

1 HB119
2 203663-1
3 By Representatives Drummond and Stringer
4 RFD: State Government
5 First Read: 04-FEB-20

8 SYNOPSIS: Under existing law, an individual under the
9 age of 19 may not purchase, possess, or transport
10 tobacco products, electronic nicotine delivery
11 systems, or alternative nicotine products.

12 Existing law also places restrictions on the
13 advertisement and marketing of electronic nicotine
14 delivery systems and alternative nicotine products.

15 This bill would raise the minimum age for
16 legal possession, transportation, and purchase of
17 tobacco products, electronic nicotine delivery
18 systems, and alternative nicotine products from 19
19 to 21.

20 This bill would prohibit the advertisement
21 or promotion of tobacco products, electronic
22 nicotine delivery systems, or alternative nicotine
23 products in certain circumstances.

24 This bill would prohibit manufacturers or
25 retailers of tobacco products, electronic nicotine
26 delivery systems, or alternative nicotine products
27 from marketing, advertising, or offering for sale

1 tobacco, tobacco products, electronic nicotine
2 delivery systems or alternative nicotine products
3 by: using branding or imagery that depicts,
4 signifies, or denotes flavoring resembling or
5 replicating the taste of candies, cakes, or other
6 sugary treats, as well as other food and drink
7 products that are primarily marketed to children;
8 or using branding or imagery that depicts,
9 signifies, or denotes characters, symbols, or
10 scenery from comic books, movies, video games,
11 television shows that are known to be marketed
12 primarily toward children, or that otherwise
13 incorporate mythical concepts or creatures known to
14 be used primarily in products that are marketed
15 toward children.

16 This bill would require retailers offering
17 electronic nicotine delivery systems for sale to
18 place signs in a prominent area near the point of
19 sale containing statements that Alabama law
20 prohibits their sale to persons under the age of
21 21, that they have the potential to transfer
22 harmful heavy metals into the body during use, and
23 that they contain nicotine unless otherwise marked.

24 This bill would also prohibit the sale of
25 alternative nicotine products or electronic
26 nicotine delivery systems in vending machines

1 unless entry to the facility is restricted to
2 persons 21 years of age and older.

3
4 A BILL
5 TO BE ENTITLED
6 AN ACT

7
8 Relating to tobacco products and electronic nicotine
9 delivery systems and products; to amend Sections 13A-12-3,
10 13A-12-3.1, 28-11-4, 28-11-11, and 28-11-13, as last amended
11 by Act 2019-233, 2019 Regular Session, and Sections 28-11-1,
12 28-11-3, 28-11-5, 28-11-6.1, 28-11-6.2, 28-11-14, 28-11-15,
13 28-11-16, and 28-11-18, Code of Alabama 1975, to raise the
14 minimum age for legal possession, transportation, and purchase
15 of tobacco products, electronic nicotine delivery systems, and
16 alternative nicotine products from 19 years to 21 years; to
17 prohibit the advertisement of tobacco products, electronic
18 nicotine delivery systems, or alternative nicotine products in
19 certain print or electronic media; to prohibit manufacturers
20 or retailers of tobacco products, electronic nicotine delivery
21 systems, or alternative nicotine products from sponsoring,
22 financing, or advertising an academic scholarship of any kind,
23 from advertising at or sponsoring stadiums, concerts, sporting
24 events, or other public events meeting certain criteria, and
25 from targeting children in the marketing, advertising, or
26 offering for sale tobacco, tobacco products, electronic
27 nicotine delivery systems or alternative nicotine products; to

1 require retailers offering electronic nicotine delivery
2 systems for sale to place signs in a prominent area near the
3 point of sale containing statements that Alabama law prohibits
4 their sale to individuals under the age of 21, that they have
5 the potential to transfer harmful heavy metals into the body
6 during use, and that they contain nicotine unless otherwise
7 marked; and to prohibit the sale of alternative nicotine
8 products or electronic nicotine delivery systems in vending
9 machines unless entry to the facility is restricted to
10 individuals aged 21 years and older.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

15 "§13A-12-3.

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

23 "§13A-12-3.1.

24 "For purposes of this article, the following terms
25 shall have the following meanings:

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

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

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

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

9 "(5) COMMISSIONER. The Commissioner of the Alabama
10 Department of Revenue.

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

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

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

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

24 "(8) DELIVERY SALE OF ELECTRONIC NICOTINE DELIVERY
25 SYSTEMS OR ALTERNATIVE NICOTINE PRODUCTS. Any sale of
26 electronic nicotine delivery systems or alternative nicotine
27 products to a consumer in this state, regardless of whether

1 the seller is located in this state, where either of the
2 following is true:

3 "a. The purchaser submits the order for the sale by
4 means of a telephonic or other method of voice transmission,
5 the mails or any other delivery service, facsimile
6 transmission, or the Internet or other online service.

