

1 HB41  
2 198432-6  
3 By Representatives Stringer and Drummond  
4 RFD: Judiciary  
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1       retailers of alternative nicotine products or electronic  
2       nicotine delivery systems to obtain a tobacco permit, to  
3       comply with FDA regulations governing the retail sale of  
4       alternative nicotine products and electronic nicotine delivery  
5       systems, and to post warning signs in their stores regarding  
6       the dangers of nicotine use and potential risks associated  
7       with vaping; to prohibit the sale or transfer of alternative  
8       nicotine products or electronic nicotine delivery systems to  
9       minors; and in connection therewith would have as its purpose  
10      or effect the requirement of a new or increased expenditure of  
11      local funds within the meaning of Amendment 621 of the  
12      Constitution of Alabama of 1901, now appearing as Section  
13      111.05 of the Official Recompilation of the Constitution of  
14      Alabama of 1901, as amended.

15      BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16               Section 1. This act shall be known and may be cited  
17      as the Stringer-Drummond Vaping Act.

18               Section 2. Sections 28-11-2, 28-11-4, 28-11-7,  
19      28-11-8, 28-11-9, 28-11-11, 28-11-13, 13A-12-3, and  
20      13A-12-3.1, Code of Alabama 1975, are amended to read as  
21      follows:

22               "§28-11-2.

23               "For purposes of this chapter, the following terms  
24      have the following meanings unless the context clearly  
25      indicates otherwise:

26               "(1) ALTERNATIVE NICOTINE PRODUCT. The term  
27      alternative nicotine product includes ~~electronic cigarettes~~

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

10 ~~"An electronic cigarette is an electronic product or~~  
11 ~~device that produces a vapor that delivers nicotine or other~~  
12 ~~substances to the person inhaling from the device to simulate~~  
13 ~~smoking, and is likely to be offered to, or purchased by,~~  
14 ~~consumers as an electronic cigarette, electronic cigar,~~  
15 ~~electronic cigarillo, or electronic pipe.~~

16 ~~"The term electronic cigarette does not include any~~  
17 ~~of the following:~~

18 ~~"1. A cigarette or other tobacco product as defined~~  
19 ~~in this section.~~

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

22 ~~"3. A product that is a device under 21 U.S.C.~~  
23 ~~§321(h).~~

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

26 ~~"The term alternative nicotine product does not~~  
27 ~~include the following:~~

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

3           ~~"2. A product that is a drug under 21 U.S.C.~~  
4 ~~§321(g)(1).~~

5           ~~"3. A product that is a device under 21 U.S.C.~~  
6 ~~§321(h).~~

7           ~~"4. A combination product described in 21 U.S.C.~~  
8 ~~§353(g).~~

9           "(2) BOARD. The Alabama Alcoholic Beverage Control  
10 Board.

11           "(3) CHILD-RESISTANT PACKAGING. Liquid nicotine  
12 container packaging meeting the requirements of 15 U.S.C.  
13 §1472a.

14           ~~"(3)(4)~~ (4) DISTRIBUTION. To sell, barter, exchange, or  
15 give tobacco or tobacco products for promotional purposes or  
16 for gratis.

17           "(5) ELECTRONIC NICOTINE DELIVERY SYSTEM. The term  
18 electronic nicotine delivery system includes any vaporizing  
19 device that produces a vapor that delivers nicotine or other  
20 substance to the person inhaling from the device to simulate  
21 smoking, and includes, but is not limited to, products that  
22 may be offered to, purchased by, or marketed to consumers as  
23 an electronic cigarette, electronic cigar, electronic  
24 cigarillo, electronic pipe, electronic hookah, vape pen, vape  
25 tool, vaping device, or any variation of these terms. The term  
26 also includes any liquid intended to be vaporized in any

1 device included in this subdivision, regardless of whether or  
2 not the liquid contains nicotine.

3 "(6) ELECTRONIC NICOTINE DELIVERY SYSTEM RETAILER.  
4 Any retail business which offers for sale electronic nicotine  
5 delivery systems.

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

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

15 "~~(4)~~(9) MINOR. Any person under the age of 19 years.

16 "~~(5)~~(10) PERSON. Any natural person, firm,  
17 partnership, association, company, corporation, or other  
18 entity. Person does not include a manufacturer or wholesaler  
19 of tobacco or tobacco products nor does it include employees  
20 of the permit holder.

