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3 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HB41  
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8 SYNOPSIS: Existing state law does not provide for  
9 comprehensive oversight or regulation of  
10 alternative nicotine products or electronic  
11 nicotine delivery systems or retailers of any of  
12 these products.

13 This bill would prohibit retailers and  
14 manufacturers of alternative nicotine products and  
15 electronic nicotine delivery systems from  
16 advertising the products near schools. This bill  
17 would also prohibit specialty retailers of  
18 electronic nicotine delivery systems from opening  
19 new places of business near schools, child care  
20 centers, churches, and other facilities.

21 This bill would also prevent retailers and  
22 manufacturers of alternative nicotine products or  
23 electronic nicotine delivery systems from  
24 advertising those products as tobacco cessation  
25 devices, as a healthy alternative to smoking, or as  
26 being available in any variety of flavors except  
27 for tobacco, mint, or menthol.

1           This bill would also require retailers of  
2 alternative nicotine products or electronic  
3 nicotine delivery systems to obtain a tobacco  
4 permit, to comply with FDA regulations governing  
5 the retail sale of alternative nicotine products  
6 and electronic nicotine delivery systems, and to  
7 post warning signs in their stores regarding the  
8 dangers of nicotine use and potential risks  
9 associated with vaping.

10           This bill would also prohibit the sale or  
11 transfer of alternative nicotine products or  
12 electronic nicotine delivery systems to minors.

13           This bill would also require the Alabama  
14 Alcoholic Beverage Control Board to regulate retail  
15 sales of alternative nicotine products and  
16 electronic nicotine delivery systems like sales of  
17 tobacco products.

18           Amendment 621 of the Constitution of Alabama  
19 of 1901, now appearing as Section 111.05 of the  
20 Official Recompilation of the Constitution of  
21 Alabama of 1901, as amended, prohibits a general  
22 law whose purpose or effect would be to require a  
23 new or increased expenditure of local funds from  
24 becoming effective with regard to a local  
25 governmental entity without enactment by a 2/3 vote  
26 unless: it comes within one of a number of  
27 specified exceptions; it is approved by the

1 affected entity; or the Legislature appropriates  
2 funds, or provides a local source of revenue, to  
3 the entity for the purpose.

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

11  
12 A BILL  
13 TO BE ENTITLED  
14 AN ACT

15  
16 Relating to alternative nicotine products; to amend  
17 Sections 28-11-2, 28-11-4, 28-11-7, 28-11-8, 28-11-9,  
18 28-11-11, 28-11-13, 13A-12-3, and 13A-12-3.1, Code of Alabama  
19 1975, to require the Alabama Alcoholic Beverage Control Board  
20 to regulate retail sales of alternative nicotine devices like  
21 sales of tobacco products, and to prohibit the sale or  
22 transfer of alternative nicotine products to minors; to add  
23 Sections 28-11-16, 28-11-17, 28-11-18, 28-11-19, and  
24 13A-12-3.8 to the Code of Alabama 1975, to prohibit retailers  
25 and manufacturers of alternative nicotine products and  
26 electronic nicotine delivery systems from advertising the  
27 products near schools; to prohibit specialty retailers of

1 electronic nicotine delivery systems from opening new places  
2 of business near schools, child care centers, churches, and  
3 other facilities; to prevent retailers and manufacturers of  
4 alternative nicotine products or electronic nicotine delivery  
5 systems from advertising those products as tobacco cessation  
6 devices, as a healthy alternative to smoking, or as being  
7 available in any variety of flavors except for tobacco, mint,  
8 or menthol; to require retailers of alternative nicotine  
9 products or electronic nicotine delivery systems to obtain a  
10 tobacco permit, to comply with FDA regulations governing the  
11 retail sale of alternative nicotine products and electronic  
12 nicotine delivery systems, and to post warning signs in their  
13 stores regarding the dangers of nicotine use and potential  
14 risks associated with vaping; to prohibit the sale or transfer  
15 of alternative nicotine products or electronic nicotine  
16 delivery systems to minors; and in connection therewith would  
17 have as its purpose or effect the requirement of a new or  
18 increased expenditure of local funds within the meaning of  
19 Amendment 621 of the Constitution of Alabama of 1901, now  
20 appearing as Section 111.05 of the Official Recompilation of  
21 the Constitution of Alabama of 1901, as amended.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Sections 28-11-2, 28-11-4, 28-11-7,  
24 28-11-8, 28-11-9, 28-11-11, 28-11-13, 13A-12-3, and  
25 13A-12-3.1, Code of Alabama 1975, are amended to read as  
26 follows:

