

1 HB273
2 211573-4
3 By Representatives Drummond, Howard, Bracy, Coleman, Wood (D)
4 and Faulkner
5 RFD: Judiciary
6 First Read: 02-FEB-21

ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

Relating to tobacco products and electronic nicotine delivery systems and products; to amend Sections 13A-12-3, 13A-12-3.1, 28-11-2, 28-11-4, 28-11-11, and 28-11-13, as last amended by Act 2019-233, 2019 Regular Session, and Sections 28-11-1, 28-11-3, 28-11-5, 28-11-6.1, 28-11-6.2, 28-11-14, 28-11-15, 28-11-16, and 28-11-18, Code of Alabama 1975; and to add Sections 28-11-17.1 and 28-11-20 to the Code of Alabama 1975; to raise the minimum age for legal possession, transportation, and purchase of tobacco products, electronic nicotine delivery systems, and alternative nicotine products; to prohibit the advertisement of tobacco products, electronic nicotine delivery systems, or alternative nicotine products in certain print or electronic media; to prohibit manufacturers or retailers of tobacco products, electronic nicotine delivery systems, or alternative nicotine products from sponsoring, financing, or advertising under certain conditions and at certain locations; to require retailers offering electronic nicotine delivery systems for sale to place signs in a prominent area near the point of sale containing certain statements; to prohibit the sale of alternative nicotine

1 products or electronic nicotine delivery systems in vending
2 machines unless entry to the facility is restricted to certain
3 individuals; require manufacturers of e-liquids and
4 alternative nicotine products to make certain representations
5 to the Commissioner of the Department of Revenue regarding
6 those products; to require the Commissioner of the Department
7 of Revenue to maintain a directory listing manufacturers of
8 e-liquids and alternative nicotine products that have
9 sufficiently made certain representations; to provide
10 authority to the Commissioner of the Department of Revenue to
11 take additional actions in conformity with its provisions; to
12 require the Department of Mental Health to ensure compliance
13 with certain federal laws; and to authorize civil penalties
14 for violations.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 13A-12-3 and 13A-12-3.1, Code of
17 Alabama 1975, as last amended by Act 2019-233, 2019 Regular
18 Session, are amended to read as follows:

19 "§13A-12-3.

20 "Any person who sells, barter, exchanges, or gives
21 to any ~~minor~~ individual under the age of 21 years any tobacco,
22 tobacco product, electronic nicotine delivery system, or
23 alternative nicotine product, on conviction, shall be fined
24 not less than one hundred dollars (\$100) nor more than three
25 hundred dollars (\$300) and may also be imprisoned in the
26 county jail for not more than 30 days.

27 "§13A-12-3.1.

1 "For purposes of this article, the following terms
2 shall have the following meanings:

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

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

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

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

13 "(5) COMMISSIONER. The Commissioner of the Alabama
14 Department of Revenue.

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

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

22 "a. The purchaser submits the order for ~~such~~ sale by
23 means of a telephonic or other method of voice transmission,
24 the mails or any other delivery service, facsimile
25 transmission, or the Internet or other online service.

26 "b. The cigarettes are delivered by use of the mails
27 or other delivery service.

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 "(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 "(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 "(11) DEPARTMENT. The Alabama Department of Revenue.

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

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

1 "(14) LEGAL MINIMUM AGE. ~~19~~ 21 years of age.

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

4 "(16) MAILES or MAILING. The shipment of cigarettes
5 through the United States Postal Service.

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

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

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

21 "(20) SHIPPING PACKAGE. A container in which packs
22 or cartons of cigarettes are shipped in connection with a
23 delivery sale.

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

1 "(22) WITHIN THIS STATE. Within the exterior limits
2 of the State of Alabama.

3 Section 2. Section 28-11-1 Code of Alabama 1975,
4 Section 28-11-2, Code of Alabama 1975, as last amended by Act
5 2019-233, and Section 28-11-3, Code of Alabama 1975, are
6 amended to read as follows:

7 "§28-11-1.

8 "It is the intent of the Legislature to prohibit
9 access to tobacco ~~and,~~ tobacco products by minors, alternative
10 nicotine products, and electronic nicotine delivery systems to
11 individuals under the age of 21 years and ~~thereby~~ prevent all
12 of the following:

13 "(1) The possibility of addiction to tobacco ~~or,~~
14 tobacco products ~~by minors,~~ alternative nicotine products, and
15 electronic nicotine delivery systems by individuals under the
16 age of 21 years.