21 "~~(6)~~(11) PROOF OF IDENTIFICATION. Any one or more of  
22 the following documents used for purposes of determining the  
23 age of a person purchasing, attempting to purchase, or  
24 receiving tobacco ~~or,~~ tobacco products, electronic nicotine  
25 delivery systems, or alternative nicotine products:

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

1 "b. United States Uniform Service Identification.

2 "c. A valid passport.

3 "d. A valid identification card issued by any state  
4 agency for the purpose of identification and bearing the  
5 photograph and date of birth of the presenting individual.

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

9 "~~(7)~~ (12) RESPONSIBLE VENDOR PROGRAM. A program  
10 administered by the board to encourage and support vendors in  
11 training employees in legal and responsible sales practices.

12 "~~(8)~~ (13) SAMPLER. Any business or person who  
13 distributes tobacco or tobacco products for promotional  
14 purposes.

15 "~~(9)~~ (14) SELF-SERVICE DISPLAY. A display that  
16 contains tobacco or tobacco products and is located in an area  
17 openly accessible to purchasers at retail and from which such  
18 purchasers can readily access tobacco or tobacco products  
19 without the assistance of the tobacco permit holder or an  
20 employee of the permit holder. A display case that holds  
21 tobacco or tobacco products behind locked doors does not  
22 constitute a self-service display.

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

1           "a. The sale of electronic nicotine delivery systems  
2 accounts for more than 35 percent of the total quarterly gross  
3 receipts for the establishment.

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

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

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

14           "e. Samples of electronic nicotine delivery systems  
15 are offered to customers.

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

20           ~~"(10)~~ (16) TOBACCO or TOBACCO PRODUCTS. Tobacco or  
21 any product containing tobacco, including, but not limited to,  
22 the following:

23           "a. Cigarettes.

24           "b. Cigars.

25           "c. Chewing tobacco.

26           "d. Snuff.

27           "e. Pipe tobacco.

1 "f. Smokeless tobacco.

2 "~~(11)~~(17) TOBACCO PERMIT. A permit issued by the  
3 board to allow the permit holder to engage in the distribution  
4 of tobacco ~~or,~~ tobacco products, electronic nicotine delivery  
5 systems, or alternative nicotine products at the location  
6 identified in the permit.

7 "~~(12)~~(18) TOBACCO SPECIALTY STORE. A business that  
8 derives at least 75 percent of its revenue from tobacco or  
9 tobacco products.

10 "§28-11-4.

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

15 "(1) Establishing permits for the distribution of  
16 tobacco ~~or,~~ tobacco products, electronic nicotine delivery  
17 systems, and alternative nicotine products.

18 "(2) Preventing the distribution of tobacco, tobacco  
19 products, electronic nicotine delivery systems, and  
20 alternative nicotine products to minors.

21 "(3) Conducting annual random compliance tests to  
22 assure compliance with applicable state and federal laws and  
23 guidelines regarding the distribution of tobacco ~~or,~~ tobacco  
24 products ~~to minors,~~ electronic nicotine delivery systems, and  
25 alternative nicotine products. The tests ~~may utilize minors~~  
26 ~~and may involve~~ involving any person or location engaged in  
27 the distribution of tobacco may utilize minors.

1           "§28-11-7.

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

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

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

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

22           "(e) If feasible, the board may, by rule or  
23 regulation, establish procedures for the issuance and renewal  
24 of permits which combine tobacco permit procedures with the  
25 application and licensing procedures for alcoholic beverages.

26           "§28-11-8.

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

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

1 the effective date of the act adding this amendatory language  
2 shall be a Class C misdemeanor.

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

12 "§28-11-9.

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

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

19 "a. Hear and decide all contested applications for  
20 permits.

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

24 "c. Revoke or suspend permits as provided in this  
25 chapter.

26 "d. Levy administrative fines upon permit holders or  
27 employees of permit holders.

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

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

23           "(c) The fines as specified in subsection (e) shall  
24 be applicable per each violation. The permit holder or  
25 employee shall remit the administrative fine to the board  
26 within seven calendar days from the day that the  
27 administrative fine is levied. Failure by the permit holder to

1 pay the administrative fine within that time period shall  
2 result in an automatic suspension of the permit until the  
3 administrative fine is paid.

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

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

17 "(1) Upon conviction for a first violation by the  
18 permit holder or an employee of the permit holder, the board  
19 or hearing commission may offer the permit holder an  
20 opportunity to provide training sessions administered by the  
21 Responsible Vendor Program in lieu of an administrative fine  
22 upon the permit holder and the employee, if the violation is  
23 by an employee, of not more than two hundred dollars (\$200).