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

15           ~~"An electronic cigarette is an electronic product or~~  
16 ~~device that produces a vapor that delivers nicotine or other~~  
17 ~~substances to the person inhaling from the device to simulate~~  
18 ~~smoking, and is likely to be offered to, or purchased by,~~  
19 ~~consumers as an electronic cigarette, electronic cigar,~~  
20 ~~electronic cigarillo, or electronic pipe.~~

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

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

25           ~~"2. A product that is a drug under 21 U.S.C.~~  
26 ~~§321(g)(1).~~

1                   ~~"3. A product that is a device under 21 U.S.C.~~  
2                   ~~§321(h).~~

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

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

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

9                   ~~"2. A product that is a drug under 21 U.S.C.~~  
10                   ~~§321(g)(1).~~

11                   ~~"3. A product that is a device under 21 U.S.C.~~  
12                   ~~§321(h).~~

13                   ~~"4. A combination product described in 21 U.S.C.~~  
14                   ~~§353(g).~~

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

17                   "(3) CHILD-RESISTANT PACKAGING. Liquid nicotine  
18 container packaging meeting the requirements of 15 U.S.C.  
19 §1472a.

20                   "~~(3)~~(4) DISTRIBUTION. To sell, barter, exchange, or  
21 give tobacco or tobacco products for promotional purposes or  
22 for gratis.

23                   "(5) ELECTRONIC NICOTINE DELIVERY SYSTEM. The term  
24 electronic nicotine delivery system includes any vaporizing  
25 device that produces a vapor that delivers nicotine or other  
26 substance to the person inhaling from the device to simulate  
27 smoking, and includes, but is not limited to, products that

1 may be offered to, purchased by, or marketed to consumers as  
2 an electronic cigarette, electronic cigar, electronic  
3 cigarillo, electronic pipe, electronic hookah, vape pen, vape  
4 tool, vaping device, or any variation of these terms. The term  
5 also includes any liquid intended to be vaporized in any  
6 device included in this subdivision, regardless of whether or  
7 not the liquid contains nicotine.

8 "(6) ELECTRONIC NICOTINE DELIVERY SYSTEM RETAILER.  
9 Any retail business which offers for sale electronic nicotine  
10 delivery systems.

11 "(7) FDA. The United States Food and Drug  
12 Administration.

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

20 "~~(4)~~(9) MINOR. Any person under the age of 19 years.

21 "~~(5)~~(10) PERSON. Any natural person, firm,  
22 partnership, association, company, corporation, or other  
23 entity. Person does not include a manufacturer or wholesaler  
24 of tobacco or tobacco products nor does it include employees  
25 of the permit holder.

26 "~~(6)~~(11) PROOF OF IDENTIFICATION. Any one or more of  
27 the following documents used for purposes of determining the

1 age of a person purchasing, attempting to purchase, or  
2 receiving tobacco ~~or~~, tobacco products, electronic nicotine  
3 delivery systems, or alternative nicotine products:

4 "a. A valid driver's license issued by any state and  
5 bearing the photograph of the presenting person.

6 "b. United States Uniform Service Identification.

7 "c. A valid passport.

