

1 HB41
2 198432-7
3 By Representatives Stringer and Drummond
4 RFD: Judiciary
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1
2 ENROLLED, An Act,

3 Relating to alternative nicotine products; to create
4 the Stringer-Drummond Vaping Act; to amend Sections 28-11-2,
5 28-11-4, 28-11-7, 28-11-8, 28-11-9, 28-11-11, 28-11-13,
6 13A-12-3, and 13A-12-3.1, Code of Alabama 1975, to require the
7 Alabama Alcoholic Beverage Control Board to regulate retail
8 sales of alternative nicotine devices like sales of tobacco
9 products, and to prohibit the sale or transfer of alternative
10 nicotine products to minors; to add Sections 28-11-16,
11 28-11-17, 28-11-18, 28-11-19, and 13A-12-3.8 to the Code of
12 Alabama 1975, to prohibit retailers and manufacturers of
13 alternative nicotine products and electronic nicotine delivery
14 systems from advertising the products near schools; to
15 prohibit specialty retailers of electronic nicotine delivery
16 systems from opening new places of business near schools,
17 child care centers, churches, and other facilities; to prevent
18 retailers and manufacturers of alternative nicotine products
19 or electronic nicotine delivery systems from advertising those
20 products as tobacco cessation devices, as a healthy
21 alternative to smoking, or as being available in any variety
22 of flavors except for tobacco, mint, or menthol; to require
23 retailers of alternative nicotine products or electronic
24 nicotine delivery systems to obtain a tobacco permit, to
25 comply with FDA regulations governing the retail sale of

1 alternative nicotine products and electronic nicotine delivery
2 systems, and to post warning signs in their stores regarding
3 the dangers of nicotine use and potential risks associated
4 with vaping; to prohibit the sale or transfer of alternative
5 nicotine products or electronic nicotine delivery systems to
6 minors; and in connection therewith would have as its purpose
7 or effect the requirement of a new or increased expenditure of
8 local funds within the meaning of Amendment 621 of the
9 Constitution of Alabama of 1901, now appearing as Section
10 111.05 of the Official Recompilation of the Constitution of
11 Alabama of 1901, as amended.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. This act shall be known and may be cited
14 as the Stringer-Drummond Vaping Act.

15 Section 2. Sections 28-11-2, 28-11-4, 28-11-7,
16 28-11-8, 28-11-9, 28-11-11, 28-11-13, 13A-12-3, and
17 13A-12-3.1, Code of Alabama 1975, are amended to read as
18 follows:

19 "§28-11-2.

20 "For purposes of this chapter, the following terms
21 have the following meanings unless the context clearly
22 indicates otherwise:

23 "(1) ALTERNATIVE NICOTINE PRODUCT. The term
24 alternative nicotine product includes ~~electronic cigarettes~~
25 any product that consists of or contains nicotine that can be

1 ingested into the body by chewing, smoking, absorbing,
2 dissolving, inhaling, snorting, sniffing, or by any other
3 means. The term does not include a tobacco product, electronic
4 nicotine delivery system, or any product that has been
5 approved by the United States Food and Drug Administration for
6 sale as a tobacco cessation product or for other medical
7 purposes and that is being marketed and sold solely for that
8 purpose.

9 ~~"An electronic cigarette is an electronic product or~~
10 ~~device that produces a vapor that delivers nicotine or other~~
11 ~~substances to the person inhaling from the device to simulate~~
12 ~~smoking, and is likely to be offered to, or purchased by,~~
13 ~~consumers as an electronic cigarette, electronic cigar,~~
14 ~~electronic cigarillo, or electronic pipe.~~

15 ~~"The term electronic cigarette does not include any~~
16 ~~of the following:~~

17 ~~"1. A cigarette or other tobacco product as defined~~
18 ~~in this section.~~

19 ~~"2. A product that is a drug under 21 U.S.C.~~
20 ~~§321(g)(1).~~

21 ~~"3. A product that is a device under 21 U.S.C.~~
22 ~~§321(h).~~

23 ~~"4. A combination product that is a device under 21~~
24 ~~U.S.C. §353(g).~~