17 "(2) Potential health problems associated with the
18 use of tobacco ~~or,~~ tobacco products, alternative nicotine
19 products, and electronic nicotine delivery systems.

20 "(3) The failure by this state to comply with
21 federal guidelines or grant funding requirements, when
22 applicable, which relate to the establishment by the state of
23 programs and policies dealing with the sale of tobacco ~~or,~~
24 tobacco products ~~to minors,~~ alternative nicotine products, and
25 electronic nicotine delivery systems.

26 "§28-11-2.

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

4 "(1) ALTERNATIVE NICOTINE PRODUCT. The term
5 alternative nicotine product includes any product that
6 consists of or contains nicotine that can be ingested into the
7 body by chewing, smoking, absorbing, dissolving, inhaling,
8 snorting, sniffing, or by any other means. The term does not
9 include a tobacco product, electronic nicotine delivery
10 system, or any product that has been approved by the United
11 States Food and Drug Administration for sale as a tobacco
12 cessation product or for other medical purposes and that is
13 being marketed and sold solely for that purpose.

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

16 "(3) CHILD-RESISTANT PACKAGING. Liquid nicotine
17 container packaging meeting the requirements of 15 U.S.C.
18 §1472a.

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

21 "~~(4)~~ (5) DISTRIBUTION. To sell, barter, exchange, or
22 give tobacco or tobacco products for promotional purposes or
23 for gratis.

24 "~~(5)~~ (6) ELECTRONIC NICOTINE DELIVERY SYSTEM. Any
25 vaporizing electronic device that produces uses a battery and
26 heating element in combination with an e-liquid or tobacco to
27 produce a vapor that delivers nicotine ~~or other substance~~ to

1 the ~~person~~ individual inhaling from the device to simulate
2 smoking, and includes, but is not limited to, products that
3 may be offered to, purchased by, or marketed to consumers as
4 an electronic cigarette, electronic cigar, electronic
5 cigarillo, electronic pipe, electronic hookah, vape pen, vape
6 tool, vaping device, or any variation of these terms. The term
7 also includes any ~~liquid~~ e-liquid intended to be vaporized in
8 any device included in this subdivision, ~~regardless of whether~~
9 ~~or not the liquid contains nicotine.~~

10 ~~"(6)~~ (7) ELECTRONIC NICOTINE DELIVERY SYSTEM
11 RETAILER. Any retail business which offers for sale electronic
12 nicotine delivery systems.

13 "(8) E-LIQUID. A liquid that contains nicotine and
14 may include flavorings or other ingredients that are intended
15 for use in an electronic nicotine delivery system.

16 "(9) E-LIQUID MANUFACTURER. Any person who
17 manufactures, fabricates, assembles, processes, mixes,
18 prepares, labels, repacks, or relabels an e-liquid to be
19 sealed in final packaging intended for consumer use. This term
20 includes an owner of a brand or formula for an e-liquid who
21 contracts with another person to complete the fabrication and
22 assembly of the product to the brand or formula owner's
23 standards.

24 ~~"(7)~~ (10) FDA. The United States Food and Drug
25 Administration.

26 ~~"(8)~~ (11) LIQUID NICOTINE CONTAINER. A bottle or
27 other container of a liquid product that is intended to be

1 vaporized and inhaled using an electronic nicotine delivery
2 system. The term does not include a container holding liquid
3 that is intended for use in a vapor product if the container
4 is pre-filled and sealed by the manufacturer and is not
5 intended to be opened by the consumer.

6 "~~(9)~~ (12) MINOR. Any ~~person~~ individual under the age
7 of 19 years.

8 "~~(10)~~ (13) PERSON. Any natural person, firm,
9 partnership, association, company, corporation, or other
10 entity. Person does not include a manufacturer or wholesaler
11 of tobacco or tobacco products nor does it include employees
12 of the permit holder.

13 "~~(11)~~ (14) PROOF OF IDENTIFICATION. Any one or more
14 of the following documents used for purposes of determining
15 the age of ~~a person~~ an individual purchasing, attempting to
16 purchase, or receiving tobacco, tobacco products, electronic
17 nicotine delivery systems, or alternative nicotine products:

18 "a. A valid driver's license issued by any state and
19 bearing the photograph of the presenting ~~person~~ individual.