7 "b. The electronic nicotine delivery systems or
8 alternative nicotine products are delivered by use of the
9 mails or other delivery service.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 "(22) WITHIN THIS STATE. Within the exterior limits
25 of the State of Alabama.

26 Section 2. Sections 28-11-1 and 28-11-3, Code of
27 Alabama 1975, are amended to read as follows:

1 "§28-11-1.

2 "It is the intent of the Legislature to prohibit
3 access to tobacco ~~and,~~ tobacco products ~~by minors,~~ alternative
4 nicotine products, and electronic nicotine delivery systems to
5 individuals under the age of 21 years and thereby prevent all
6 of the following:

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

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

14 "(3) The failure by this state to comply with
15 federal guidelines or grant funding requirements, when
16 applicable, which relate to the establishment by the state of
17 programs and policies dealing with the sale of tobacco ~~or,~~
18 tobacco products ~~to minors,~~ alternative nicotine products, and
19 electronic nicotine delivery systems.

20 "§28-11-3.

21 "The board, in conjunction with federal, state, and
22 local law enforcement agencies, shall enforce state and
23 federal laws that prohibit the distribution of tobacco, ~~or~~
24 tobacco products, alternative nicotine products, and
25 electronic nicotine delivery systems to ~~minors~~ individuals
26 under the age of 21. Notwithstanding the foregoing, for
27 purposes of inspections and enforcement actions undertaken

1 pursuant to this section, ~~minors~~ individuals under the age of
2 21 may be enlisted to attempt to purchase or purchase tobacco,
3 tobacco products, alternative nicotine products, and
4 electronic nicotine delivery systems, provided that ~~such the~~
5 ~~persons~~ individuals shall have the prior written consent of a
6 parent or legal guardian, and provided further that ~~such the~~
7 ~~persons~~ individuals shall be directly supervised during the
8 conduct of each inspection or enforcement action by an
9 enforcement agent of the board, or by a sheriff or head of
10 police of any county, city, town or other political
11 subdivision, or by a deputy or officer thereof. No ~~minor~~
12 individual under the age of 21 may misrepresent his or her age
13 for the purpose of purchasing or attempting to purchase
14 tobacco, tobacco products, alternative nicotine products, or
15 electronic nicotine delivery systems. If questioned about his
16 or her age during an attempt to purchase or receive tobacco,
17 tobacco products, alternative nicotine products, or electronic
18 nicotine delivery systems, ~~a minor~~ an individual under the age
19 of 21 shall state his or her true age. A photograph or video
20 recording of any ~~minor~~ individual under the age of 21
21 assisting in an inspection or enforcement action shall be
22 taken prior to the investigation. The appearance of ~~a minor~~ an
23 individual under the age of 21 participating in an inspection
24 or enforcement action shall not be altered at the time of the
25 inspection. ~~The minor shall be under the age of 18.~~

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

4 "§28-11-4.

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

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

11 "(2) Preventing the distribution of tobacco, tobacco
12 products, electronic nicotine delivery systems, and
13 alternative nicotine products to ~~minors~~ individuals under the
14 age of 21.

15 "(3) Conducting annual random compliance tests to
16 assure compliance with applicable state and federal laws and
17 guidelines regarding the distribution of tobacco, tobacco
18 products, electronic nicotine delivery systems, and
19 alternative nicotine products. The tests involving any person
20 or location engaged in the distribution of tobacco may utilize
21 ~~minors~~ individuals under the age of 21.

22 Section 4. Sections 28-11-5, 28-11-6.1, and
23 28-11-6.2, Code of Alabama 1975, are amended to read as
24 follows:

25 "§28-11-5.

26 "The board may use funding, if available, from the
27 Department of Mental Health, other state or federal agencies,

1 grants, and private or public organizations to enforce this
2 chapter and to provide and distribute tobacco and nicotine
3 prevention materials to retail tobacco merchants and specialty
4 retailers of electronic nicotine delivery systems. The
5 materials shall provide information regarding state and
6 federal laws that prohibit access to tobacco, ~~or~~ tobacco
7 products, alternative nicotine products, and electronic
8 nicotine delivery systems by ~~minors~~ individuals under the age
9 of 21 and other appropriate information. The board may also
10 provide consultation services for establishing programs to
11 minimize or eliminate sales of tobacco, ~~or~~ tobacco products,
12 alternative nicotine products, and electronic nicotine
13 delivery systems to ~~minors~~ individuals under the age of 21
14 pursuant to the responsible vendor program.

15 "§28-11-6.1.

16 "(a) No tobacco, ~~or~~ tobacco product, alternative
17 nicotine product, or electronic nicotine delivery system shall
18 be distributed by use of a vending machine unless ~~such~~ the
19 machine:

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

22 "(2) Dispenses tobacco, ~~or~~ tobacco products,
23 alternative nicotine products, or electronic nicotine delivery
24 systems through the operation of a device that requires the
25 tobacco permit holder or an employee of the permit holder to
26 control the distribution of the product.

