Sen. John G. Mulroe

Filed: 4/9/2019

AMENDMENT TO SENATE BILL 664

AMENDMENT NO. _____. Amend Senate Bill 664 by replacing everything after the enacting clause with the following:

"Section 1. Short title. This Act may be cited as the Tobacco Products Compliance Act.

Section 5. Definitions. As used in this Act:

"Person" means any individual, corporation, partnership, firm, organization or association.

"Tobacco product" means any product made or derived from tobacco, any product containing tobacco, or any product intended for or traditionally used with tobacco, including papers, wraps, tubes, filters, e-cigarettes, vapor devices, and liquids used in e-cigarettes and vapor devices. A product otherwise meeting the definition of a tobacco product will be deemed a "tobacco product" regardless of any labeling or descriptive language on such product stating that the product

is not intended for use with tobacco or for non-tobacco use only or other similar language.

Section 10. Compliance reports. Any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a tobacco product, or imports a finished tobacco product for sale or distribution in the United States, located in or having a place of business in the State, shall be required to provide annually, by June 1, 2020 and by June 1 of each year thereafter, written evidence and documentation of its compliance with Sections 903, 904, 905, and 920 of the federal Family Smoking Prevention and Tobacco Control Act of 2009 to the Department of Public Health and the Department of Revenue.

This written documentation shall provide a true and accurate written certification stating the person's compliance with Sections 903, 904, 905, and 920 of the federal Family Smoking Prevention and Tobacco Control Act of 2009, and shall be accompanied by written evidence for each tobacco product manufactured, sold, or distributed by the person: (i) that the tobacco product is a "grandfathered" product that was commercially marketed in the United States as of February 15, 2007; (ii) that the tobacco product was marketed after February 15, 2007, but before March 22, 2011, and the tobacco product manufacturer submitted a 905(j) substantial equivalence report for the product by March 22, 2011 and has not received a Not

Substantially Equivalent order from the United States Food and Drug Administration; or (iii) that the person received a receipt of a marketing authorization order from the United States Food and Drug Administration after review of a premarket submission intended to demonstrate substantial equivalence under Section 905(j) of the federal Family Smoking Prevention and Tobacco Control Act of 2009.

Section 15. Private right of action. To enforce against a violation of the Act or any rule adopted under this Act by any local government or political subdivision as described in this Act, any interested party may file suit in circuit court in the county where the alleged violation occurred or where any person who is a party to the action resides. Actions may be brought by one or more persons for and on behalf of themselves and other persons similarly situated. If the interested party prevails in its enforcement action, it will be entitled to recover damages of 3 times its attorney's fees and costs, and, in addition, the court or other adjudicating body, at its discretion, may assess punitive damages for any wanton or flagrant violation of the law.

Section 20. Rulemaking. The Department of Public Health and the Department of Revenue shall jointly adopt rules for the administration and enforcement of this Act.

Section 99. Effective date. This Act takes effect upon becoming law.".