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

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

14 "~~(7)~~ (12) RESPONSIBLE VENDOR PROGRAM. A program  
15 administered by the board to encourage and support vendors in  
16 training employees in legal and responsible sales practices.

17 "~~(8)~~ (13) SAMPLER. Any business or person who  
18 distributes tobacco or tobacco products for promotional  
19 purposes.

20 "~~(9)~~ (14) SELF-SERVICE DISPLAY. A display that  
21 contains tobacco or tobacco products and is located in an area  
22 openly accessible to purchasers at retail and from which such  
23 purchasers can readily access tobacco or tobacco products  
24 without the assistance of the tobacco permit holder or an  
25 employee of the permit holder. A display case that holds  
26 tobacco or tobacco products behind locked doors does not  
27 constitute a self-service display.



1                   "(15) SPECIALTY RETAILER OF ELECTRONIC NICOTINE  
2 DELIVERY SYSTEMS. A business establishment at which any of the  
3 following are true:

4                   "a. The sale of electronic nicotine delivery systems  
5 accounts for more than 35 percent of the total quarterly gross  
6 receipts for the establishment.

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

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

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

17                   "e. Samples of electronic nicotine delivery systems  
18 are offered to customers.

19                   "f. Liquids intended to be vaporized through the use  
20 of an electronic nicotine delivery system are produced at the  
21 facility or are produced by the owner of the establishment or  
22 any of its agents or employees for sale at the establishment.

23                   ~~(10)~~(16) TOBACCO or TOBACCO PRODUCTS. Tobacco or  
24 any product containing tobacco, including, but not limited to,  
25 the following:

26                   "a. Cigarettes.

27                   "b. Cigars.

1 "c. Chewing tobacco.

2 "d. Snuff.

3 "e. Pipe tobacco.

4 "f. Smokeless tobacco.

5 "~~(11)~~ (17) TOBACCO PERMIT. A permit issued by the  
6 board to allow the permit holder to engage in the distribution  
7 of tobacco ~~or,~~ tobacco products, electronic nicotine delivery  
8 systems, or alternative nicotine products at the location  
9 identified in the permit.

10 "~~(12)~~ (18) TOBACCO SPECIALTY STORE. A business that  
11 derives at least 75 percent of its revenue from tobacco or  
12 tobacco products.

13 "§28-11-4.

14 "Pursuant to its ~~rule-making~~ rulemaking authority,  
15 the board ~~may promulgate~~ shall adopt rules ~~and regulations~~  
16 that have the full force and effect of law, for purposes of  
17 ~~but not limited to,~~ the following:

18 "(1) Establishing permits for the distribution of  
19 tobacco ~~or,~~ tobacco products, electronic nicotine delivery  
20 systems, and alternative nicotine products.

21 "(2) Preventing the distribution of tobacco, tobacco  
22 products, electronic nicotine delivery systems, and  
23 alternative nicotine products to minors.

24 "(3) Conducting annual random compliance tests to  
25 assure compliance with applicable state and federal laws and  
26 guidelines regarding the distribution of tobacco ~~or,~~ tobacco  
27 products to minors, electronic nicotine delivery systems, and

1 alternative nicotine products. The tests ~~may utilize minors~~  
2 ~~and may involve~~ involving any person or location engaged in  
3 the distribution of tobacco may utilize minors.

4 "§28-11-7.

5 "(a) Any person who distributes tobacco, tobacco  
6 products, electronic nicotine delivery systems, or alternative  
7 nicotine products within this state shall first obtain a  
8 permit from the board for each location of distribution. There  
9 is no fee for the permit.

10 "(b) Any person who maintains a tobacco ~~or,~~ tobacco  
11 product, electronic nicotine delivery system, or alternative  
12 nicotine product vending machine on his or her property in  
13 this state shall first obtain a permit from the board for each  
14 machine at each machine location. The permit for each machine  
15 shall be posted in a conspicuous place on the machine.