20 "b. United States Uniform Service Identification.

21 "c. A valid passport.

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

25 "e. For legal mail order purposes only, a valid
26 signed certification that will verify the individual is ~~19~~ 21
27 years of age or older.

1 "~~(12)~~(15) RESPONSIBLE VENDOR PROGRAM. A program
2 administered by the board to encourage and support vendors in
3 training employees in legal and responsible sales practices.

4 "~~(13)~~(16) SAMPLER. Any business or person who
5 distributes tobacco or tobacco products for promotional
6 purposes.

7 "~~(14)~~(17) SELF-SERVICE DISPLAY. A display that
8 contains tobacco or tobacco products and is located in an area
9 openly accessible to purchasers at retail and from which ~~such~~
10 the purchasers can readily access tobacco or tobacco products
11 without the assistance of the tobacco permit holder or an
12 employee of the permit holder. A display case that holds
13 tobacco or tobacco products behind locked doors does not
14 constitute a self-service display.

15 "~~(15)~~(18) SPECIALTY RETAILER OF ELECTRONIC NICOTINE
16 DELIVERY SYSTEMS. A business establishment at which any of the
17 following are true:

18 "a. The sale of electronic nicotine delivery systems
19 accounts for more than 35 percent of the total quarterly gross
20 receipts for the establishment.

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

24 "c. Twenty percent or more of the total shelf space,
25 including retail floor shelf space and shelf space in areas
26 accessible only to employees, is allocated for the offering,

1 displaying, or storage of electronic nicotine delivery
2 systems.

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

5 "e. Samples of electronic nicotine delivery systems
6 are offered to customers.

7 "f. Liquids intended to be vaporized through the use
8 of an electronic nicotine delivery system are produced at the
9 facility or are produced by the owner of the establishment or
10 any of its agents or employees for sale at the establishment.

11 ~~"(16) TOBACCO or TOBACCO PRODUCTS. Tobacco or any~~
12 ~~product containing tobacco, including, but not limited to, the~~
13 ~~following:~~

14 ~~"a. Cigarettes.~~

15 ~~"b. Cigars.~~

16 ~~"c. Chewing tobacco.~~

17 ~~"d. Snuff.~~

18 ~~"e. Pipe tobacco.~~

19 ~~"f. Smokeless tobacco.~~

20 "(19) TOBACCO or TOBACCO PRODUCT. Any product made
21 or derived from tobacco that is intended for human
22 consumption, including any component, part, or accessory of a
23 tobacco product, except for raw materials other than tobacco
24 used in manufacturing a component, part, or accessory of a
25 tobacco product, but does not include an article that is a
26 drug under Section 201(g)(1) of the Federal Food, Drug, and
27 Cosmetic Act, a device under Section 201(h) of the Federal

1 Food, Drug, and Cosmetic Act, or a combination product
2 described in Section 503(g) of the Federal Food, Drug, and
3 Cosmetic Act.

4 ~~"(17)~~ (20) TOBACCO PERMIT. A permit issued by the
5 board to allow the permit holder to engage in the distribution
6 of tobacco, tobacco products, electronic nicotine delivery
7 systems, or alternative nicotine products at the location
8 identified in the permit.

9 ~~"(18)~~ (21) TOBACCO SPECIALTY STORE. A business that
10 derives at least 75 percent of its revenue from tobacco or
11 tobacco products.

12 "§28-11-3.

13 "The board, in conjunction with federal, state, and
14 local law enforcement agencies, shall enforce state and
15 federal laws that prohibit the distribution of tobacco, ~~or~~
16 tobacco products, alternative nicotine products, and
17 electronic nicotine delivery systems to ~~minors~~ individuals
18 under the age of 21 years. Notwithstanding the foregoing, for
19 purposes of inspections and enforcement actions undertaken
20 pursuant to this section, ~~minors~~ individuals under the age of
21 21 years may be enlisted to attempt to purchase or purchase
22 tobacco, tobacco products, alternative nicotine products, and
23 electronic nicotine delivery systems, provided that ~~such~~
24 ~~persons~~ individuals under the age of 18 years shall have the
25 prior written consent of a parent or legal guardian, and
26 provided further that ~~such~~ the persons individuals shall be
27 directly supervised during the conduct of each inspection or

