and (3) shall include a
19 copy of the marketing authorization or similar order for the electronic vaping device
20 issued by the U.S. food and drug administration pursuant to 21 USC 387j, as
21 provided under sub. (2) (a), or evidence that the pre-market tobacco product
22 application for the electronic vaping device was submitted to the U.S. food and drug
23 administration, as provided under sub. (2) (b), and a final decision on the application
24 has not otherwise taken effect.

1 **(5)** A manufacturer that is required to submit a certification form under this
2 section shall notify the department within 30 days of any material change to the
3 information contained in the certification form, including the issuance or denial of
4 a marketing authorization or similar order by the U.S. food and drug administration
5 pursuant to 21 USC 387j, as provided under sub. (2) (a), or any other order or action
6 by the U.S. food and drug administration that affects the ability of the electronic
7 vaping device to be introduced or delivered into interstate commerce for commercial
8 distribution in the United States.

9 **(6)** Beginning March 1, 2025, the department shall maintain and make
10 publicly available on its website a directory that lists all electronic vaping device
11 manufacturers and electronic vaping devices for which certification forms have been
12 submitted and shall update the directory at least monthly to ensure accuracy.

13 **(7) (a)** The department shall provide manufacturers notice and an opportunity
14 to cure deficiencies in the directory maintained under sub. (6) before removing
15 manufacturers or electronic vaping devices from the directory. The department may
16 remove a manufacturer or the manufacturer's devices from the directory no sooner
17 than 15 business days after the date on which the department sends the
18 manufacturer notice under this paragraph. The department shall send the notice
19 under this paragraph by email or facsimile to the email address or facsimile number
20 provided by the manufacturer in the manufacturer's most recent certification
21 submitted under this section.

22 **(b)** A manufacturer that receives notice under par. (a) has no more than 15
23 business days to respond to the notice and provide sufficient information, as
24 determined by the department, in order for the manufacturer or the manufacturer's
25 electronic vaping devices to remain in the directory maintained under sub. (6).

1 (c) A determination by the department to not include or to remove from the
2 directory maintained under sub. (6) a manufacturer or an electronic vaping device
3 shall be subject to review by the filing of a civil action for prospective declaratory or
4 injunctive relief.

5 (8) If an electronic vaping device is removed from the directory maintained
6 under sub. (6), each retailer, distributor, and wholesaler that has such a device in its
7 inventory shall remove the device from its inventory no later 21 days after the date
8 on which the device is removed from the directory and return the device to the
9 manufacturer for disposal. After 21 days following removal from the directory, the
10 electronic vaping devices of a manufacturer identified in the notice under sub. (7) (a)
11 are subject to seizure, forfeiture, and destruction, and may not be purchased or sold
12 in this state. The cost of such seizure, forfeiture, and destruction shall be borne by
13 the person from whom the electronic vaping devices are confiscated.

14 (9) (a) Beginning March 1, 2025, or on the date that the department first makes
15 the directory maintained under sub. (6) available for public inspection on its website,
16 whichever is later, the department shall impose on each retailer who sells or offers
17 for sale an electronic vaping device in this state that is not included in the directory
18 a forfeiture of \$1,000 per day for each electronic vaping device offered for sale in
19 violation of this section until each such device is no longer offered for sale in this state
20 or until each such device is properly listed on the directory pursuant to this section.

21 (b) Beginning March 1, 2025, or on the date that the department first makes
22 the directory maintained under sub. (6) available for public inspection on its website,
23 whichever is later, the department shall impose on each manufacturer of an
24 electronic vaping device that is sold in this state, but not included in the directory
25 a forfeiture of \$1,000 per day for each electronic vaping device offered for sale in

1 violation of this section until each such device is no longer offered for sale in this state
2 or until each such device is properly listed on the directory pursuant to this section.

3 (c) Any retailer, distributor, wholesaler, or manufacturer who violates this
4 section engages in an unfair and deceptive trade practice in violation of s. 100.20.

5 (10) Section 139.82, as it applies to records and inspections under subch. III
6 of ch. 139, applies to records and inspections under this section.

7 (11) (a) Any electronic vaping device sold, offered for sale, or possessed for sale,
8 in this state, in violation of this section shall be deemed contraband and such devices
9 shall be subject to seizure in the manner provided under s. 139.40 for the seizure of
10 cigarettes. All electronic vaping devices that are seized as provided under this
11 paragraph shall be destroyed and not resold.

12 (b) The duly authorized employees of the department have all necessary police
13 powers to prevent violations of this section.

14 (12) (a) Upon request by the secretary of revenue, the attorney general may
15 represent this state or assist a district attorney in prosecuting any case arising under
16 this section.

17 (b) The state shall be entitled to recover the costs of investigation, expert
18 witness fees, court costs, and reasonable attorney fees for any action brought by the
19 state to enforce this section.

20 (13) Section 995.12 (3), as it applies to an agent for service of process under s.
21 995.12, applies to an agent for service of process under this section.

22 (14) The department may promulgate rules to administer this section.

23 (15) No later than July 1, 2026, and annually thereafter, the department shall
24 provide a report to the legislature, as provided under s. 13.172 (2), regarding the
25 status of the directory maintained under sub. (6), manufacturers and electronic