1 ~~"The term alternative nicotine product does not~~
2 ~~include the following:~~

3 ~~"1. A cigarette or other tobacco product as defined~~
4 ~~in this section.~~

5 ~~"2. A product that is a drug under 21 U.S.C.~~
6 ~~§321(g)(1).~~

7 ~~"3. A product that is a device under 21 U.S.C.~~
8 ~~§321(h).~~

9 ~~"4. A combination product described in 21 U.S.C.~~
10 ~~§353(g).~~

11 (2) BOARD. The Alabama Alcoholic Beverage Control
12 Board.

13 "(3) CHILD-RESISTANT PACKAGING. Liquid nicotine
14 container packaging meeting the requirements of 15 U.S.C.
15 §1472a.

16 ~~"(3)(4)~~ (4) DISTRIBUTION. To sell, barter, exchange, or
17 give tobacco or tobacco products for promotional purposes or
18 for gratis.

19 "(5) ELECTRONIC NICOTINE DELIVERY SYSTEM. The term
20 electronic nicotine delivery system includes any vaporizing
21 device that produces a vapor that delivers nicotine or other
22 substance to the person inhaling from the device to simulate
23 smoking, and includes, but is not limited to, products that
24 may be offered to, purchased by, or marketed to consumers as
25 an electronic cigarette, electronic cigar, electronic

1 cigarillo, electronic pipe, electronic hookah, vape pen, vape
2 tool, vaping device, or any variation of these terms. The term
3 also includes any liquid intended to be vaporized in any
4 device included in this subdivision, regardless of whether or
5 not the liquid contains nicotine.

6 "(6) ELECTRONIC NICOTINE DELIVERY SYSTEM RETAILER.
7 Any retail business which offers for sale electronic nicotine
8 delivery systems.

9 "(7) FDA. The United States Food and Drug
10 Administration.

11 "(8) LIQUID NICOTINE CONTAINER. A bottle or other
12 container of a liquid product that is intended to be vaporized
13 and inhaled using an electronic nicotine delivery system. The
14 term does not include a container holding liquid that is
15 intended for use in a vapor product if the container is
16 pre-filled and sealed by the manufacturer and is not intended
17 to be opened by the consumer.

18 "~~(4)~~(9) MINOR. Any person under the age of 19 years.

19 "~~(5)~~(10) PERSON. Any natural person, firm,
20 partnership, association, company, corporation, or other
21 entity. Person does not include a manufacturer or wholesaler
22 of tobacco or tobacco products nor does it include employees
23 of the permit holder.

24 "~~(6)~~(11) PROOF OF IDENTIFICATION. Any one or more of
25 the following documents used for purposes of determining the

1 age of a person purchasing, attempting to purchase, or
2 receiving tobacco ~~or~~, tobacco products, electronic nicotine
3 delivery systems, or alternative nicotine products:

4 "a. A valid driver's license issued by any state and
5 bearing the photograph of the presenting person.

6 "b. United States Uniform Service Identification.

7 "c. A valid passport.

8 "d. A valid identification card issued by any state
9 agency for the purpose of identification and bearing the
10 photograph and date of birth of the presenting individual.

11 "e. For legal mail order purposes only a valid
12 signed certification that will verify the individual is 19
13 years of age or older.

14 "~~(7)~~ (12) RESPONSIBLE VENDOR PROGRAM. A program
15 administered by the board to encourage and support vendors in
16 training employees in legal and responsible sales practices.

17 "~~(8)~~ (13) SAMPLER. Any business or person who
18 distributes tobacco or tobacco products for promotional
19 purposes.

20 "~~(9)~~ (14) SELF-SERVICE DISPLAY. A display that
21 contains tobacco or tobacco products and is located in an area
22 openly accessible to purchasers at retail and from which such
23 purchasers can readily access tobacco or tobacco products
24 without the assistance of the tobacco permit holder or an
25 employee of the permit holder. A display case that holds

1 tobacco or tobacco products behind locked doors does not
2 constitute a self-service display.

