HB41

196711-1

By Representatives Stringer and Drummond

RFD: Judiciary

First Read: 05-MAR-19

PFD: 02/14/2019
SYNOPSIS: Existing state law does not provide for comprehensive oversight or regulation of alternative nicotine products or retailers of these products.

This bill would prohibit alternative nicotine product retailers and manufacturers of alternative nicotine products from advertising alternative nicotine products near schools. This bill would also prohibit specialty retailers of alternative nicotine products from opening new places of business near schools, child care centers, churches, and other facilities. This bill would also prevent retailers and manufacturers of alternative nicotine products from advertising those products as tobacco cessation devices, as a healthy alternative to smoking, or as being available in any variety of flavors.

This bill would also require retailers of alternative nicotine products to obtain a tobacco permit, to comply with FDA regulations governing
the retail sale of alternative nicotine products, and to post warning signs in their stores regarding the dangers of nicotine use and potential risks associated with vaping.

This bill would also prohibit the use of alternative nicotine products in various places, including in schools, in child care facilities, and in vehicles operated by child care facilities for the purposes of transporting children.

This bill would also prohibit the sale or transfer of alternative nicotine products to minors.

This bill would also require the Alabama Alcoholic Beverage Control Board to regulate retail sales of alternative nicotine devices like sales of tobacco products.

 Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates
funds, or provides a local source of revenue, to the entity for the purpose.

The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of the amendment. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in the amendment.

A BILL
TO BE ENTITLED
AN ACT

Relating to alternative nicotine products; to amend Sections 28-11-2, 28-11-4, 28-11-7, 28-11-8, 28-11-9, 28-11-11, 13A-12-3, and 13A-12-3.1, Code of Alabama 1975, to require the Alabama Alcoholic Beverage Control Board to regulate retail sales of alternative nicotine devices like sales of tobacco products, and to prohibit the sale or transfer of alternative nicotine products to minors; to add Sections 28-11-16, 28-11-17, 28-11-18, 28-11-19, and 28-11-20, to the Code of Alabama 1975, to prohibit alternative nicotine product retailers and manufacturers of alternative nicotine products from advertising alternative nicotine products near schools; to prohibit specialty retailers of alternative nicotine products from opening new places of business near
certain locations; to prevent retailers of alternative nicotine products from advertising those products as tobacco cessation devices, as a healthy alternative to smoking, or as being available in any variety of flavors; to require retailers of alternative nicotine products to obtain a tobacco permit, to comply with FDA regulations governing the retail sale of alternative nicotine products, and to post certain warning signs; to prohibit the use of alternative nicotine products in various places, including motor vehicles under certain conditions; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 28-11-2, 28-11-4, 28-11-7, 28-11-8, 28-11-9, 28-11-11, 13A-12-3, and 13A-12-3.1, Code of Alabama 1975, are amended to read as follows:

"§28-11-2.

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

"(1) ALTERNATIVE NICOTINE PRODUCT. The term alternative nicotine product includes electronic cigarettes. An electronic cigarette is an electronic product or device that produces vaporizing devices, such as electronic products
or devices that produce a vapor that delivers nicotine or other substances to the person inhaling from the device to simulate smoking, and is likely to includes, but is not limited to, products that may be offered to, or purchased by, or marketed to consumers as an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe, electronic hookah, vape pen, vape tool, vaping device, or any variation of these terms. The term also includes any liquid intended to be vaporized in any device included in this subdivision, regardless of whether or not the liquid contains nicotine.

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

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


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

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

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

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

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


"(2) ALTERNATIVE NICOTINE PRODUCT RETAILER. Any retail business which offers for sale alternative nicotine products.

"(2)(3) BOARD. The Alabama Alcoholic Beverage Control Board.


"(3)(5) DISTRIBUTION. To sell, barter, exchange, or give tobacco or tobacco products for promotional purposes or for gratis.

"(6) FDA. The United States Food and Drug Administration.