1 enforcement action by an enforcement agent of the board, or by
2 a sheriff or head of police of any county, city, town or other
3 political subdivision, or by a deputy or officer thereof. No
4 ~~minor~~ individual under the age of 21 years may misrepresent
5 his or her age for the purpose of purchasing or attempting to
6 purchase tobacco, tobacco products, alternative nicotine
7 products, or electronic nicotine delivery systems. If
8 questioned about his or her age during an attempt to purchase
9 or receive tobacco, tobacco products, alternative nicotine
10 products, or electronic nicotine delivery systems, a minor an
11 individual under the age of 21 years shall state his or her
12 true age. A photograph or video recording of any ~~minor~~
13 individual under the age of 21 years assisting in an
14 inspection or enforcement action shall be taken prior to the
15 investigation. The appearance of ~~a minor~~ an individual under
16 the age of 21 years participating in an inspection or
17 enforcement action shall not be altered at the time of the
18 inspection. ~~The minor shall be under the age of 18.~~

19 Section 3. Section 28-11-4, Code of Alabama 1975, as
20 last amended by Act 2019-233, 2019 Regular Session, is amended
21 to read as follows:

22 "§28-11-4.

23 "Pursuant to its rulemaking authority, the board
24 shall adopt rules that have the full force and effect of law,
25 for purposes of the following:

1 "(1) Establishing permits for the distribution of
2 tobacco, tobacco products, electronic nicotine delivery
3 systems, and alternative nicotine products.

4 "(2) Preventing the distribution of tobacco, tobacco
5 products, electronic nicotine delivery systems, and
6 alternative nicotine products to ~~minors~~ individuals under the
7 age of 21 years.

8 "(3) Conducting annual random compliance tests to
9 assure compliance with applicable state and federal laws and
10 guidelines regarding the distribution of tobacco, tobacco
11 products, electronic nicotine delivery systems, and
12 alternative nicotine products. The tests involving any person
13 or location engaged in the distribution of tobacco may utilize
14 ~~minors~~ individuals under the age of 21 years.

15 Section 4. Sections 28-11-5, 28-11-6.1, and
16 28-11-6.2, Code of Alabama 1975, are amended to read as
17 follows:

18 "§28-11-5.

19 "The board may use funding, if available, from the
20 Department of Mental Health, other state or federal agencies,
21 grants, and private or public organizations to enforce this
22 chapter and to provide and distribute tobacco and nicotine
23 prevention materials to retail tobacco merchants and specialty
24 retailers of electronic nicotine delivery systems. The
25 materials shall provide information regarding state and
26 federal laws that prohibit access to tobacco, ~~or~~ tobacco
27 products, alternative nicotine products, and electronic

1 nicotine delivery systems by ~~minors~~ individuals under the age
2 of 21 years and other appropriate information. The board may
3 also provide consultation services for establishing programs
4 to minimize or eliminate sales of tobacco, ~~or~~ tobacco
5 products, alternative nicotine products, and electronic
6 nicotine delivery systems to ~~minors~~ individuals under the age
7 of 21 years pursuant to the responsible vendor program.

8 "§28-11-6.1.

9 "(a) No tobacco, ~~or~~ tobacco product, alternative
10 nicotine product, or electronic nicotine delivery system shall
11 be distributed by use of a vending machine unless ~~such~~ the
12 machine:

13 "(1) Is located in an area in which ~~minors~~
14 individuals under the age of 21 years are not permitted
15 access; or

16 "(2) Dispenses tobacco, ~~or~~ tobacco products, alternative
17 nicotine products, or electronic nicotine delivery
18 systems through the operation of a device that requires the
19 tobacco permit holder or an employee of the permit holder to
20 control the distribution of the product.

21 "(b) No tobacco, ~~or~~ tobacco product, alternative
22 nicotine product, or electronic nicotine delivery system shall
23 be distributed at retail by use of a vending machine if ~~the~~
24 ~~tobacco or tobacco product~~ is placed together with any
25 non-tobacco product or non-nicotine product, other than
26 matches, in the machine.

27 "§28-11-6.2.

1 "No tobacco, ~~or~~ tobacco product, alternative
2 nicotine product, or electronic nicotine delivery system shall
3 be distributed at retail through a self-service display unless
4 ~~such~~ the display is a vending machine as permitted under
5 Section 28-11-6.1 or is located in a tobacco specialty store
6 or at a specialty retailer of electronic nicotine delivery
7 systems.