3 "(15) SPECIALTY RETAILER OF ELECTRONIC NICOTINE
4 DELIVERY SYSTEMS. A business establishment at which any of the
5 following are true:

6 "a. The sale of electronic nicotine delivery systems
7 accounts for more than 35 percent of the total quarterly gross
8 receipts for the establishment.

9 "b. Twenty percent or more of the public retail
10 floor space is allocated for the offering, displaying, or
11 storage of electronic nicotine delivery systems.

12 "c. Twenty percent or more of the total shelf space,
13 including retail floor shelf space and shelf space in areas
14 accessible only to employees, is allocated for the offering,
15 displaying, or storage of electronic nicotine delivery
16 systems.

17 "d. The retail space features a self-service display
18 for electronic nicotine delivery systems.

19 "e. Samples of electronic nicotine delivery systems
20 are offered to customers.

21 "f. Liquids intended to be vaporized through the use
22 of an electronic nicotine delivery system are produced at the
23 facility or are produced by the owner of the establishment or
24 any of its agents or employees for sale at the establishment.

1 "~~(10)~~(16) TOBACCO or TOBACCO PRODUCTS. Tobacco or
2 any product containing tobacco, including, but not limited to,
3 the following:

4 "a. Cigarettes.

5 "b. Cigars.

6 "c. Chewing tobacco.

7 "d. Snuff.

8 "e. Pipe tobacco.

9 "f. Smokeless tobacco.

10 "~~(11)~~(17) TOBACCO PERMIT. A permit issued by the
11 board to allow the permit holder to engage in the distribution
12 of tobacco ~~or,~~ tobacco products, electronic nicotine delivery
13 systems, or alternative nicotine products at the location
14 identified in the permit.

15 "~~(12)~~(18) TOBACCO SPECIALTY STORE. A business that
16 derives at least 75 percent of its revenue from tobacco or
17 tobacco products.

18 "§28-11-4.

19 "Pursuant to its ~~rule making~~ rulemaking authority,
20 the board ~~may promulgate~~ shall adopt rules ~~and regulations~~
21 that have the full force and effect of law, for purposes of
22 ~~but not limited to,~~ the following:

23 "(1) Establishing permits for the distribution of
24 tobacco ~~or,~~ tobacco products, electronic nicotine delivery
25 systems, and alternative nicotine products.

1 "(2) Preventing the distribution of tobacco, tobacco
2 products, electronic nicotine delivery systems, and
3 alternative nicotine products to minors.

4 "(3) Conducting annual random compliance tests to
5 assure compliance with applicable state and federal laws and
6 guidelines regarding the distribution of tobacco or, tobacco
7 products to minors, electronic nicotine delivery systems, and
8 alternative nicotine products. The tests ~~may utilize minors~~
9 ~~and may involve~~ involving any person or location engaged in
10 the distribution of tobacco may utilize minors.

11 "§28-11-7.

12 "(a) Any person who distributes tobacco, tobacco
13 products, electronic nicotine delivery systems, or alternative
14 nicotine products within this state shall first obtain a
15 permit from the board for each location of distribution. There
16 is no fee for the permit.

17 "(b) Any person who maintains a tobacco ~~or,~~ tobacco
18 product, electronic nicotine delivery system, or alternative
19 nicotine product vending machine on his or her property in
20 this state shall first obtain a permit from the board for each
21 machine at each machine location. The permit for each machine
22 shall be posted in a conspicuous place on the machine.

23 "(c) A permit shall be valid only for the location
24 specified in the permit application.

1 "(d) A permit is not ~~transferrable~~ transferable or
2 assignable and shall be renewed annually. Notwithstanding the
3 foregoing, if a location for which a permit is obtained is
4 sold or transferred, the permit shall be transferred to the
5 person obtaining control of the location and shall be valid
6 for 30 days after the transfer during which time a new permit
7 shall be obtained.