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

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

25 "(e) If feasible, the board may, by rule or  
26 regulation, establish procedures for the issuance and renewal

1 of permits which combine tobacco permit procedures with the  
2 application and licensing procedures for alcoholic beverages.

3 "§28-11-8.

4 "(a) It shall be unlawful for any person to  
5 distribute sell or offer for sale tobacco or tobacco products  
6 without first obtaining from the board the appropriate permit.  
7 Failure to obtain or display from the board. Selling or  
8 offering for sale tobacco or tobacco products without  
9 obtaining and displaying a valid permit by January 1, 1998,  
10 shall result in issuance of a warning citation. The board  
11 shall conduct an information and education campaign by its  
12 Responsible Vendor Program to inform distributors of tobacco  
13 products at retail or in vending machines or self-service  
14 displays of the requirements of this law. Failure to obtain or  
15 display a valid permit pursuant to this chapter after January  
16 1, 1998, shall constitute a misdemeanor offense.

17 "(b) It shall be unlawful for any person to sell or  
18 offer for sale electronic nicotine delivery systems or  
19 alternative nicotine products without first obtaining the  
20 appropriate permit from the board. Failure to obtain or  
21 display a valid permit within 90 days after the effective date  
22 of the act adding this amendatory language shall result in  
23 issuance of a warning citation. The board shall conduct an  
24 information and education campaign by its Responsible Vendor  
25 Program to inform distributors of alternative nicotine  
26 products at retail or in vending machines or self-service  
27 displays of the requirements of this law. Selling or offering

1 for sale electronic nicotine delivery systems or alternative  
2 nicotine products without obtaining and displaying a valid  
3 permit issued pursuant to this chapter within 90 days after  
4 the effective date of the act adding this amendatory language  
5 shall be a Class C misdemeanor.

6 "(c) Each violation for selling tobacco, tobacco  
7 products, electronic nicotine delivery systems, or alternative  
8 nicotine products without a valid permit shall be treated as a  
9 separate offense and be punishable as follows: For the first  
10 violation by a fine of not less than one hundred dollars  
11 (\$100) nor more than five hundred dollars (\$500) and for each  
12 subsequent violation by a fine of not less than five hundred  
13 dollars (\$500) nor more than one thousand five hundred dollars  
14 (\$1,500).

15 "§28-11-9.

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

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

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

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

1            "c. Revoke or suspend permits as provided in this  
2 chapter.

3            "d. Levy administrative fines upon permit holders or  
4 employees of permit holders.

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

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

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

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

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

22           "(1) Upon conviction for a first violation by the  
23 permit holder or an employee of the permit holder, the board  
24 or hearing commission may offer the permit holder an  
25 opportunity to provide training sessions administered by the  
26 Responsible Vendor Program in lieu of an administrative fine

1 upon the permit holder and the employee, if the violation is  
2 by an employee, of not more than two hundred dollars (\$200).

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

8 "(3) Upon conviction of a third or subsequent  
9 violation at the same location within a two-year period, the  
10 board or hearing commission may levy an administrative fine  
11 upon the permit holder and the employee, if the violation is  
12 by an employee, of not more than seven hundred fifty dollars  
13 (\$750).

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

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

24 "§28-11-11.

25 "The board shall issue an annual report to the  
26 Governor, the Legislature, and the Attorney General concerning



1 compliance by state retail merchants with this chapter. The  
2 report shall contain all of the following:

3 "(1) The total number of retail distributors of  
4 tobacco, tobacco products, electronic nicotine delivery  
5 systems, and alternative nicotine products categorized by type  
6 of retail outlet.

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

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

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

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

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

20 "§28-11-13.