8 Section 5. Sections 28-11-11 and 28-11-13, Code of
9 Alabama 1975, as last amended by Act 2019-233, 2019 Regular
10 Session, are amended to read as follows:

11 "§28-11-11.

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

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

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

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

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

1 products, alternative nicotine products, and electronic
2 nicotine delivery systems to ~~minors~~ individuals under the age
3 of 21 years.

4 "(5) Information as to the level of access and
5 availability of tobacco, tobacco products, alternative
6 nicotine products, and electronic nicotine delivery systems to
7 ~~minors~~ individuals under the age of 21 years.

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~~ individual under
12 the age of 21 years to purchase, use, possess, or transport
13 tobacco, a tobacco product, an electronic nicotine delivery
14 system, or an alternative nicotine product within this state.
15 It shall not be unlawful for ~~a minor~~ an individual under the
16 age of 21 years who is an employee of a tobacco, tobacco
17 product, electronic nicotine delivery system, or alternative
18 nicotine product permit holder to handle, transport, or sell
19 tobacco, a tobacco product, an electronic nicotine delivery
20 system, or an alternative tobacco product if the ~~minor~~
21 employee is acting within the line and scope of employment and
22 the permit holder, or an employee of the permit holder who is
23 21 years of age or older, is present.

24 "(b) It is unlawful for any ~~minor~~ individual under
25 the age of 21 years to present or offer to another person
26 proof of identification which is false, fraudulent, or not
27 actually his or her own proof of identification in order to

1 buy, receive, or otherwise obtain, or attempt to buy, receive,
2 or otherwise obtain, any tobacco, tobacco product, electronic
3 nicotine delivery system, or 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 Section 6. Sections 28-11-14, 28-11-15, 28-11-16,
9 and 28-11-18, Code of Alabama 1975, are amended to read as
10 follows:

11 "§28-11-14.

12 "(a) Any tobacco, or tobacco product, alternative
13 nicotine product, electronic nicotine delivery system, or
14 false proof of identification found in the possession of a
15 minor an individual under the age of 21 years is contraband
16 and subject to seizure by law enforcement. Any ~~minor~~
17 individual under the age of 21 years violating Section
18 28-11-13 shall be issued a citation similar to a uniform
19 nontraffic citation and shall be fined not less than ten
20 dollars (\$10) nor more than fifty dollars (\$50) for each
21 violation, and shall be assessed no other court costs or fees.

22 "(b) The minor shall not be required to pay any
23 other court costs or fees. Any statute or law to the contrary
24 notwithstanding, Notwithstanding any other provision of law,
25 the disposition of any violation shall be within the
26 jurisdiction of the district or municipal court and not the
27 juvenile court. Violations shall not be considered criminal

1 offenses and shall be administratively adjudicated by the
2 district or municipal court.

3 "§28-11-15.

4 "Any person who distributes tobacco or tobacco
5 products within this state shall post conspicuously and keep
6 so posted at each location of distribution and vending
7 machines a sign that is placed in ~~such a manner~~ a way that it
8 is likely to be read by those seeking to purchase or obtain
9 tobacco or tobacco products. Each sign shall state that:

10 "(1) Alabama law strictly prohibits the purchase of
11 tobacco products by persons under the age of ~~19~~ 21 years.

12 "(2) Proof of age is required for the purchase of
13 tobacco products.

14 "§28-11-16.

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

19 "a. As a tobacco cessation product.

20 "b. As a healthier alternative to smoking.

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

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

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

6 "(b) (1) A specialty retailer of electronic nicotine
7 delivery systems or manufacturer of tobacco, tobacco products,
8 electronic nicotine delivery systems, or alternative nicotine
9 products may not in any way sponsor, finance, or advertise a
10 scholarship of any kind using the brand name of any tobacco
11 product, alternative nicotine product, or electronic nicotine
12 delivery system.

13 "(2) A specialty retailer of electronic nicotine
14 delivery systems or manufacturer of tobacco, tobacco products,
15 electronic nicotine delivery systems, or alternative nicotine
16 products may not use the brand name of any tobacco product,
17 alternative nicotine product, or electronic nicotine delivery
18 system to advertise at or sponsor any stadium, concert,
19 sporting event, or other public performance event for which
20 individuals aged 21 years or older make up less than 85
21 percent of the total age demographic of performing
22 participants.