8 "(e) If feasible, the board may, by rule or
9 regulation, establish procedures for the issuance and renewal
10 of permits which combine tobacco permit procedures with the
11 application and licensing procedures for alcoholic beverages.

12 "§28-11-8.

13 "(a) It shall be unlawful for any person to
14 ~~distribute~~ sell or offer for sale tobacco or tobacco products
15 without first obtaining ~~from the board~~ the appropriate permit.
16 ~~Failure to obtain or display~~ from the board. Selling or
17 offering for sale tobacco or tobacco products without
18 obtaining and displaying a valid permit by January 1, 1998,
19 shall result in issuance of a warning citation. The board
20 shall conduct an information and education campaign by its
21 Responsible Vendor Program to inform distributors of tobacco
22 products at retail or in vending machines or self-service
23 displays of the requirements of this law. Failure to obtain or
24 display a valid permit pursuant to this chapter after January
25 1, 1998, shall constitute a misdemeanor offense.

1 "(b) It shall be unlawful for any person to sell or
2 offer for sale electronic nicotine delivery systems or
3 alternative nicotine products without first obtaining the
4 appropriate permit from the board. Failure to obtain or
5 display a valid permit within 90 days after the effective date
6 of the act adding this amendatory language shall result in
7 issuance of a warning citation. The board shall conduct an
8 information and education campaign by its Responsible Vendor
9 Program to inform distributors of alternative nicotine
10 products at retail or in vending machines or self-service
11 displays of the requirements of this law. Selling or offering
12 for sale electronic nicotine delivery systems or alternative
13 nicotine products without obtaining and displaying a valid
14 permit issued pursuant to this chapter within 90 days after
15 the effective date of the act adding this amendatory language
16 shall be a Class C misdemeanor.

17 "(c) Each violation for selling tobacco, tobacco
18 products, electronic nicotine delivery systems, or alternative
19 nicotine products without a valid permit shall be treated as a
20 separate offense and be punishable as follows: For the first
21 violation by a fine of not less than one hundred dollars
22 (\$100) nor more than five hundred dollars (\$500) and for each
23 subsequent violation by a fine of not less than five hundred
24 dollars (\$500) nor more than one thousand five hundred dollars
25 (\$1,500).

1 "§28-11-9.

2 "(a) Subject to the Alabama Administrative Procedure
3 Act, Chapter 22 of Title 41, the board shall have full and
4 final authority as to the suspension or revocation for cause
5 of any permit issued pursuant to this chapter.

6 "(1) The board may appoint a hearing commission of
7 at least three persons which may do all of the following:

8 "a. Hear and decide all contested applications for
9 permits.

10 "b. Hear and decide all charges against any permit
11 holder or employee of a permit holder for violations of this
12 chapter, the law, or the regulations of the board.

13 "c. Revoke or suspend permits as provided in this
14 chapter.

15 "d. Levy administrative fines upon permit holders or
16 employees of permit holders.

17 "(2) No member of the hearing commission shall
18 participate in the hearing or disposition of any application
19 for a permit or charge against a permit holder or an employee
20 of a permit holder if he or she has an interest therein or was
21 involved in the investigation.

22 "(b) The board, or a hearing commission appointed by
23 the board, upon finding that a permit holder or any partner,
24 member, employee, officer, or director of the permit holder
25 has violated any of the laws of this state or the United

1 States relating to the manufacture, sale, possession, or
2 transportation of tobacco ~~or~~, tobacco products, electronic
3 nicotine delivery systems, or alternative nicotine products,
4 or that the permit holder has acted in a manner prejudicial to
5 the welfare, health, peace, temperance, and safety of the
6 people of the community or of the state, may upon due notice
7 and hearing, levy administrative fines or suspend or revoke
8 the permit issued by the board, or a combination of all three.
9 In all cases where the board or hearing commission shall levy
10 an administrative fine, or suspend or revoke a permit, it
11 shall set forth its findings of fact, the evidence from which
12 the findings of facts are made, and the reasons upon which its
13 actions are based.

