

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

1
2 ENROLLED, An Act,

3 Relating to tobacco products and electronic nicotine
4 delivery systems and products; to amend Sections 13A-12-3,
5 13A-12-3.1, 28-11-2, 28-11-4, 28-11-11, and 28-11-13, as last
6 amended by Act 2019-233, 2019 Regular Session, and Sections
7 28-11-1, 28-11-3, 28-11-5, 28-11-6.1, 28-11-6.2, 28-11-14,
8 28-11-15, 28-11-16, and 28-11-18, Code of Alabama 1975; and to
9 add Sections 28-11-17.1 and 28-11-20 to the Code of Alabama
10 1975; to raise the minimum age for legal possession,
11 transportation, and purchase of tobacco products, electronic
12 nicotine delivery systems, and alternative nicotine products;
13 to prohibit the advertisement of tobacco products, electronic
14 nicotine delivery systems, or alternative nicotine products in
15 certain print or electronic media; to prohibit manufacturers
16 or retailers of tobacco products, electronic nicotine delivery
17 systems, or alternative nicotine products from sponsoring,
18 financing, or advertising under certain conditions and at
19 certain locations; to require retailers offering electronic
20 nicotine delivery systems for sale to place signs in a
21 prominent area near the point of sale containing certain
22 statements; to prohibit the sale of alternative nicotine
23 products or electronic nicotine delivery systems in vending
24 machines unless entry to the facility is restricted to certain
25 individuals; require manufacturers of e-liquids and

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

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

16 "§13A-12-3.

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

24 "§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.

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

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

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

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

16 "(9) DELIVERY SALES STATUTES. Those provisions
17 contained within Sections 13A-12-3.2, 13A-12-3.3, 13A-12-3.4,
18 13A-12-3.5, 13A-12-3.6, and 13A-12-3.7.

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

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

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

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

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

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

9 "(16) MAILS or MAILING. The shipment of cigarettes
10 through the United States Postal Service.

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

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

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

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

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

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

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

13 "§28-11-1.

14 "It is the intent of the Legislature to prohibit
15 access to tobacco ~~and,~~ tobacco products ~~by minors,~~ alternative
16 nicotine products, and electronic nicotine delivery systems to
17 individuals under the age of 21 years and ~~thereby~~ prevent all
18 of the following:

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

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

1 "(3) The failure by this state to comply with
2 federal guidelines or grant funding requirements, when
3 applicable, which relate to the establishment by the state of
4 programs and policies dealing with the sale of tobacco ~~or~~
5 tobacco products ~~to minors~~, alternative nicotine products, and
6 electronic nicotine delivery systems.

7 "§28-11-2.

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

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

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

23 "(3) CHILD-RESISTANT PACKAGING. Liquid nicotine
24 container packaging meeting the requirements of 15 U.S.C.
25 §1472a.

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

3 "~~(4)~~ (5) DISTRIBUTION. To sell, barter, exchange, or
4 give tobacco or tobacco products for promotional purposes or
5 for gratis.

6 "~~(5)~~ (6) ELECTRONIC NICOTINE DELIVERY SYSTEM. Any
7 ~~vaporizing~~ electronic device that ~~produces~~ uses a battery and
8 heating element in combination with an e-liquid or tobacco to
9 produce a vapor that delivers nicotine ~~or other substance~~ to
10 the ~~person~~ individual inhaling from the device to simulate
11 smoking, and includes, but is not limited to, products that
12 may be offered to, purchased by, or marketed to consumers as
13 an electronic cigarette, electronic cigar, electronic
14 cigarillo, electronic pipe, electronic hookah, vape pen, vape
15 tool, vaping device, or any variation of these terms. The term
16 also includes any ~~liquid~~ e-liquid intended to be vaporized in
17 any device included in this subdivision, ~~regardless of whether~~
18 ~~or not the liquid contains nicotine.~~

19 "~~(6)~~ (7) ELECTRONIC NICOTINE DELIVERY SYSTEM
20 RETAILER. Any retail business which offers for sale electronic
21 nicotine delivery systems.

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

1 "(9) E-LIQUID MANUFACTURER. Any person who
2 manufactures, fabricates, assembles, processes, mixes,
3 prepares, labels, repacks, or relabels an e-liquid to be
4 sealed in final packaging intended for consumer use. This term
5 includes an owner of a brand or formula for an e-liquid who
6 contracts with another person to complete the fabrication and
7 assembly of the product to the brand or formula owner's
8 standards.

