

1 HB273  
2 208899-1  
3 By Representatives Drummond, Howard, Bracy, Coleman, Wood (D)  
4 and Faulkner  
5 RFD: Judiciary  
6 First Read: 02-FEB-21

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

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

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

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

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

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

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

3 This bill would require manufacturers of  
4 e-liquids and alternative nicotine products to make  
5 certain representations to the Commissioner of the  
6 Department of Revenue regarding those products.

7 This bill would require the Commissioner of  
8 the Department of Revenue to maintain a directory  
9 listing manufacturers of e-liquids and alternative  
10 nicotine products that have sufficiently made  
11 representations as required by this bill.

12 This bill would provide authority to the  
13 Commissioner of the Department of Revenue to take  
14 additional actions in conformity with its  
15 provisions.

16 This bill would require the Department of  
17 Mental Health to ensure that this state is in  
18 compliance with and satisfies all reporting and  
19 enforcement obligations of the United States  
20 Department of Health and Human Services including  
21 annually preparing and submitting to the Secretary  
22 of Health and Human Services a report describing,  
23 among other things, efforts taken to ensure that  
24 tobacco products, electronic nicotine delivery  
25 systems, and alternative nicotine products are not  
26 sold to individuals under the age of 21.

1                   This bill would also authorize the  
2                   imposition of civil penalties for violations.

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, 28-11-2, 28-11-4, 28-11-11, and 28-11-13, as last  
11                  amended by Act 2019-233, 2019 Regular Session, and Sections  
12                  28-11-1, 28-11-3, 28-11-5, 28-11-6.1, 28-11-6.2, 28-11-14,  
13                  28-11-15, 28-11-16, and 28-11-18, Code of Alabama 1975; and to  
14                  add Sections 28-11-17.1 and 28-11-20 to the Code of Alabama  
15                  1975; to raise the minimum age for legal possession,  
16                  transportation, and purchase of tobacco products, electronic  
17                  nicotine delivery systems, and alternative nicotine products;  
18                  to prohibit the advertisement of tobacco products, electronic  
19                  nicotine delivery systems, or alternative nicotine products in  
20                  certain print or electronic media; to prohibit manufacturers  
21                  or retailers of tobacco products, electronic nicotine delivery  
22                  systems, or alternative nicotine products from sponsoring,  
23                  financing, or advertising under certain conditions and at  
24                  certain locations; to require retailers offering electronic  
25                  nicotine delivery systems for sale to place signs in a  
26                  prominent area near the point of sale containing certain  
27                  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~~s~~, exchanges, l 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 June 1, 2021, 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, both 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 May 12, 2021, to the FDA.

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

18 (2) In addition to the requirements in subdivision  
19 (1), each manufacturer shall provide a copy of the cover page  
20 of the premarket tobacco application with evidence of receipt  
21 of the application by the FDA or a copy of the cover page of  
22 the marketing order or other authorization issued pursuant to  
23 21 U.S.C. §387j, whichever is applicable.

24 (b) Any manufacturer submitting a certification  
25 pursuant to subsection (a) shall notify the commissioner  
26 within 30 days of any material change to the certification,  
27 including issuance by the FDA of any of the following:

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

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

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

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

10 (c) The commissioner shall develop and maintain a  
11 directory listing all e-liquid manufacturers and manufacturers  
12 of alternative nicotine products that have provided  
13 certifications that comply with subsection (a) and all  
14 products that are listed in those certifications.

15 (d) No later than July 1, 2022, the commissioner  
16 shall do all of the following:

17 (1) Make the directory available for public  
18 inspection on its website.

19 (2) Update the directory as necessary in order to  
20 correct mistakes and to add or remove e-liquid manufacturers,  
21 manufacturers of alternative nicotine products, or products  
22 manufactured by those manufacturers consistent with the  
23 requirements of subsections (a) and (b).

24 (3) Send monthly notifications to each wholesaler,  
25 jobber, semijobber, retailer, importer, or distributor of  
26 tobacco products that have qualified or registered with the  
27 Department of Revenue, by electronic communication, containing

1 a list of all changes that have been made to the directory in  
2 the previous month.

3 (e) Notwithstanding subsection (a), if an e-liquid  
4 manufacturer or manufacturer of alternative nicotine products  
5 can demonstrate to the commissioner that the FDA has issued a  
6 rule, guidance, or any other formal statement that temporarily  
7 exempts a product from the federal premarket tobacco  
8 application requirements, the product may be added to the  
9 directory upon request by the manufacturer if the manufacturer  
10 provides sufficient evidence that the product is compliant  
11 with the federal rule, guidance, or other formal statement, as  
12 applicable.

13 (f) Each certifying e-liquid manufacturer and  
14 manufacturer of alternative nicotine products shall pay an  
15 initial fee of two thousand dollars (\$2,000) to offset the  
16 costs incurred by the department for processing the  
17 certifications and operating the directory. The commissioner  
18 shall collect an annual renewal fee of five hundred dollars  
19 (\$500) to offset the costs associated with maintaining the  
20 directory and satisfying the requirements of this section. The  
21 fees received under this section by the department shall be  
22 used by the department exclusively for processing the  
23 certifications and operating and maintaining the directory.  
24 After the payment of these expenses, the remaining funds shall  
25 be deposited into the General Fund.

26 (g) (1) An e-liquid manufacturer or manufacturer of  
27 alternative nicotine products who offers for sale a product

1 not listed on the directory is subject to a one thousand  
2 dollars (\$1,000) daily fine for each product offered for sale  
3 in violation of this section until the offending product is  
4 removed from the market or until the offending product is  
5 properly listed on the directory.

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

8 (h) The commissioner shall adopt rules for the  
9 implementation and enforcement of this section.

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

12 §28-11-20.

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

21 (1) The activities carried out by the Department of  
22 Mental Health in coordination with the Alabama State Law  
23 Enforcement Agency to ensure that tobacco retailers or  
24 specialty retailers of electronic nicotine delivery systems do  
25 not sell alternative nicotine products, tobacco products, or  
26 electronic nicotine delivery systems to individuals under the  
27 age of 21 years.

1           (2) The extent of success the Department of Mental  
2 Health, in coordination with the Alabama State Law Enforcement  
3 Agency, has achieved in ensuring 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 years.

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

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

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

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



1                   (2) To further tobacco product, alternative nicotine  
2 product, or electronic nicotine delivery system cessation  
3 programs.

4                   (3) To further tobacco product, alternative nicotine  
5 product, or electronic nicotine delivery system education  
6 programs.

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