14 "(c) The fines as specified in subsection (e) shall
15 be applicable per each violation. The permit holder or
16 employee shall remit the administrative fine to the board
17 within seven calendar days from the day that the
18 administrative fine is levied. Failure by the permit holder to
19 pay the administrative fine within that time period shall
20 result in an automatic suspension of the permit until the
21 administrative fine is paid.

22 "(d) The maximum length of suspension of a permit
23 pursuant to this chapter shall be one year. A permit holder
24 shall be ineligible to hold a permit pursuant to this chapter
25 for the location where the violation occurred until the

1 expiration or removal of the suspension. A permit holder whose
2 permit is revoked by the board or the hearing commission shall
3 be, at the discretion of the board or hearing commission,
4 ineligible to hold a permit pursuant to this chapter until the
5 expiration of one year from the date the permit is revoked at
6 the location where the violation occurred.

7 "(e) The following administrative fines may be
8 levied for violations of this chapter against valid permit
9 holders or employees, or both:

10 "(1) Upon conviction for a first violation by the
11 permit holder or an employee of the permit holder, the board
12 or hearing commission may offer the permit holder an
13 opportunity to provide training sessions administered by the
14 Responsible Vendor Program in lieu of an administrative fine
15 upon the permit holder and the employee, if the violation is
16 by an employee, of not more than two hundred dollars (\$200).

17 "(2) Upon conviction of a second violation at the
18 same location within a two-year period, the board or hearing
19 commission may levy an administrative fine upon the permit
20 holder and the employee, if the violation is by an employee,
21 of not more than four hundred dollars (\$400).

22 "(3) Upon conviction of a third or subsequent
23 violation at the same location within a two-year period, the
24 board or hearing commission may levy an administrative fine
25 upon the permit holder and the employee, if the violation is

1 by an employee, of not more than seven hundred fifty dollars
2 (\$750).

3 "(4) Upon conviction of a fourth or subsequent
4 violation at the same location within a two-year period, the
5 board or hearing commission may levy an administrative fine
6 upon the permit holder and the employee, if the violation is
7 by an employee, of not more than one thousand dollars (\$1,000)
8 and may suspend or revoke the permit.

9 "(f) Before imposition of any administrative fine,
10 the permit holder shall be afforded all procedural rights to
11 due process in addition to those rights guaranteed by the
12 Alabama Administrative Procedure Act, Chapter 22 of Title 41.

13 "§28-11-11.

14 "The board shall issue an annual report to the
15 Governor, the Legislature, and the Attorney General concerning
16 compliance by state retail merchants with this chapter. The
17 report shall contain all of the following:

18 "(1) The total number of retail distributors of
19 tobacco, tobacco products, electronic nicotine delivery
20 systems, and alternative nicotine products categorized by type
21 of retail outlet.

22 "(2) The number of citations reported to the board,
23 categorized by type of retail outlet.

24 "(3) The total number of successful compliance
25 checks, categorized by type of retail outlet.

1 "(4) The extent and nature of organized educational
2 and government activities intended to promote, encourage, or
3 otherwise secure compliance with state and federal laws
4 prohibiting the sale or distribution of tobacco products to
5 minors.

6 "(5) Information as to the level of access and
7 availability of tobacco products to minors.

8 "(6) Noted impediments to implementation of this
9 chapter, as well as recommendations for alleviating the same.

10 "§28-11-13.

11 "(a) It is unlawful for any minor to purchase, use,
12 possess, or transport tobacco, tobacco product, electronic
13 nicotine delivery systems, or alternative nicotine product
14 within this state. It shall not be unlawful for a minor
15 employee of a tobacco, tobacco product, electronic nicotine
16 delivery system, or alternative nicotine product permit holder
17 to handle, transport, or sell tobacco, tobacco product,
18 electronic nicotine delivery systems, or alternative tobacco
19 product if the minor employee is acting within the line and
20 scope of employment and the permit holder, or an employee of
21 the permit holder who is 21 years of age or older, is present.