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

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

18 "~~(9)~~(12) MINOR. Any ~~person~~ individual under the age
19 of 19 years.

20 "~~(10)~~(13) PERSON. Any natural person, firm,
21 partnership, association, company, corporation, or other
22 entity. Person does not include a manufacturer or wholesaler
23 of tobacco or tobacco products nor does it include employees
24 of the permit holder.

1 "~~(11)~~(14) PROOF OF IDENTIFICATION. Any one or more
2 of the following documents used for purposes of determining
3 the age of ~~a person~~ an individual purchasing, attempting to
4 purchase, or receiving tobacco, tobacco products, electronic
5 nicotine delivery systems, or alternative nicotine products:

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

8 "b. United States Uniform Service Identification.

9 "c. A valid passport.

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

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

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

19 "~~(13)~~(16) SAMPLER. Any business or person who
20 distributes tobacco or tobacco products for promotional
21 purposes.

22 "~~(14)~~(17) SELF-SERVICE DISPLAY. A display that
23 contains tobacco or tobacco products and is located in an area
24 openly accessible to purchasers at retail and from which ~~such~~
25 the purchasers can readily access tobacco or tobacco products

1 without the assistance of the tobacco permit holder or an
2 employee of the permit holder. A display case that holds
3 tobacco or tobacco products behind locked doors does not
4 constitute a self-service display.

5 "~~(15)~~(18) SPECIALTY RETAILER OF ELECTRONIC NICOTINE
6 DELIVERY SYSTEMS. A business establishment at which any of the
7 following are true:

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

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

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

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

21 "e. Samples of electronic nicotine delivery systems
22 are offered to customers.

23 "f. Liquids intended to be vaporized through the use
24 of an electronic nicotine delivery system are produced at the

1 facility or are produced by the owner of the establishment or
2 any of its agents or employees for sale at the establishment.

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

6 ~~"a. Cigarettes.~~

7 ~~"b. Cigars.~~

8 ~~"c. Chewing tobacco.~~

9 ~~"d. Snuff.~~

10 ~~"e. Pipe tobacco.~~

11 ~~"f. Smokeless tobacco.~~

12 "(19) TOBACCO or TOBACCO PRODUCT. Any product made
13 or derived from tobacco that is intended for human
14 consumption, including any component, part, or accessory of a
15 tobacco product, except for raw materials other than tobacco
16 used in manufacturing a component, part, or accessory of a
17 tobacco product, but does not include an article that is a
18 drug under Section 201(g)(1) of the Federal Food, Drug, and
19 Cosmetic Act, a device under Section 201(h) of the Federal
20 Food, Drug, and Cosmetic Act, or a combination product
21 described in Section 503(g) of the Federal Food, Drug, and
22 Cosmetic Act.

23 ~~"(17)~~ (20) TOBACCO PERMIT. A permit issued by the
24 board to allow the permit holder to engage in the distribution
25 of tobacco, tobacco products, electronic nicotine delivery

1 systems, or alternative nicotine products at the location
2 identified in the permit.

3 "~~(18)~~(21) TOBACCO SPECIALTY STORE. A business that
4 derives at least 75 percent of its revenue from tobacco or
5 tobacco products.

6 "§28-11-3.

7 "The board, in conjunction with federal, state, and
8 local law enforcement agencies, shall enforce state and
9 federal laws that prohibit the distribution of tobacco, ~~or~~
10 tobacco products, alternative nicotine products, and
11 electronic nicotine delivery systems to ~~minors~~ individuals
12 under the age of 21 years. Notwithstanding the foregoing, for
13 purposes of inspections and enforcement actions undertaken
14 pursuant to this section, ~~minors~~ individuals under the age of
15 21 years may be enlisted to attempt to purchase or purchase
16 tobacco, tobacco products, alternative nicotine products, and
17 electronic nicotine delivery systems, provided that ~~such~~
18 ~~persons~~ individuals under the age of 18 years shall have the
19 prior written consent of a parent or legal guardian, and
20 provided further that ~~such~~ the persons individuals shall be
21 directly supervised during the conduct of each inspection or
22 enforcement action by an enforcement agent of the board, or by
23 a sheriff or head of police of any county, city, town or other
24 political subdivision, or by a deputy or officer thereof. No
25 ~~minor~~ individual under the age of 21 years may misrepresent