"(4)(7) MINOR. Any person under the age of 19 years.

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

"(6)(9) PROOF OF IDENTIFICATION. Any one or more of the following documents used for purposes of determining the age of a person purchasing, attempting to purchase, or receiving tobacco or tobacco products:
"a. A valid driver's license issued by any state and bearing the photograph of the presenting person.

"b. United States Uniform Service Identification.

c. A valid passport.

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

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

"(10) RESPONSIBLE VENDOR PROGRAM. A program administered by the board to encourage and support vendors in training employees in legal and responsible sales practices.

"(11) SAMPLER. Any business or person who distributes tobacco or tobacco products for promotional purposes.

"(12) SELF-SERVICE DISPLAY. A display that contains tobacco or tobacco products and is located in an area openly accessible to purchasers at retail and from which such purchasers can readily access tobacco or tobacco products without the assistance of the tobacco permit holder or an employee of the permit holder. A display case that holds tobacco or tobacco products behind locked doors does not constitute a self-service display.

"(13) SPECIALTY RETAILER OF ALTERNATIVE NICOTINE PRODUCTS. A business establishment at which any of the following are true:
"a. The sale of alternative nicotine products accounts for more than 35 percent of the total quarterly gross receipts for the establishment.

"b. Twenty percent or more of the public retail floor space is allocated for the offering, displaying, or storage of alternative nicotine products.

c. Twenty percent or more of the total shelf space, including retail floor shelf space and shelf space in areas accessible only to employees, is allocated for the offering, displaying, or storage of alternative nicotine products.

d. The retail space features a self-service display for alternative nicotine products.

e. Samples of alternative nicotine products are offered to customers.

"f. Liquids intended to be vaporized in a device as described in Section 28-11-2, Code of Alabama 1975, are produced at the facility or are produced by the owner of the establishment or any of its agents or employees for sale at the establishment.

"(10)-(14) TOBACCO or TOBACCO PRODUCTS. Tobacco or any product containing tobacco, including, but not limited to, the following:

"a. Cigarettes.
"b. Cigars.
"c. Chewing tobacco.
"d. Snuff.
"e. Pipe tobacco.
f. Smokeless tobacco.

"(11)(15) TOBACCO PERMIT. A permit issued by the board to allow the permit holder to engage in the distribution of tobacco or tobacco products, or alternative nicotine products at the location identified in the permit.

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

"§28-11-4.

"(a) Pursuant to its rule-making authority, the board may promulgate rules and regulations that have the full force and effect of law, for purposes of, but not limited to, the following:

"(1) Establishing permits for the distribution of tobacco or tobacco products, and alternative nicotine products.

"(2) Preventing the distribution of tobacco products and alternative nicotine products to minors.

"(3) Conducting annual random compliance tests to assure compliance with applicable state and federal laws and guidelines regarding the distribution of tobacco or tobacco products to minors, and alternative nicotine products. The tests may utilize minors and may involve any person or location engaged in the distribution of tobacco or may utilize minors.
(b) The board may adopt any other rules necessary for enforcing compliance with applicable state and federal law.

§28-11-7.

(a) Any person who distributes tobacco products or alternative nicotine products within this state shall first obtain a permit from the board for each location of distribution. There is no fee for the permit at a cost to the applicant of three hundred dollars ($300) per permit.

(b) Any person who maintains a tobacco or tobacco product, or alternative nicotine product vending machine on his or her property in this state shall first obtain a permit from the board for each machine at each machine location. The permit for each machine shall be posted in a conspicuous place on the machine.

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

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

(e) If feasible, the board may, by rule or regulation, establish procedures for the issuance and renewal
§28-11-8.