22 "(b) It is unlawful for any minor to present or
23 offer to another person proof of identification which is
24 false, fraudulent, or not actually his or her own proof of
25 identification in order to buy, receive, or otherwise obtain,

1 or attempt to buy, receive, or otherwise obtain, any tobacco,
2 tobacco product, electronic nicotine delivery system, or
3 alternative nicotine product.

4 "(c) If a minor is cited for any violation under
5 this section, the citing agency shall notify a parent, legal
6 guardian, or legal custodian of the minor unless the minor has
7 been emancipated by court order or operation of law.

8 "§13A-12-3.

9 "Any person who sells, barter, exchanges or gives
10 to any minor any ~~cigarettes, cigarette tobacco or cigarette~~
11 ~~paper, or any substitute for either of them~~ tobacco, tobacco
12 products, electronic nicotine delivery systems, or alternative
13 nicotine products shall, on conviction, be fined not less than
14 ~~\$10.00 nor more than \$50.00~~ one hundred dollars (\$100) nor
15 more than three hundred dollars (\$300) and may also be
16 imprisoned in the county jail ~~or sentenced to hard labor for~~
17 ~~the county~~ for not more than 30 days.

18 "§13A-12-3.1.

19 "For purposes of this article, the following terms
20 shall have the following meanings:

21 "(1) ALTERNATIVE NICOTINE PRODUCT. The same meaning
22 as in Section 28-11-2.

23 "(2) BOARD. The same meaning as in Section 28-11-2.

24 "~~(1)~~ (3) BRAND STYLE. A variety of cigarettes
25 distinguished by the tobacco used, tar and nicotine content,

1 flavoring used, size of cigarette, filtration on the
2 cigarette, or packaging.

3 "~~(2)~~(4) CLEAR AND CONSPICUOUS STATEMENT. ~~The~~ A
4 statement that is of sufficient type size to be clearly
5 readable by the recipient of the communication.

6 "~~(3)~~(5) COMMISSIONER. The Commissioner of the
7 Alabama Department of Revenue.

8 "~~(4)~~(6) CONSUMER. An individual who acquires or
9 seeks to acquire cigarettes, or any one or more articles taxed
10 herein, for personal use.

11 "~~(5)~~(7) DELIVERY SALE. Any sale of cigarettes to a
12 consumer within this state, regardless of whether the seller
13 is located in this state, where either of the following are
14 true:

15 "a. ~~the~~ The purchaser submits the order for such
16 sale by means of a telephonic or other method of voice
17 transmission, the mails or any other delivery service,
18 facsimile transmission, or the Internet or other online
19 service ~~or.~~

20 "b. ~~the~~ The cigarettes are delivered by use of the
21 mails or other delivery service. ~~A sale of cigarettes that~~
22 ~~meets the requirements of this subdivision shall constitute a~~
23 ~~delivery sale regardless of whether the seller is located~~
24 ~~within or without the state.~~

1 "(8) DELIVERY SALE OF ELECTRONIC NICOTINE DELIVERY
 2 SYSTEMS OR ALTERNATIVE NICOTINE PRODUCTS. Any sale of
 3 electronic nicotine delivery systems or alternative nicotine
 4 products to a consumer in this state, regardless of whether
 5 the seller is located in this state, where either of the
 6 following is true:

7 "a. The purchaser submits the order for the sale by
 8 means of a telephonic or other method of voice transmission,
 9 the mails or any other delivery service, facsimile
 10 transmission, or the Internet or other online service.

11 "b. The electronic nicotine delivery systems or
 12 alternative nicotine products are delivered by use of the
 13 mails or other delivery service.

14 ~~"(6)~~ (9) DELIVERY SALES STATUTES. Those provisions
 15 contained within Sections 13A-12-3.2, 13A-12-3.3, 13A-12-3.4,
 16 13A-12-3.5, 13A-12-3.6, and 13A-12-3.7.

17 ~~"(7)~~ (10) DELIVERY SERVICE. Any person, other than a
 18 person who makes a delivery sale, who delivers to the consumer
 19 the cigarettes sold in a delivery sale.