23 "(3) A specialty retailer of electronic nicotine
24 delivery systems or manufacturer of tobacco, tobacco products,
25 electronic nicotine delivery systems, or alternative nicotine
26 products may not advertise a tobacco product, electronic
27 nicotine delivery system, or alternative nicotine product in a

1 newspaper, magazine, periodical, or other print or digital
2 publication distributed in this state for which less than 85
3 percent of the viewership or readership of the publication is
4 made up of individuals 21 years of age or older as measured by
5 competent and reliable survey evidence.

6 "~~(b)~~ (c) (1) A violation of subsection (a) or
7 subsection (b) shall result in a one hundred dollar (\$100)
8 fine for the first occurrence.

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

12 "(3) Each day a violation of subsection (a) or
13 subsection (b) persists shall constitute a separate and
14 subsequent violation.

15 "(d) A retailer or manufacturer of tobacco, tobacco
16 products, electronic nicotine delivery systems, or alternative
17 nicotine products may not advertise, market, or offer for sale
18 tobacco, a tobacco product, an electronic nicotine delivery
19 system, or an alternative nicotine product in any of the
20 following ways:

21 "(1) By using, in the labeling or design of the
22 product, its packaging, or in its advertising or marketing
23 materials, the terms "candy" or "candies," any variant of
24 these words, or any other term referencing a type or brand of
25 candy, including types or brands of candy that do not include
26 the words "candy" or "candies" in their names or slogans.

1 "(2) By using, in the labeling or design of the
2 product, its packaging, or in its advertising or marketing
3 materials, the terms "cake" or "cakes" or "cupcake" or
4 "cupcakes" or "pie" or "pies," any variant of these words, or
5 any other term referencing a type or brand of cake, pastry, or
6 pie, including types or brands of cakes, pastries, or pies
7 that do not include the words "cake" or "cakes" or "cupcake"
8 or "cupcakes" or "pie" or "pies" in their names or slogans.

9 "(3) By using, in the labeling or design of the
10 product, its packaging, or in its advertising or marketing
11 materials, trade dress, trademarks, branding, or other related
12 imagery that imitates or replicates those of food brands or
13 other related products that are marketed to minors, including,
14 but not limited to, breakfast cereal, cookies, juice drinks,
15 soft drinks, frozen drinks, ice creams, sorbets, sherbets, and
16 frozen pops.

17 "(4) By using, in the labeling or design of the
18 product, its packaging, or in its advertising or marketing
19 materials, trade dress, trademarks, branding, or other related
20 imagery that depicts or signifies characters or symbols that
21 are known to appeal primarily to minors, including, but not
22 limited to, superheroes, comic book characters, video game
23 characters, television show characters, movie characters,
24 mythical creatures, unicorns, or that otherwise incorporates
25 related imagery or scenery.

26 "§28-11-18.

1 "(a) All liquid nicotine containers offered for sale
2 that are intended to be vaporized in an electronic nicotine
3 delivery system shall be contained in child-resistant
4 packaging.

5 "(b) A specialty retailer of electronic nicotine
6 delivery systems shall display in a prominent area of the
7 retail store near the point of sale a sign which contains the
8 following statements:

9 "(1) "ALABAMA LAW STRICTLY PROHIBITS THE PURCHASE OF
10 ALTERNATIVE NICOTINE PRODUCTS AND ELECTRONIC NICOTINE DELIVERY
11 SYSTEMS BY PERSONS UNDER THE AGE OF 21 YEARS."

12 "~~(1)~~(2) "THE USE OF SOME VAPING DEVICES MAY INCREASE
13 YOUR RISK OF EXPOSURE TO POTENTIALLY TOXIC LEVELS OF HEAVY
14 METALS SUCH AS LEAD, CHROMIUM, AND NICKEL."

15 "~~(2)~~(3) "WARNING: VAPING PRODUCTS OFFERED FOR SALE
16 IN THIS STORE CONTAIN NICOTINE UNLESS OTHERWISE MARKED.
17 NICOTINE IS A HIGHLY ADDICTIVE CHEMICAL WHICH CAN HARM BRAIN
18 DEVELOPMENT IN CHILDREN AND ADOLESCENTS AND WHICH POSES
19 SERIOUS HEALTH RISKS TO PREGNANT WOMEN AND THEIR BABIES."