24 "(2) Upon conviction of a second violation at the  
25 same location within a two-year period, the board or hearing  
26 commission may levy an administrative fine upon the permit

1 holder and the employee, if the violation is by an employee,  
2 of not more than four hundred dollars (\$400).

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

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

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

19 "§28-11-11.

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

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

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

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

5           "(4) The extent and nature of organized educational  
6 and government activities intended to promote, encourage, or  
7 otherwise secure compliance with state and federal laws  
8 prohibiting the sale or distribution of tobacco products to  
9 minors.

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

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

14           "§28-11-13.

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

26           "(b) It is unlawful for any minor to present or  
27 offer to another person proof of identification which is

1 false, fraudulent, or not actually his or her own proof of  
2 identification in order to buy, receive, or otherwise obtain,  
3 or attempt to buy, receive, or otherwise obtain, any tobacco,  
4 tobacco product, electronic nicotine delivery system, or  
5 alternative nicotine product.

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

10 "§13A-12-3.

11 "Any person who sells, barter, exchanges or gives  
12 to any minor any ~~cigarettes, cigarette tobacco or cigarette~~  
13 ~~paper, or any substitute for either of them~~ tobacco, tobacco  
14 products, electronic nicotine delivery systems, or alternative  
15 nicotine products shall, on conviction, be fined not less than  
16 ~~\$10.00 nor more than \$50.00~~ one hundred dollars (\$100) nor  
17 more than three hundred dollars (\$300) and may also be  
18 imprisoned in the county jail ~~or sentenced to hard labor for~~  
19 ~~the county~~ for not more than 30 days.

20 "§13A-12-3.1.

21 "For purposes of this article, the following terms  
22 shall have the following meanings:

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

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

26 "~~(1)~~ (3) BRAND STYLE. A variety of cigarettes  
27 distinguished by the tobacco used, tar and nicotine content,

1       flavoring used, size of cigarette, filtration on the  
2       cigarette, or packaging.

3               "~~(2)~~(4) CLEAR AND CONSPICUOUS STATEMENT. ~~The~~ A  
4       statement that is of sufficient type size to be clearly  
5       readable by the recipient of the communication.

6               "~~(3)~~(5) COMMISSIONER. The Commissioner of the  
7       Alabama Department of Revenue.

8               "~~(4)~~(6) CONSUMER. An individual who acquires or  
9       seeks to acquire cigarettes, or any one or more articles taxed  
10      herein, for personal use.

11              "~~(5)~~(7) DELIVERY SALE. Any sale of cigarettes to a  
12      consumer within this state, regardless of whether the seller  
13      is located in this state, where either of the following are  
14      true:

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

20              "b. ~~the~~ The cigarettes are delivered by use of the  
21      mails or other delivery service. ~~A sale of cigarettes that~~  
22      ~~meets the requirements of this subdivision shall constitute a~~  
23      ~~delivery sale regardless of whether the seller is located~~  
24      ~~within or without the state.~~

25              "(8) DELIVERY SALE OF ELECTRONIC NICOTINE DELIVERY  
26      SYSTEMS OR ALTERNATIVE NICOTINE PRODUCTS. Any sale of  
27      electronic nicotine delivery systems or alternative nicotine

1 products to a consumer in this state, regardless of whether  
2 the seller is located in this state, where either of the  
3 following is true:

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

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

11 "(6)(9) DELIVERY SALES STATUTES. Those provisions  
12 contained within Sections 13A-12-3.2, 13A-12-3.3, 13A-12-3.4,  
13 13A-12-3.5, 13A-12-3.6, and 13A-12-3.7.

14 "(7)(10) DELIVERY SERVICE. Any person, other than a  
15 person who makes a delivery sale, who delivers to the consumer  
16 the cigarettes sold in a delivery sale.

17 "(8)(11) DEPARTMENT. The Alabama Department of  
18 Revenue.

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

21 "(9)(13) GOVERNMENT-ISSUED IDENTIFICATION. A state  
22 driver's license, state identification card, passport, a  
23 military identification, or an official naturalization or  
24 immigration document, including an alien registration  
25 recipient card or green card, or an immigrant visa.

26 "(10)(14) LEGAL MINIMUM AGE. 19 years of age.

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

3                   "~~(11)~~(16) MAILS or MAILING. The shipment of  
4 cigarettes through the United States Postal Service.

5                   "~~(12)~~(17) OUT-OF-STATE SALE. A sale of cigarettes to  
6 a consumer located outside of this state where the consumer  
7 submits the order for such sale by means of a telephonic or  
8 other method of voice transmission, the mails or any other  
9 delivery service, facsimile transmission, or the Internet or  
10 other online service, and where the cigarettes are delivered  
11 by use of the mails or other delivery service.