21 "(a) It is unlawful for any minor to purchase, use,  
22 possess, or transport tobacco, tobacco product, electronic  
23 nicotine delivery systems, or alternative nicotine product  
24 within this state. It shall not be unlawful for a minor  
25 employee of a tobacco, tobacco product, electronic nicotine  
26 delivery system, or alternative nicotine product permit holder  
27 to handle, transport, or sell tobacco, tobacco product,

1 electronic nicotine delivery systems, or alternative tobacco  
2 product if the minor employee is acting within the line and  
3 scope of employment and the permit holder, or an employee of  
4 the permit holder who is 21 years of age or older, is present.

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

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

16 "§13A-12-3.

17 "Any person who sells, barter, exchanges or gives  
18 to any minor any ~~cigarettes, cigarette tobacco or cigarette~~  
19 ~~paper, or any substitute for either of them~~ tobacco, tobacco  
20 products, electronic nicotine delivery systems, or alternative  
21 nicotine products shall, on conviction, be fined not less than  
22 ~~\$10.00 nor more than \$50.00~~ one hundred dollars (\$100) nor  
23 more than three hundred dollars (\$300) and may also be  
24 imprisoned in the county jail ~~or sentenced to hard labor for~~  
25 ~~the county~~ for not more than 30 days.

26 "§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           "~~(1)~~(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           "~~(2)~~(4) CLEAR AND CONSPICUOUS STATEMENT. The A  
11 statement that is of sufficient type size to be clearly  
12 readable by the recipient of the communication.

13           "~~(3)~~(5) COMMISSIONER. The Commissioner of the  
14 Alabama Department of Revenue.

15           "~~(4)~~(6) CONSUMER. An individual who acquires or  
16 seeks to acquire cigarettes, or any one or more articles taxed  
17 herein, for personal use.

18           "~~(5)~~(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 are  
21 true:

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

1           **"b. the** The cigarettes are delivered by use of the  
2 mails or other delivery service. ~~A sale of cigarettes that~~  
3 ~~meets the requirements of this subdivision shall constitute a~~  
4 ~~delivery sale regardless of whether the seller is located~~  
5 ~~within or without the state.~~

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

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

16           **"b.** The electronic nicotine delivery systems or  
17 alternative nicotine products are delivered by use of the  
18 mails or other delivery service.

19           **"(6)(9)** DELIVERY SALES STATUTES. Those provisions  
20 contained within Sections 13A-12-3.2, 13A-12-3.3, 13A-12-3.4,  
21 13A-12-3.5, 13A-12-3.6, and 13A-12-3.7.

22           **"(7)(10)** DELIVERY SERVICE. Any person, other than a  
23 person who makes a delivery sale, who delivers to the consumer  
24 the cigarettes sold in a delivery sale.

25           **"(8)(11)** DEPARTMENT. The Alabama Department of  
26 Revenue.

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

3           "~~(9)~~(13) GOVERNMENT-ISSUED IDENTIFICATION. A state  
4 driver's license, state identification card, passport, a  
5 military identification, or an official naturalization or  
6 immigration document, including an alien registration  
7 recipient card or green card, or an immigrant visa.

8           "~~(10)~~(14) LEGAL MINIMUM AGE. 19 years of age.

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

11           "~~(11)~~(16) MAILS or MAILING. The shipment of  
12 cigarettes through the United States Postal Service.

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

20           "~~(13)~~(18) PERSON. Any individual, corporation,  
21 partnership, limited liability company, association, or other  
22 organization that engages in any for-profit or not-for-profit  
23 activities.

24           "~~(14)~~(19) SHIPPING DOCUMENTS. Bills of lading, air  
25 bills, or any other documents used to evidence the undertaking  
26 by a delivery service to deliver letters, packages, or other  
27 containers.

1           "~~(15)~~(20) SHIPPING PACKAGE. A container in which  
2 packs or cartons of cigarettes are shipped in connection with  
3 a delivery sale.

4           "~~(16)~~(21) STAMP or STAMPS. The stamp or stamps by  
5 the use of which the tax levied under this article is paid and  
6 shall be designated Alabama Revenue Stamps.