1 his or her age for the purpose of purchasing or attempting to
2 purchase tobacco, tobacco products, alternative nicotine
3 products, or electronic nicotine delivery systems. If
4 questioned about his or her age during an attempt to purchase
5 or receive tobacco, tobacco products, alternative nicotine
6 products, or electronic nicotine delivery systems, a minor an
7 individual under the age of 21 years shall state his or her
8 true age. A photograph or video recording of any ~~minor~~
9 individual under the age of 21 years assisting in an
10 inspection or enforcement action shall be taken prior to the
11 investigation. The appearance of ~~a minor~~ an individual under
12 the age of 21 years participating in an inspection or
13 enforcement action shall not be altered at the time of the
14 inspection. ~~The minor shall be under the age of 18.~~

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

18 "§28-11-4.

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

22 "(1) Establishing permits for the distribution of
23 tobacco, tobacco products, electronic nicotine delivery
24 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~~ individuals under the
4 age of 21 years.

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

12 Section 4. Sections 28-11-5, 28-11-6.1, and
13 28-11-6.2, Code of Alabama 1975, are amended to read as
14 follows:

15 "§28-11-5.

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

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

7 "§28-11-6.1.

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

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

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

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

1 "§28-11-6.2.

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

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

12 "§28-11-11.

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

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

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

23 "(3) The total number of successful compliance
24 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, tobacco
5 products, alternative nicotine products, and electronic
6 nicotine delivery systems to ~~minors~~ individuals under the age
7 of 21 years.

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

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

14 "§28-11-13.

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

1 the permit holder, or an employee of the permit holder who is
2 21 years of age or older, is present.

3 "(b) It is unlawful for any ~~minor~~ individual under
4 the age of 21 years to present or offer to another person
5 proof of identification which is false, fraudulent, or not
6 actually his or her own proof of identification in order to
7 buy, receive, or otherwise obtain, or attempt to buy, receive,
8 or otherwise obtain, any tobacco, tobacco product, electronic
9 nicotine delivery system, or alternative nicotine product.

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

14 Section 6. Sections 28-11-14, 28-11-15, 28-11-16,
15 and 28-11-18, Code of Alabama 1975, are amended to read as
16 follows:

17 "§28-11-14.

18 "(a) Any tobacco, or tobacco product, alternative
19 nicotine product, electronic nicotine delivery system, or
20 false proof of identification found in the possession of a
21 minor an individual under the age of 21 years is contraband
22 and subject to seizure by law enforcement. Any ~~minor~~
23 individual under the age of 21 years violating Section
24 28-11-13 shall be issued a citation similar to a uniform
25 nontraffic citation and shall be fined not less than ten

1 dollars (\$10) nor more than fifty dollars (\$50) for each
 2 violation, and shall be assessed no other court costs or fees.

3 "(b) The minor shall not be required to pay any
 4 other court costs or fees. Any statute or law to the contrary
 5 notwithstanding, Notwithstanding any other provision of law,
 6 the disposition of any violation shall be within the
 7 jurisdiction of the district or municipal court and not the
 8 juvenile court. Violations shall not be considered criminal
 9 offenses and shall be administratively adjudicated by the
 10 district or municipal court.

11 "§28-11-15.

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

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

20 "(2) Proof of age is required for the purchase of
 21 tobacco products.

22 "§28-11-16.

23 "(a) (1) A retailer or manufacturer of electronic
 24 nicotine delivery systems or alternative nicotine products may

1 not advertise an electronic nicotine delivery system or an
2 alternative nicotine product in any of the following ways:

3 "a. As a tobacco cessation product.

4 "b. As a healthier alternative to smoking.

5 "c. As available for purchase in any variety of
6 flavors other than tobacco, mint, or menthol on any outdoor
7 billboard.

8 "d. On any outdoor billboard located within 1,000
9 feet of any public or private K-12 school or public
10 playground.

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

16 "(b) (1) A specialty retailer of electronic nicotine
17 delivery systems or manufacturer of tobacco, tobacco products,
18 electronic nicotine delivery systems, or alternative nicotine
19 products may not in any way sponsor, finance, or advertise a
20 scholarship of any kind using the brand name of any tobacco
21 product, alternative nicotine product, or electronic nicotine
22 delivery system.