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

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

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

23                   "~~(16)~~(21) STAMP or STAMPS. The stamp or stamps by  
24 the use of which the tax levied under this article is paid and  
25 shall be designated Alabama Revenue Stamps.

26                   "~~(17)~~(22) WITHIN THIS STATE. Within the exterior  
27 limits of the State of Alabama."

1                   Section 3. Sections 28-11-16, 28-11-17, 28-11-18,  
2 28-11-19, and 13A-12-3.8 are added to the Code of Alabama  
3 1975, to read as follows:

4                   §28-11-16.

5                   (a) (1) A retailer or manufacturer of electronic  
6 nicotine delivery systems or alternative nicotine products may  
7 not advertise an electronic nicotine delivery system or an  
8 alternative nicotine product in any of the following ways:

9                   a. As a tobacco cessation product.

10                  b. As a healthier alternative to smoking.

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

13                  d. On any outdoor billboard located within 1,000  
14 feet of any public or private K-12 school or public  
15 playground.

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

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

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

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

27                  §28-11-17.

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

5 (b) Each violation of subsection (a) shall be a  
6 Class C misdemeanor.

7 §28-11-18.

8 (a) All liquid nicotine containers offered for sale  
9 that are intended to be vaporized in an electronic nicotine  
10 delivery system shall be contained in child-resistant  
11 packaging.

12 (b) A specialty retailer of electronic nicotine  
13 delivery systems shall display in a prominent area of the  
14 retail store near the point of sale a sign which contains the  
15 following statements:

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

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

24 §28-11-19.

25 (a) Beginning January 1, 2020, a county may not  
26 issue a license to conduct business as a specialty retailer of

1 electronic nicotine delivery systems if the retail business is  
2 located within 1,000 feet of any of the following:

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

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

5 (3) A church.

6 (4) A public library.

7 (5) A public playground.

8 (6) A public park.

9 (7) A youth center or other space used primarily for  
10 youth oriented activities.

11 (b) This section does not apply to a specialty  
12 retailer of electronic nicotine delivery systems that obtained  
13 a business license at a location prohibited in subsection (a)  
14 prior to January 1, 2020, that has conducted business as a  
15 specialty retailer of electronic nicotine delivery systems at  
16 that location for at least 18 consecutive months, and that  
17 remains in the same location.

18 §13A-12-3.8.

19 (a) No person may conduct a delivery sale of  
20 electronic nicotine delivery systems or alternative nicotine  
21 products unless the seller has obtained a valid permit to  
22 conduct delivery sales of electronic nicotine delivery systems  
23 or alternative nicotine products issued by the board pursuant  
24 to Section 28-11-4.

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

1 (c) A person holding a permit to conduct delivery  
2 sales of electronic nicotine delivery systems or alternative  
3 nicotine products may not accept a purchase or order from any  
4 person without first obtaining the full name, birth date, and  
5 residential address of that person and verifying this  
6 information through an independently operated third-party  
7 database or aggregate of databases, which includes data from  
8 government sources, that are regularly used by government and  
9 businesses for the purpose of age and identity verification  
10 and authentication.

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

15 (e) Each violation for conducting a delivery sale of  
16 electronic nicotine delivery systems or alternative nicotine  
17 products without a valid permit or otherwise in violation of  
18 this section shall be treated as a separate offense and be  
19 punishable as follows: For the first violation by a fine of  
20 not less than one hundred dollars (\$100) nor more than five  
21 hundred dollars (\$500) and for each subsequent violation by a  
22 fine of not less than five hundred dollars (\$500) nor more  
23 than one thousand five hundred dollars (\$1,500).

24 Section 4. Although this bill would have as its  
25 purpose or effect the requirement of a new or increased  
26 expenditure of local funds, the bill is excluded from further  
27 requirements and application under Amendment 621, now

1 appearing as Section 111.05 of the Official ReCompilation of  
2 the Constitution of Alabama of 1901, as amended, because the  
3 bill defines a new crime or amends the definition of an  
4 existing crime.

5 Section 5. This act shall become effective on the  
6 first day of the third month following its passage and  
7 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Judiciary ..... 05-MAR-19

Read for the second time and placed  
on the calendar with 1 substitute  
and 1 amendment..... 03-APR-19

Read for the third time and passed  
as amended..... 04-APR-19

Yeas 101, Nays 0, Abstains 1

Jeff Woodard  
Clerk