7           "~~(17)~~(22) WITHIN THIS STATE. Within the exterior  
8 limits of the State of Alabama."

9           Section 2. Sections 28-11-16, 28-11-17, 28-11-18,  
10 28-11-19, and 13A-12-3.8 are added to the Code of Alabama  
11 1975, to read as follows:

12           §28-11-16.

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

17           a. As a tobacco cessation product.

18           b. As a healthier alternative to smoking.

19           c. As available for purchase in any variety of  
20 flavors other than tobacco, mint, or menthol.

21           d. On any outdoor billboard located within 1,000  
22 feet of any public or private K-12 school or public  
23 playground.

24           (2) Paragraphs a. and b. are not applicable to  
25 products that have received an order from the FDA permitting  
26 the product to be marketed as a modified risk tobacco product,  
27 and are marketed in accordance with that order.

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

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

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

8 §28-11-17.

9 (a) It is unlawful to distribute, sell, or offer for  
10 sale any electronic nicotine delivery system or alternative  
11 nicotine product that cannot be legally marketed under federal  
12 law or FDA rule, regulation, or guidance.

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

15 §28-11-18.

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

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

24 (1) "THE USE OF SOME VAPING DEVICES MAY INCREASE  
25 YOUR RISK OF EXPOSURE TO POTENTIALLY TOXIC LEVELS OF HEAVY  
26 METALS SUCH AS LEAD, CHROMIUM, AND NICKEL."

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

6           §28-11-19.

7           (a) Beginning January 1, 2020, a county may not  
8 issue a license to conduct business as a specialty retailer of  
9 electronic nicotine delivery systems if the retail business is  
10 located within 1,000 feet of any of the following:

11           (1) A public or private K-12 school.

12           (2) A licensed child-care facility or preschool.

13           (3) A church.

14           (4) A public library.

15           (5) A public playground.

16           (6) A public park.

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

19           (b) This section does not apply to a specialty  
20 retailer of electronic nicotine delivery systems that obtained  
21 a business license at a location prohibited in subsection (a)  
22 prior to January 1, 2020, that has conducted business as a  
23 specialty retailer of electronic nicotine delivery systems at  
24 that location for at least 18 consecutive months, and that  
25 remains in the same location.

26           §13A-12-3.8.



1 (a) No person may conduct a delivery sale of  
2 electronic nicotine delivery systems or alternative nicotine  
3 products unless the seller has obtained a valid permit to  
4 conduct delivery sales of electronic nicotine delivery systems  
5 or alternative nicotine products issued by the board pursuant  
6 to Section 28-11-4.

7 (b) No person may conduct a delivery sale of  
8 electronic nicotine delivery systems or alternative nicotine  
9 products to a person under the legal minimum age.

10 (c) A person holding a permit to conduct delivery  
11 sales of electronic nicotine delivery systems or alternative  
12 nicotine products may not accept a purchase or order from any  
13 person without first obtaining the full name, birth date, and  
14 residential address of that person and verifying this  
15 information through an independently operated third-party  
16 database or aggregate of databases, which includes data from  
17 government sources, that are regularly used by government and  
18 businesses for the purpose of age and identity verification  
19 and authentication.

20 (d) A person holding a permit to conduct delivery  
21 sales of electronic nicotine delivery systems or alternative  
22 nicotine products shall accept payment only through a credit  
23 or debit card issued in the purchaser's own name.

24 (e) Each violation for conducting a delivery sale of  
25 electronic nicotine delivery systems or alternative nicotine  
26 products without a valid permit or otherwise in violation of  
27 this section shall be treated as a separate offense and be

1 punishable as follows: For the first violation by a fine of  
2 not less than one hundred dollars (\$100) nor more than five  
3 hundred dollars (\$500) and for each subsequent violation by a  
4 fine of not less than five hundred dollars (\$500) nor more  
5 than one thousand five hundred dollars (\$1,500).

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

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