20 ~~"(8)~~ (11) DEPARTMENT. The Alabama Department of
 21 Revenue.

22 "(12) ELECTRONIC NICOTINE DELIVERY SYSTEM. The same
 23 meaning as in Section 28-11-2.

24 ~~"(9)~~ (13) GOVERNMENT-ISSUED IDENTIFICATION. A state
 25 driver's license, state identification card, passport, a

1 military identification, or an official naturalization or
2 immigration document, including an alien registration
3 recipient card or green card, or an immigrant visa.

4 "~~(10)~~ (14) LEGAL MINIMUM AGE. 19 years of age.

5 "(15) LIQUID NICOTINE CONTAINER. The same meaning as
6 in Section 28-11-2.

7 "~~(11)~~ (16) MAILS or MAILING. The shipment of
8 cigarettes through the United States Postal Service.

9 "~~(12)~~ (17) OUT-OF-STATE SALE. A sale of cigarettes to
10 a consumer located outside of this state where the consumer
11 submits the order for such sale by means of a telephonic or
12 other method of voice transmission, the mails or any other
13 delivery service, facsimile transmission, or the Internet or
14 other online service, and where the cigarettes are delivered
15 by use of the mails or other delivery service.

16 "~~(13)~~ (18) PERSON. Any individual, corporation,
17 partnership, limited liability company, association, or other
18 organization that engages in any for-profit or not-for-profit
19 activities.

20 "~~(14)~~ (19) SHIPPING DOCUMENTS. Bills of lading, air
21 bills, or any other documents used to evidence the undertaking
22 by a delivery service to deliver letters, packages, or other
23 containers.

1 "~~(15)~~ (20) SHIPPING PACKAGE. A container in which
2 packs or cartons of cigarettes are shipped in connection with
3 a delivery sale.

4 "~~(16)~~ (21) STAMP or STAMPS. The stamp or stamps by
5 the use of which the tax levied under this article is paid and
6 shall be designated Alabama Revenue Stamps.

7 "~~(17)~~ (22) WITHIN THIS STATE. Within the exterior
8 limits of the State of Alabama."

9 Section 3. Sections 28-11-16, 28-11-17, 28-11-18,
10 28-11-19, and 13A-12-3.8 are added to the Code of Alabama
11 1975, to read as follows:

12 §28-11-16.

13 (a) (1) A retailer or manufacturer of electronic
14 nicotine delivery systems or alternative nicotine products may
15 not advertise an electronic nicotine delivery system or an
16 alternative nicotine product in any of the following ways:

17 a. As a tobacco cessation product.

18 b. As a healthier alternative to smoking.

19 c. As available for purchase in any variety of
20 flavors other than tobacco, mint, or menthol on any outdoor
21 billboard.

22 d. On any outdoor billboard located within 1,000
23 feet of any public or private K-12 school or public
24 playground.

1 (2) Paragraphs a. and b. are not applicable to
2 products that have received an order from the FDA permitting
3 the product to be marketed as a modified risk tobacco product,
4 and are marketed in accordance with that order.

5 (b) (1) A violation of subsection (a) shall result in
6 a one hundred dollar (\$100) fine for the first occurrence.

7 (2) A second or subsequent violation of subsection
8 (a) shall result in a five hundred dollar (\$500) fine per
9 occurrence.

10 (3) Each day a violation of subsection (a) persists
11 shall constitute a separate and subsequent violation.

12 §28-11-17.

13 (a) It is unlawful to distribute, sell, or offer for
14 sale any electronic nicotine delivery system or alternative
15 nicotine product that cannot be legally marketed under federal
16 law or FDA rule, regulation, or guidance.

17 (b) Each violation of subsection (a) shall be a
18 Class C misdemeanor.

19 §28-11-18.

20 (a) All liquid nicotine containers offered for sale
21 that are intended to be vaporized in an electronic nicotine
22 delivery system shall be contained in child-resistant
23 packaging.

