HB65

PFH7EGG-2

By Representative Drummond

RFD: Judiciary

First Read: 06-Feb-24

PFD: 30-Jan-24

A BILL

TO BE ENTITLED

AN ACT

Relating to the Alcoholic Beverage Control Board; to amend Sections 28-11-2, 28-11-3, 28-11-5, 28-11-6.1, 28-11-6.2, 28-11-7, 28-11-9, 28-11-10, 28-11-12, 28-11-13, 28-11-14, 28-11-16, 28-11-17.1, and 28-11-18, Code of Alabama 1975, to revise the definition of "electronic nicotine delivery system" to include battery powered devices that deliver substances other than tobacco through the inhalation of vapor; to further provide restrictions on the sale of tobacco and other related products to minors; to prohibit the distribution of tobacco, tobacco products, electronic nicotine delivery systems, e-liquids, and alternative nicotine products through a vending machine; to provide license fees for the retail sale of certain tobacco products; to further provide for the authorized penalties for certain violations; to establish the Tobacco Licensing and Compliance Fund in the State Treasury and provide for its administration; to further provide for the membership of the advisory board to the Alcoholic Beverage Control Board; to further provide for the requirement of tobacco retailers to post signage warning of the dangers of tobacco product use; to require the board to adopt rules; to require the State Board of Education to

establish a model vaping awareness, education, and prevention program and require each local board of education to adopt a policy based on the model policy; to repeal Sections 28-11-15 and 28-11-19, Code of Alabama 1975, and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Section 111.05 of the Constitution of Alabama of 2022.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 28-11-2, 28-11-3, 28-11-5, 28-11-6.1, 28-11-6.2, 28-11-7, 28-11-9, 28-11-10, 28-11-12, 28-11-13, 28-11-14, 28-11-16, 28-11-17.1, and 28-11-18, Code of Alabama 1975, are amended to read as follows:

"§28-11-2

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

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

(2) BOARD. The Alabama Alcoholic Beverage Control

Board.

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

(4) COMMISSIONER. The Commissioner of the Department of Revenue.

(5) DELIVERY SALE. The delivery sale of tobacco, tobacco products, electronic nicotine delivery systems, e-liquids, or alternative nicotine products.

~~(5)~~ (6) DISTRIBUTION. To sell, barter, exchange, or give ~~tobacco or tobacco products~~ for promotional purposes or for gratis.

~~(6)~~ (7) ELECTRONIC NICOTINE DELIVERY SYSTEM. Any electronic device that uses a battery and heating element in combination with an e-liquid or tobacco, or substitutes thereof, to produce a vapor that delivers nicotine or other substances to the individual inhaling from the device to simulate smoking, and includes, but is not limited to, products that may be offered to, purchased by, or marketed to consumers as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vape pen, vape tool, vaping device, or any variation of these terms. The term also includes any e-liquid intended to be vaporized in any device included in this subdivision.

~~(7)~~ (8) ELECTRONIC NICOTINE DELIVERY SYSTEM RETAILER. Any retail business which offers for sale electronic nicotine delivery systems.

~~(8)~~ (9) E-LIQUID. A liquid that contains nicotine or

other substances and may include flavorings or other ingredients that are intended for use in an electronic nicotine delivery system. The term includes e-liquid substitutes, tobacco substitutes, and any other product that may be used in conjunction with an electronic nicotine delivery system, or other substances, including, but not limited to, CBD oil.

~~(9)~~(10) E-LIQUID MANUFACTURER. Any person who manufactures, fabricates, assembles, processes, mixes, prepares, labels, repacks, or relabels an e-liquid to be sealed in final packaging intended for consumer use. This term includes an owner of a brand or formula for an e-liquid who contracts with another person to complete the fabrication and assembly of the product to the brand or formula owner's standards.

~~(10)~~(11) FDA. The United States Food and Drug Administration.

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

~~(12)~~(13) MINOR. Any individual under ~~the age of 19~~ 21 years of age.

~~(13)~~(14) PERSON. Any natural person, firm, partnership, association, company, corporation, or other entity. Person

does not include a manufacturer or wholesaler of tobacco or tobacco products nor does it include employees of the permit holder.