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

(b) It shall be unlawful for any person to sell or offer for sale alternative nicotine products without first obtaining the appropriate permit from the board. Failure to obtain or display a valid permit within 90 days after the effective date of the act adding this amendatory language shall result in issuance of a warning citation. The board shall conduct an information and education campaign by its Responsible Vendor Program to inform distributors of alternative nicotine products at retail or in vending machines or self-service displays of the requirements of this law. Selling or offering for sale alternative nicotine products
without obtaining and displaying a valid permit pursuant to
this chapter within 90 days after the effective date of the
act adding this amendatory language shall be a Class C
misdemeanor.

(c) Each violation for selling tobacco, tobacco
products, or alternative nicotine products without a valid
permit shall be treated as a separate offense and be
punishable as follows: For the first violation by a fine of
not less than one hundred dollars ($100) nor more than five
hundred dollars ($500) and for each subsequent violation by a
fine of not less than five hundred dollars ($500) nor more
than one thousand five hundred dollars ($1,500).

§28-11-9.

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

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

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

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

"c. Revoke or suspend permits as provided in this
chapter."
"d. Levy administrative fines upon permit holders or employees of permit holders.

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

"(b) The board, or a hearing commission appointed by the board, upon finding that a permit holder or any partner, member, employee, officer, or director of the permit holder has violated any of the laws of this state or the United States relating to the manufacture, sale, possession, or transportation of tobacco or tobacco products, or alternative nicotine products, or that the permit holder has acted in a manner prejudicial to the welfare, health, peace, temperance, and safety of the people of the community or of the state, may upon due notice and hearing, levy administrative fines, suspend or revoke the permit issued by the board, or a combination of all three. In all cases where the board or hearing commission shall levy an administrative fine, or suspend or revoke a permit, it shall set forth its findings of fact, the evidence from which the findings of facts are made, and the reasons upon which its actions are based.

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

"(d) The maximum length of suspension of a permit pursuant to this chapter shall be one year. A permit holder shall be ineligible to hold a permit pursuant to this chapter for the location where the violation occurred until the expiration or removal of the suspension. A permit holder whose permit is revoked by the board or the hearing commission shall be, at the discretion of the board or hearing commission, ineligible to hold a permit pursuant to this chapter until the expiration of one year from the date the permit is revoked at the location where the violation occurred.

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

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

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

"(3) Upon conviction of a third or subsequent violation at the same location within a two-year period, the board or hearing commission may levy an administrative fine upon the permit holder and the employee, if the violation is by an employee, of not more than seven hundred fifty dollars ($750).

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

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

"§28-11-11.

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

"(1) The total number of retail distributors of tobacco, tobacco products, and alternative nicotine products categorized by type of retail outlet.
"(2) The number of citations reported to the board, categorized by type of retail outlet.

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

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

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

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

§13A-12-3.

"Any person who sells, barters, exchanges or gives to any minor any cigarettes, cigarette tobacco or cigarette paper, or any substitute for either of them tobacco, tobacco products, or alternative nicotine products shall, on conviction, be fined not less than $10.00 nor more than $50.00 one hundred dollars ($100) nor more than three hundred dollars ($300) and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than 30 days.

§13A-12-3.1.

"For purposes of this article, the following terms shall have the following meanings:
(1) ALTERNATIVE NICOTINE PRODUCT. The same meaning as in Section 28-11-2.

"(2) BRAND STYLE. A variety of cigarettes distinguished by the tobacco used, tar and nicotine content, flavoring used, size of cigarette, filtration on the cigarette, or packaging.

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

"(4) COMMISSIONER. The Commissioner of the Alabama Department of Revenue.

"(5) CONSUMER. An individual who acquires or seeks to acquire cigarettes, or any one or more articles taxed herein, for personal use.

"(6) DELIVERY SALE. Any sale of cigarettes to a consumer within this state, regardless of whether the seller is located in this state, where either of the following are true:

a. the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, facsimile transmission, or the Internet or other online service or.

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

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

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

"(8)(9) DEPARTMENT. The Alabama Department of Revenue.

"(9)(10) GOVERNMENT-ISSUED IDENTIFICATION. A state driver's license, state identification card, passport, a military identification, or an official naturalization or immigration document, including an alien registration recipient card or green card, or an immigrant visa.