23 "(2) A specialty retailer of electronic nicotine
24 delivery systems or manufacturer of tobacco, tobacco products,
25 electronic nicotine delivery systems, or alternative nicotine

1 products may not use the brand name of any tobacco product,
2 alternative nicotine product, or electronic nicotine delivery
3 system to advertise at or sponsor any stadium, concert,
4 sporting event, or other public performance event for which
5 individuals aged 21 years or older make up less than 85
6 percent of the total age demographic of performing
7 participants.

8 (3) A specialty retailer of electronic nicotine
9 delivery systems or manufacturer of tobacco, tobacco products,
10 electronic nicotine delivery systems, or alternative nicotine
11 products may not advertise a tobacco product, electronic
12 nicotine delivery system, or alternative nicotine product in a
13 newspaper, magazine, periodical, or other print or digital
14 publication distributed in this state for which less than 85
15 percent of the viewership or readership of the publication is
16 made up of individuals 21 years of age or older as measured by
17 competent and reliable survey evidence.

18 ~~(b)~~ (c) (1) A violation of subsection (a) or
19 subsection (b) shall result in a one hundred dollar (\$100)
20 fine for the first occurrence.

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

1 "(3) Each day a violation of subsection (a) or
2 subsection (b) persists shall constitute a separate and
3 subsequent violation.

4 "(d) A retailer or manufacturer of tobacco, tobacco
5 products, electronic nicotine delivery systems, or alternative
6 nicotine products may not advertise, market, or offer for sale
7 tobacco, a tobacco product, an electronic nicotine delivery
8 system, or an alternative nicotine product in any of the
9 following ways:

10 "(1) By using, in the labeling or design of the
11 product, its packaging, or in its advertising or marketing
12 materials, the terms "candy" or "candies," any variant of
13 these words, or any other term referencing a type or brand of
14 candy, including types or brands of candy that do not include
15 the words "candy" or "candies" in their names or slogans.

16 "(2) By using, in the labeling or design of the
17 product, its packaging, or in its advertising or marketing
18 materials, the terms "cake" or "cakes" or "cupcake" or
19 "cupcakes" or "pie" or "pies," any variant of these words, or
20 any other term referencing a type or brand of cake, pastry, or
21 pie, including types or brands of cakes, pastries, or pies
22 that do not include the words "cake" or "cakes" or "cupcake"
23 or "cupcakes" or "pie" or "pies" in their names or slogans.

24 "(3) By using, in the labeling or design of the
25 product, its packaging, or in its advertising or marketing

1 materials, trade dress, trademarks, branding, or other related
2 imagery that imitates or replicates those of food brands or
3 other related products that are marketed to minors, including,
4 but not limited to, breakfast cereal, cookies, juice drinks,
5 soft drinks, frozen drinks, ice creams, sorbets, sherbets, and
6 frozen pops.

7 "(4) By using, in the labeling or design of the
8 product, its packaging, or in its advertising or marketing
9 materials, trade dress, trademarks, branding, or other related
10 imagery that depicts or signifies characters or symbols that
11 are known to appeal primarily to minors, including, but not
12 limited to, superheroes, comic book characters, video game
13 characters, television show characters, movie characters,
14 mythical creatures, unicorns, or that otherwise incorporates
15 related imagery or scenery.

16 "§28-11-18.

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

21 "(b) A specialty retailer of electronic nicotine
22 delivery systems shall display in a prominent area of the
23 retail store near the point of sale a sign which contains the
24 following statements:

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

4 "~~(1)~~ (2) "THE USE OF SOME VAPING DEVICES MAY INCREASE
5 YOUR RISK OF EXPOSURE TO POTENTIALLY TOXIC LEVELS OF HEAVY
6 METALS SUCH AS LEAD, CHROMIUM, AND NICKEL."

7 "~~(2)~~ (3) "WARNING: VAPING PRODUCTS OFFERED FOR SALE
8 IN THIS STORE CONTAIN NICOTINE UNLESS OTHERWISE MARKED.
9 NICOTINE IS A HIGHLY ADDICTIVE CHEMICAL WHICH CAN HARM BRAIN
10 DEVELOPMENT IN CHILDREN AND ADOLESCENTS AND WHICH POSES
11 SERIOUS HEALTH RISKS TO PREGNANT WOMEN AND THEIR BABIES."

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

14 §28-11-17.1.

