



Electronic Vaping Device Retail Licensing and Registration Requirements

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Under 2023 Wisconsin Act 73 and subsequent legislation, a person must obtain a license to sell an electronic vaping device in Wisconsin, and an electronic vaping device that has not been registered with the Department of Revenue (DOR) generally may not be sold in Wisconsin.¹

An electronic vaping device is defined as a device that may be used to deliver any aerosolized or vaporized liquid or other substance for inhalation, regardless of whether the liquid or other substance contains nicotine, including an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. The definition includes a component, part, or accessory of the device, including a liquid or other substance that may be aerosolized or vaporized by the device, regardless of whether the liquid or other substance contains nicotine. It does not include a battery or battery charger when sold separately or drugs, devices, or a combination of products authorized for sale by the U.S. Food and Drug Administration (FDA), as those terms are defined in the Federal Food, Drug, and Cosmetic Act (FFDCA).²

RETAIL LICENSE

Under Act 73, electronic vaping devices are subject to the same retail licensing requirements as cigarettes and tobacco products. Specifically, in order to sell an electronic vaping device, cigarette, or tobacco product, a person must obtain a license from the clerk of the city, village, or town where the retailer seeks to operate. In order to obtain a license, a person must apply on a form that is created by DOR and includes certain information, such as the applicant's history relevant to the applicant's fitness to hold a license and the premises where the electronic vaping devices, cigarettes, or tobacco products will be stored or sold.

Generally, upon the filing of a proper written application, a clerk must issue a license, unless, subject to the Wisconsin Fair Employment Act, the applicant has habitually been a law offender or been convicted of a felony unless pardoned, or fails to submit proof of a seller's permit or use tax registration certificate.³ A license must name the licensee and specifically describe the premises where the licensed business is conducted. The clerk must annually submit to DOR a list of licenses issued by the municipality during the previous year, which DOR must publish on its website.⁴

VAPING DEVICE DIRECTORY

General Registration Requirement

Unless the temporary exception described below applies, a manufacturer of an electronic vaping device must register the device with DOR before the device may be sold in Wisconsin. To be registered with DOR, the device must have either received an FDA marketing authorization or been submitted for approval under a premarket tobacco product application (PMTA) and not been denied. Specifically, the manufacturer must certify to DOR that the manufacturer will comply with the directory requirements and that: (1) the manufacturer has either received a marketing authorization or similar order for the device from the FDA; or (2) the device was marketed in the United States prior to August 8, 2016; the manufacturer submitted a PMTA by September 9, 2020; and the application remains under review or a final decision has not otherwise taken effect.⁵

Along with a form created by DOR, a manufacturer must also: (1) submit a list of each of the manufacturer's devices that are available for sale in Wisconsin; (2) provide a payment equal to \$500 per device; and (3) include a copy of the marketing authorization or similar order or evidence that the PMTA

was submitted and a final decision has not yet taken effect. The registration requirement took effect on July 1, 2025, and manufacturers must register each device annually. A manufacturer must also notify DOR of any material change to the information in its form within 30 days of the change.⁶

DOR must maintain and make publicly available on its website a [directory](#) that lists all electronic vaping device manufacturers and electronic vaping devices that have been registered, and must update the directory at least monthly. Effective September 1, 2025, DOR must impose a forfeiture on retailers and manufacturers of \$1,000 per day for each device sold or offered for sale in violation of the registration requirements. Additionally, any electronic vaping device sold, offered for sale, or possessed for sale in violation of the registration requirements is subject to seizure, and it is an unfair and deceptive trade practice for any retailer, distributor, wholesaler, or manufacturer to violate the requirements.⁷

Temporary Exception for Hemp Devices

A manufacturer of an electronic vaping device that contains hemp but not nicotine is required to register the device by July 1, 2026, rather than July 1, 2025. Thus, an electronic vaping device that contains hemp but not nicotine may be sold until that July 1, 2026, regardless of whether the device is registered with DOR.

To register an electronic vaping device that contains hemp, a manufacturer must generally follow the same requirements applicable to other electronic vaping devices, except that instead of certifying to DOR that the device has received an FDA marketing authorization or that a PMTA was submitted, the manufacturer must provide DOR with a certificate of analysis from an independent laboratory showing that the device contains hemp and does not contain nicotine. Electronic vaping devices that contain hemp are subject to the same enforcement provisions as devices that do not contain hemp, and DOR is directed to begin imposing forfeitures for violations on September 1, 2026.⁸

Litigation Regarding Registration Requirement

In June 2025, a group of vaping device manufacturers, distributors, retailers, and users filed a lawsuit against DOR that sought to block enforcement of the registration requirements. The lawsuit argued that the registration requirements violate the Equal Protection Clause of the U.S. Constitution by discriminating against devices that contain non-tobacco nicotine, because the manufacturers of a non-tobacco nicotine product could not submit a PMTA until after the dates contemplated by Act 73,⁹ and violate the Supremacy Clause because it is impliedly preempted by the FFDCA. On September 5, 2025, a federal district court judge denied the plaintiffs' motion for a preliminary injunction to prohibit enforcement. The plaintiffs filed a notice of appeal to the U.S. 7th Circuit Court of Appeals.¹⁰

¹ 2023 Wisconsin Act 73 established the requirement to obtain a license in order to sell an electronic vaping device and that, effective March 1, 2025, devices be registered with DOR. 2023 Wisconsin Act 146 delayed the effective date for the registration requirements to July 1, 2025, and the date on which DOR must bring for forfeiture for violations to September 1, 2025. 2025 Wisconsin Act 15 created the temporary exception for devices that contain hemp but not nicotine, and required that those devices be registered by July 1, 2026.

² ss. 134.65 (1a) (b) and 995.15 (1) (b), Stats.

³ The Wisconsin Fair Employment Act generally prohibits employment discrimination based on a person's arrest or conviction history, unless that history is "substantially related" to the circumstances of the particular job or licensed activity. [ss. 111.321, 111.322, and 111.335, Stats.]

⁴ s. 134.65, Stats.

⁵ A product that does not contain nicotine is likely not considered a "tobacco product" and therefore is not eligible for an FDA marketing authorization or PMTA. [See, Congressional Research Service, *U.S. Food and Drug Administration (FDA) Regulation of Electronic Nicotine Delivery Systems (ENDS): Background and Selected Policy Issues*, [R48483](#) (April 4, 2025).]

⁶ s. 995.15 (2), (3), (4), and (5), Stats.

⁷ s. 995.15, Stats.

⁸ s. 995.15 (2) (c), (2m), (4), and (9) (d), Stats. "Hemp" is generally defined as the cannabis plant, including all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis. [s. 94.55 (1), Stats.]

⁹ In 2022, Congress granted the FDA the authority to regulate non-tobacco nicotine products by amending the definition of "tobacco product" in the FFDCA to mean any product "containing nicotine from any source" that is intended for human consumption, rather than only those that are made or derived from tobacco. [21 U.S.C. s. 321 (rr); see P.L. 117-103, SEC. 111.]

¹⁰ See *Wisconsinites for Alternatives to Smoking & Tobacco, Inc., et al., v. David Casey*, No. 25-cv-552-wmc (W.D. Wis.).