24 (b) A specialty retailer of electronic nicotine
25 delivery systems shall display in a prominent area of the

1 retail store near the point of sale a sign which contains the
2 following statements:

3 (1) "THE USE OF SOME VAPING DEVICES MAY INCREASE
4 YOUR RISK OF EXPOSURE TO POTENTIALLY TOXIC LEVELS OF HEAVY
5 METALS SUCH AS LEAD, CHROMIUM, AND NICKEL."

6 (2) "WARNING: PRODUCTS OFFERED FOR SALE IN THIS
7 STORE CONTAIN NICOTINE UNLESS OTHERWISE MARKED. NICOTINE IS A
8 HIGHLY ADDICTIVE CHEMICAL WHICH CAN HARM BRAIN DEVELOPMENT IN
9 CHILDREN AND ADOLESCENTS AND WHICH POSES SERIOUS HEALTH RISKS
10 TO PREGNANT WOMEN AND THEIR BABIES."

11 §28-11-19.

12 (a) Beginning January 1, 2020, a county may not
13 issue a license to conduct business as a specialty retailer of
14 electronic nicotine delivery systems if the retail business is
15 located within 1,000 feet of any of the following:

16 (1) A public or private K-12 school.

17 (2) A licensed child-care facility or preschool.

18 (3) A church.

19 (4) A public library.

20 (5) A public playground.

21 (6) A public park.

22 (7) A youth center or other space used primarily for
23 youth oriented activities.

24 (b) This section does not apply to a specialty
25 retailer of electronic nicotine delivery systems that obtained

1 a business license at a location prohibited in subsection (a)
2 prior to January 1, 2020, that has conducted business as a
3 specialty retailer of electronic nicotine delivery systems at
4 that location for at least 18 consecutive months, and that
5 remains in the same location.

6 §13A-12-3.8.

7 (a) No person may conduct a delivery sale of
8 electronic nicotine delivery systems or alternative nicotine
9 products unless the seller has obtained a valid permit to
10 conduct delivery sales of electronic nicotine delivery systems
11 or alternative nicotine products issued by the board pursuant
12 to Section 28-11-4.

13 (b) No person may conduct a delivery sale of
14 electronic nicotine delivery systems or alternative nicotine
15 products to a person under the legal minimum age.

16 (c) A person holding a permit to conduct delivery
17 sales of electronic nicotine delivery systems or alternative
18 nicotine products may not accept a purchase or order from any
19 person without first obtaining the full name, birth date, and
20 residential address of that person and verifying this
21 information through an independently operated third-party
22 database or aggregate of databases, which includes data from
23 government sources, that are regularly used by government and
24 businesses for the purpose of age and identity verification
25 and authentication.

1 (d) A person holding a permit to conduct delivery
2 sales of electronic nicotine delivery systems or alternative
3 nicotine products shall accept payment only through a credit
4 or debit card issued in the purchaser's own name.

5 (e) Each violation for conducting a delivery sale of
6 electronic nicotine delivery systems or alternative nicotine
7 products without a valid permit or otherwise in violation of
8 this section shall be treated as a separate offense and be
9 punishable as follows: For the first violation by a fine of
10 not less than one hundred dollars (\$100) nor more than five
11 hundred dollars (\$500) and for each subsequent violation by a
12 fine of not less than five hundred dollars (\$500) nor more
13 than one thousand five hundred dollars (\$1,500).

14 Section 4. Although this bill would have as its
15 purpose or effect the requirement of a new or increased
16 expenditure of local funds, the bill is excluded from further
17 requirements and application under Amendment 621, now
18 appearing as Section 111.05 of the Official Recompilation of
19 the Constitution of Alabama of 1901, as amended, because the
20 bill defines a new crime or amends the definition of an
21 existing crime.

22 Section 5. This act shall become effective on the
23 first day of the third month following its passage and
24 approval by the Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 04-APR-19, as amended.

Jeff Woodard
Clerk

Senate	<hr/> 15-MAY-19 <hr/>	Amended and Passed
House	<hr/> 15-MAY-19 <hr/>	Concurred in Senate Amendment