15 (a) (1) Beginning March 1, 2022, or other date not
16 more than 30 days following a premarket tobacco application
17 submission deadline issued by the FDA, whichever is later,
18 every e-liquid manufacturer and manufacturer of alternative
19 nicotine products whose products are sold in this state,
20 whether directly or through a distributor, retailer, or
21 similar intermediary or intermediaries, shall execute and
22 deliver on a form prescribed by the commissioner, a
23 certification to the commissioner certifying, under penalty of
24 perjury, either of the following:

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

9 1. The premarket tobacco product application for the
10 product remains under review by the FDA.

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

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

23 (2) In addition to the requirements in subdivision
24 (1), each manufacturer shall provide a copy of the cover page
25 of the premarket tobacco application with evidence of receipt

1 of the application by the FDA or a copy of the cover page of
2 the marketing order or other authorization issued pursuant to
3 21 U.S.C. §387j, whichever is applicable.

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

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

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

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

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

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

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

23 (1) Make the directory available for public
24 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

1 with the federal rule, guidance, or other formal statement, as
2 applicable.

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

18 (g) Beginning on September 1, 2021, no e-liquid,
19 e-liquid in combination with an electronic nicotine delivery
20 system, or alternative nicotine product that, in the case of
21 any such product, contains synthetic nicotine or nicotine
22 derived from a source other than tobacco may be sold or
23 otherwise distributed in this state without first obtaining
24 approval from the United States Food and Drug Administration
25 for sale as a drug under Section 201(g)(1) of the Federal

1 Food, Drug, and Cosmetic Act, a device under Section 201(h) of
 2 the Federal Food, Drug, and Cosmetic Act, a combination
 3 product described in Section 503(g) of the Federal Food, Drug,
 4 and Cosmetic Act, or some other medical purpose.

5 ~~(g)~~ (h) (1) Beginning ~~October 1, 2021,~~ May 1, 2022,
 6 or on the date that the Department of Revenue first makes the
 7 directory available for public inspection on its website as
 8 provided in subsection (d), whichever is later, an e-liquid
 9 manufacturer or manufacturer of alternative nicotine products
 10 who offers for sale a product not listed on the directory is
 11 subject to a one thousand dollars (\$1,000) daily fine for each
 12 product offered for sale in violation of this section until
 13 the offending product is removed from the market or until the
 14 offending product is properly listed on the directory.

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

17 (3) All fines collected pursuant to this subsection

18 ~~(h)~~ (i) The commissioner shall adopt rules for the
 19 implementation and enforcement of this section.

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

22 §28-11-20.

23 (a) The Department of Mental Health shall be
 24 responsible for ensuring that the state is in compliance with
 25 and satisfies all reporting and enforcement obligations of the

1 United States Department of Health and Human Services (HHS)
2 pursuant to 42 U.S.C. §300x-26, as amended, including, but not
3 limited to, annually preparing and submitting to the Secretary
4 of Health and Human Services a report, as required by federal
5 law, describing all of the following:

6 (1) The activities carried out by the Department of
7 Mental Health in coordination with the Alabama State Law
8 Enforcement Agency to ensure that tobacco retailers or
9 specialty retailers of electronic nicotine delivery systems do
10 not sell alternative nicotine products, tobacco products, or
11 electronic nicotine delivery systems to individuals under the
12 age of 21 years.

13 (2) The extent of success the Department of Mental
14 Health, in coordination with the Alabama State Law Enforcement
15 Agency, has achieved in ensuring that retailers do not sell
16 alternative nicotine products, tobacco products, or electronic
17 nicotine delivery systems to individuals under the age of 21
18 years.

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

24 (b) In addition to the requirements listed in
25 subsection (a), the Department of Mental Health shall adopt

1 rules and act as necessary to satisfy the requirements of 42
2 U.S.C. §300x-26, as amended, and any rules adopted thereunder
3 by the Secretary of Health and Human Services. Rules adopted
4 pursuant to the authority delegated to the Department of
5 Mental Health in this section shall be narrowly tailored to
6 bring this state into compliance with federal law and shall
7 comply with the requirements of the Administrative Procedure
8 Act, Title 41, Chapter 22.

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

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

15 (2) To further tobacco product, alternative nicotine
16 product, or electronic nicotine delivery system cessation
17 programs.

18 (3) To further tobacco product, alternative nicotine
19 product, or electronic nicotine delivery system education
20 programs.

21 Section 9. This act shall become effective on the
22 first day of the third month following its passage and
23 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 30-MAR-21, as amended.

Jeff Woodard
Clerk

Senate	04-MAY-21	Amended and Passed
House	06-MAY-21	Concurred in Senate Amendment