1 "(b) No tobacco, ~~or~~ tobacco product, alternative
2 nicotine product, or electronic nicotine delivery system shall
3 be distributed at retail by use of a vending machine if ~~the~~
4 ~~tobacco or tobacco product is~~ placed together with any
5 non-tobacco product or non-nicotine product, other than
6 matches, in the machine.

7 "§28-11-6.2.

8 "No tobacco, ~~or~~ tobacco product, alternative
9 nicotine product, or electronic nicotine delivery system shall
10 be distributed at retail through a self-service display unless
11 such display is a vending machine as permitted under Section
12 28-11-6.1 or is located in a tobacco specialty store or at a
13 specialty retailer of electronic nicotine delivery systems.

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

17 "§28-11-11.

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

22 "(1) The total number of retail distributors of
23 tobacco, tobacco products, electronic nicotine delivery
24 systems, and alternative nicotine products categorized by type
25 of retail outlet.

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

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

3 "(4) The extent and nature of organized educational
4 and government activities intended to promote, encourage, or
5 otherwise secure compliance with state and federal laws
6 prohibiting the sale or distribution of tobacco, tobacco
7 products, alternative nicotine products, and electronic
8 nicotine delivery systems to ~~minors~~ individuals under the age
9 of 21.

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

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

16 "§28-11-13.

17 "(a) It is unlawful for any ~~minor~~ individual under
18 the age of 21 years to purchase, use, possess, or transport
19 tobacco, a tobacco product, an electronic nicotine delivery
20 system, or an alternative nicotine product within this state.
21 It shall not be unlawful for ~~a minor~~ an individual under the
22 age of 21 years who is an employee of a tobacco, tobacco
23 product, electronic nicotine delivery system, or alternative
24 nicotine product permit holder to handle, transport, or sell
25 tobacco, a tobacco product, an electronic nicotine delivery
26 system, or an alternative tobacco product if the ~~minor~~
27 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~~ an individual under the age of 21
11 years is cited for any violation under this section, the
12 citing agency shall notify a parent, legal guardian, or legal
13 custodian of the ~~minor individual unless the minor has been~~
14 ~~emancipated by court order or operation of law.~~

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

18 "§28-11-14.

19 "(a) Any tobacco, or tobacco product, alternative
20 nicotine product, electronic nicotine delivery system, or
21 false proof of identification found in the possession of a
22 minor an individual under the age of 21 years is contraband
23 and subject to seizure by law enforcement. Any ~~minor~~
24 individual under the age of 21 years violating Section
25 28-11-13 shall be issued a citation similar to a uniform
26 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 that it is
16 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.

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

27 "a. As a tobacco cessation product.

1 "b. As a healthier alternative to smoking.

2 "c. As available for purchase in any variety of
3 flavors other than tobacco, mint, or menthol on any outdoor
4 billboard.

5 "d. On any outdoor billboard located within 1,000
6 feet of any public or private K-12 school or public
7 playground.

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

13 "(b) (1) A retailer or manufacturer of tobacco,
14 tobacco products, electronic nicotine delivery systems, or
15 alternative nicotine products may not in any way sponsor,
16 finance, or advertise a scholarship of any kind.

17 "(2) A retailer or manufacturer of tobacco, tobacco
18 products, electronic nicotine delivery systems, or alternative
19 nicotine products may not advertise at or sponsor any stadium,
20 concert, sporting event, or other public event for which
21 individuals aged 21 years or older make up less than 85
22 percent of the total age demographic of attendees.

23 "(3) A retailer or manufacturer of tobacco, tobacco
24 products, electronic nicotine delivery systems, or alternative
25 nicotine products may not advertise in any print or electronic
26 publication for which less than 85 percent of the viewership

1 or readership of the publication is made up of individuals 21
2 years of age or older.

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

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

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

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

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

24 "(2) By using, in the labeling or design of the
25 product, its packaging, or in its advertising or marketing
26 materials, the terms "cake" or "cakes" or "cupcake" or
27 "cupcakes" or "pie" or "pies," any variant of these words, or

1 any other term referencing a type or brand of cake, pastry, or
2 pie, including types or brands of cakes, pastries, or pies
3 that do not include the words "cake" or "cakes" or "cupcake"
4 or "cupcakes" or "pie" or "pies" in their names or slogans.

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

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

22 "§28-11-18.

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

1 "(b) A ~~specialty~~ retailer ~~of~~ offering for sale
2 electronic nicotine delivery systems or related products shall
3 display in a prominent area of the retail store near the point
4 of sale a sign which contains the following statements:

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

8 "~~(1)~~(2) "THE USE OF SOME VAPING DEVICES MAY INCREASE
9 YOUR RISK OF EXPOSURE TO POTENTIALLY TOXIC LEVELS OF HEAVY
10 METALS SUCH AS LEAD, CHROMIUM, AND NICKEL."

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

16 Section 7. This act shall become effective on the
17 first day of the third month following its passage and
18 approval by the Governor, or its otherwise becoming law.