20 Section 7. Section 28-11-17.1 is added to the Code
21 of Alabama 1975, to read as follows:

22 §28-11-17.1.

23 (a) (1) Beginning March 1, 2022, or other date not
24 more than 30 days following a premarket tobacco application
25 submission deadline issued by the FDA, whichever is later,
26 every e-liquid manufacturer and manufacturer of alternative
27 nicotine products whose products are sold in this state,

1 whether directly or through a distributor, retailer, or
2 similar intermediary or intermediaries, shall execute and
3 deliver on a form prescribed by the commissioner, a
4 certification to the commissioner certifying, under penalty of
5 perjury, either of the following:

6 a. The product was on the market in the United
7 States as of August 8, 2016, and the manufacturer has applied
8 for a marketing order pursuant to 21 U.S.C. §387j for the
9 e-liquid, e-liquid in combination with an electronic nicotine
10 delivery system, or alternative nicotine product, whichever is
11 applicable, by submitting a premarket tobacco product
12 application on or before September 9, 2020, to the FDA; and
13 either of the following is true:

14 1. The premarket tobacco product application for the
15 product remains under review by the FDA.

16 2. The FDA has issued a no marketing order for the
17 e-liquid, e-liquid in combination with an electronic nicotine
18 delivery system, or alternative nicotine product, whichever is
19 applicable, from the FDA; however, the agency or a federal
20 court has issued a stay order or injunction during the
21 pendency of the manufacturer's appeal of the no marketing
22 order.

23 b. The manufacturer has received a marketing order
24 or other authorization under 21 U.S.C. §387j for the e-liquid,
25 e-liquid in combination with an electronic nicotine delivery
26 system, or alternative nicotine product, whichever is
27 applicable, from the FDA.

1 (2) In addition to the requirements in subdivision
2 (1), each manufacturer shall provide a copy of the cover page
3 of the premarket tobacco application with evidence of receipt
4 of the application by the FDA or a copy of the cover page of
5 the marketing order or other authorization issued pursuant to
6 21 U.S.C. §387j, whichever is applicable.

7 (b) Any manufacturer submitting a certification
8 pursuant to subsection (a) shall notify the commissioner
9 within 30 days of any material change to the certification,
10 including issuance by the FDA of any of the following:

11 (1) A market order or other authorization pursuant
12 to 21 U.S.C. §387j.

13 (2) An order requiring a manufacturer to remove a
14 product from the market either temporarily or permanently.

15 (3) Any notice of action taken by the FDA affecting
16 the ability of the new product to be introduced or delivered
17 into interstate commerce for commercial distribution.

18 (4) Any change in policy that results in a product
19 no longer being exempt from federal enforcement oversight.

20 (c) The commissioner shall develop and maintain a
21 directory listing all e-liquid manufacturers and manufacturers
22 of alternative nicotine products that have provided
23 certifications that comply with subsection (a) and all
24 products that are listed in those certifications.

25 (d) The commissioner shall do all of the following:

26 (1) Make the directory available for public
27 inspection on its website by ~~October 1, 2021~~ May 1, 2022.

1 (2) Update the directory as necessary in order to
2 correct mistakes and to add or remove e-liquid manufacturers,
3 manufacturers of alternative nicotine products, or products
4 manufactured by those manufacturers consistent with the
5 requirements of subsections (a) and (b) on a monthly basis.

6 (3) Send monthly notifications to each wholesaler,
7 jobber, semijobber, retailer, importer, or distributor of
8 tobacco products that have qualified or registered with the
9 Department of Revenue, by electronic communication, containing
10 a list of all changes that have been made to the directory in
11 the previous month. In lieu of sending monthly notifications,
12 the commissioner may make the information available in a
13 prominent place on the Department of Revenue's public website.

14 (4) Information required to be listed in the
15 directory shall not be subject to the confidentiality and
16 disclosure provisions in Section 40-2A-10, Code of Alabama
17 1975.

18 (e) Notwithstanding subsection (a), if an e-liquid
19 manufacturer or manufacturer of alternative nicotine products
20 can demonstrate to the commissioner that the FDA has issued a
21 rule, guidance, or any other formal statement that temporarily
22 exempts a product from the federal premarket tobacco
23 application requirements, the product may be added to the
24 directory upon request by the manufacturer if the manufacturer
25 provides sufficient evidence that the product is compliant
26 with the federal rule, guidance, or other formal statement, as
27 applicable.