"(10)(11) LEGAL MINIMUM AGE. 19 years of age.

"(11)(12) MAILS or MAILING. The shipment of cigarettes through the United States Postal Service.

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

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

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

"(15)(16) SHIPPING PACKAGE. A container in which
packs or cartons of cigarettes are shipped in connection with
a delivery sale.

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

"(17)(18) WITHIN THIS STATE. Within the exterior
limits of the State of Alabama."

Section 2. Sections 28-11-16, 28-11-17, 28-11-18,
28-11-19, and 28-11-20, are added to the Code of Alabama 1975,
to read as follows:

§28-11-16.

(a) A retailer or manufacturer of alternative
nicotine products may not advertise an alternative nicotine
product in any of the following ways:

(1) As a tobacco cessation product.

(2) As a healthier alternative to smoking.

(3) As available for purchase in any variety of
flavors.
(4) On any outdoor billboard located within 1,000 feet of any public or private K-12 school or public playground.

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

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

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

§28-11-17.

(a) It is unlawful to distribute, sell, or offer for sale any alternative nicotine product that is required by federal rule or federal law to meet FDA approval guidelines and that has not been approved by the FDA.

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

§28-11-18.

(a) All liquids offered for sale that are intended to be vaporized in any device described in Section 28-11-2, Code of Alabama 1975, shall be contained in child-resistant packaging.

(b) A specialty retailer of alternative nicotine products shall display in a prominent area of the retail store near the point of sale a sign which contains the following statements:
THE USE OF SOME VAPING DEVICES MAY INCREASE YOUR RISK OF EXPOSURE TO POTENTIALLY TOXIC LEVELS OF HEAVY METALS SUCH AS LEAD, CHROMIUM, AND NICKEL."

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

§28-11-19.

(a) A person may not use an alternative nicotine product under any of the following circumstances:

(1) On the grounds or in the buildings of any public K-12 school or state two-year or four-year institution of higher education, including parking lots, playing fields, and school buses.

(2) At any bus stop serving students of a public K-12 school for a period of one hour before and one hour after any scheduled student pick-up or drop-off time.

(3) On the grounds or in the buildings of any child care facility, regardless of whether or not children are present at the facility.

(4) In any motor vehicle that is operated by employees or agents of any child care facility and used to transport children, whether children are present in the vehicle or not.

(5) On the grounds or in the buildings of any health care facility, including, but not limited to hospitals, health
clinics, physician's offices, and surgery centers, except for designated areas where smoking is already allowed.

(6) Inside or at any sports arena or stadium.
(7) Within any indoor public place.
(8) In any place of employment, except for designated areas where smoking is already allowed.
(9) In any public or private parking deck.
(10) At any playground.
(11) At any youth sporting event.
(12) At any off-campus public K-12 school-sponsored or school-sanctioned event.
(13) In a motor vehicle, whether in motion or at rest, in which a minor is a passenger or driver.
(14) On the grounds or in the buildings of any state park.

(b)(1) A violation of subsection (a) shall result in a one hundred dollar ($100) fine for the first occurrence.
(2) A second or subsequent violation of subsection (a) shall result in a five hundred dollar ($500) fine per occurrence.

§28-11-20.
(a) Beginning January 1, 2020, a county may not issue a license to conduct business as a specialty retailer of alternative nicotine products if the retail business is located within 1,000 feet of any of the following:
(1) A public or private K-12 school.
(2) A licensed child-care facility or preschool.
(3) A church.

(4) A public library.

(5) A public playground.

(6) A public park.

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

(b) This section does not apply to a specialty retailer of alternative nicotine products that obtained a business license at a location prohibited in subsection (a) prior to January 1, 2020, that has conducted business as a specialty retailer of alternative nicotine products at that location for at least 18 consecutive months, and that remains in the same location.

Section 3. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, because the bill defines a new crime or amends the definition of an existing crime.

Section 4. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.