1 (f) Each certifying e-liquid manufacturer and
2 manufacturer of alternative nicotine products shall pay an
3 initial fee of two thousand dollars (\$2,000) to offset the
4 costs incurred by the department for processing the
5 certifications and operating the directory. The commissioner
6 shall collect an annual renewal fee of five hundred dollars
7 (\$500) to offset the costs associated with maintaining the
8 directory and satisfying the requirements of this section. The
9 fees received under this section by the department shall be
10 used by the department exclusively for processing the
11 certifications and operating and maintaining the directory.
12 After the payment of these expenses, two-thirds of the
13 remaining funds shall be deposited into the General Fund, and
14 the remaining one-third shall be distributed evenly to the
15 Alabama State Law Enforcement Agency and to the board.

16 (g) (1) Beginning ~~October 1, 2021,~~ May 1, 2022, or on
17 the date that the Department of Revenue first makes the
18 directory available for public inspection on its website as
19 provided in subsection (d), whichever is later, an e-liquid
20 manufacturer or manufacturer of alternative nicotine products
21 who offers for sale a product not listed on the directory is
22 subject to a one thousand dollars (\$1,000) daily fine for each
23 product offered for sale in violation of this section until
24 the offending product is removed from the market or until the
25 offending product is properly listed on the directory.

26 (2) Any other violation of this section shall result
27 in a fine of five hundred dollars (\$500) per offense.

1 (3) All fines collected pursuant to this subsection
2 (h) The commissioner shall adopt rules for the
3 implementation and enforcement of this section.

4 Section 8. Section 28-11-20 is added to the Code of
5 Alabama 1975, to read as follows:

6 §28-11-20.

7 (a) The Department of Mental Health shall be
8 responsible for ensuring that the state is in compliance with
9 and satisfies all reporting and enforcement obligations of the
10 United States Department of Health and Human Services (HHS)
11 pursuant to 42 U.S.C. §300x-26, as amended, including, but not
12 limited to, annually preparing and submitting to the Secretary
13 of Health and Human Services a report, as required by federal
14 law, describing all of the following:

15 (1) The activities carried out by the Department of
16 Mental Health in coordination with the Alabama State Law
17 Enforcement Agency to ensure that tobacco retailers or
18 specialty retailers of electronic nicotine delivery systems do
19 not sell alternative nicotine products, tobacco products, or
20 electronic nicotine delivery systems to individuals under the
21 age of 21 years.

22 (2) The extent of success the Department of Mental
23 Health, in coordination with the Alabama State Law Enforcement
24 Agency, has achieved in ensuring that retailers do not sell
25 alternative nicotine products, tobacco products, or electronic
26 nicotine delivery systems to individuals under the age of 21
27 years.

1 (3) The strategies utilized by the Department of
2 Mental Health, in coordination with the Alabama State Law
3 Enforcement Agency, to ensure that retailers do not sell
4 alternative nicotine products, tobacco products, or electronic
5 nicotine delivery systems to individuals under the age of 21.

6 (b) In addition to the requirements listed in
7 subsection (a), the Department of Mental Health shall adopt
8 rules and act as necessary to satisfy the requirements of 42
9 U.S.C. §300x-26, as amended, and any rules adopted thereunder
10 by the Secretary of Health and Human Services. Rules adopted
11 pursuant to the authority delegated to the Department of
12 Mental Health in this section shall be narrowly tailored to
13 bring this state into compliance with federal law and shall
14 comply with the requirements of the Administrative Procedure
15 Act, Title 41, Chapter 22.

16 (c) The Department of Mental Health is responsible
17 for applying for transitional grant monies provided pursuant
18 to 42 U.S.C. §300x-26, as amended, through the term of the
19 transitional grants. Any transitional grant monies awarded to
20 the state shall be used for the following purposes:

21 (1) To ensure compliance with subsection (a).

22 (2) To further tobacco product, alternative nicotine
23 product, or electronic nicotine delivery system cessation
24 programs.

25 (3) To further tobacco product, alternative nicotine
26 product, or electronic nicotine delivery system education
27 programs.

1 Section 9. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Judiciary 02-FEB-21

Read for the second time and placed
on the calendar with 1 substitute
and..... 11-MAR-21

Read for the third time and passed
as amended..... 30-MAR-21

Yeas 74, Nays 18, Abstains 2

Jeff Woodard
Clerk