~~(14)~~ (15) PROOF OF IDENTIFICATION. Any one or more of the following documents used for purposes of determining the age of an individual purchasing, attempting to purchase, or receiving tobacco, tobacco products, electronic nicotine delivery systems, or alternative nicotine products:

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

b. United States Uniform Service Identification.

c. A valid passport.

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

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

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

~~(16)~~ (17) SAMPLER. Any business or person who distributes tobacco, ~~or~~ tobacco products, electronic nicotine delivery systems, alternative nicotine products, or e-liquids for promotional purposes.

~~(17)~~ (18) SELF-SERVICE DISPLAY. A display that contains tobacco, ~~or~~ tobacco products, electronic nicotine delivery systems, alternative nicotine products, or e-liquids and is

located in an area openly accessible to purchasers at retail and from which the purchasers can readily access tobacco or tobacco products without the assistance of the tobacco permit holder or an employee of the permit holder. A display case that holds tobacco or tobacco products behind locked doors does not constitute a self-service display.

~~(18)~~ (19) SPECIALTY RETAILER OF ELECTRONIC NICOTINE DELIVERY SYSTEMS. A business establishment at which any of the following are true:

a. The trade name includes the words vape, vapor, or any variation of the terms which may indicate that the business sells electronic nicotine delivery systems, alternative nicotine products, or e-liquids.

~~a. The sale of electronic nicotine delivery systems accounts for more than 35 percent of the total quarterly gross receipts for the establishment~~b. The provided list of intended inventory includes 50 percent or more of electronic nicotine delivery systems or alternative nicotine products, or both, by quantity, by value, or both.

c. At any time after a permit has been issued, the inventory maintained by the business includes 50 percent or more of electronic nicotine delivery systems or alternative nicotine products, or both, by quantity, by value, or both.

~~b.~~d. Twenty percent or more of the public retail floor space is allocated for the offering, displaying, or storage of electronic nicotine delivery systems.

~~c.~~e. Twenty percent or more of the total shelf space, including retail floor shelf space and shelf space in areas

accessible only to employees, is allocated for the offering, displaying, or storage of electronic nicotine delivery systems.

~~d.~~f. The retail space features a self-service display for electronic nicotine delivery systems.

~~e.~~g. Samples of electronic nicotine delivery systems are offered to customers.

~~f.~~h. Liquids intended to be vaporized through the use of an electronic nicotine delivery system ~~are~~ may be produced at the facility or ~~are~~ may be produced by the owner of the establishment or any of its agents or employees~~ for sale at the establishment~~.

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

~~(20)~~(21) TOBACCO PERMIT. A permit issued by the board to allow the permit holder to engage in the distribution of tobacco, tobacco products, electronic nicotine delivery systems, e-liquids, or alternative nicotine products at the location identified in the permit.

~~(21)~~ (22) TOBACCO SPECIALTY STORE. A business that derives at least 75 percent of its revenue from tobacco or tobacco products.

(23) TOBACCO SUBSTITUTE. Products, including electronic nicotine cigarettes or other electronic or battery-powered devices, which contain or are designed to deliver nicotine or other substances into the body through the inhalation of vapor and which have not been approved by the U.S. Food and Drug Administration for tobacco cessation or other medical purposes."

"§28-11-3

The board, in conjunction with federal, state, and local law enforcement agencies, shall enforce state and federal laws that prohibit the distribution of tobacco, tobacco products, alternative nicotine products, e-liquids, and electronic nicotine delivery systems to individuals under ~~the age of~~ 21 years of age. Notwithstanding the foregoing, for purposes of inspections and enforcement actions undertaken pursuant to this section, individuals under ~~the age of~~ 21 years of age may be enlisted to attempt to purchase or purchase tobacco, tobacco products, alternative nicotine products, e-liquids, and electronic nicotine delivery systems, provided that individuals under ~~the age of~~ 18 years of age shall have the prior written consent of a parent or legal guardian, and provided further that the individuals shall be directly supervised during the conduct of each inspection or enforcement action by an enforcement agent of the board or a law enforcement officer~~, or by a sheriff or head of police of~~

~~any county, city, town, or other political subdivision, or by a deputy or officer thereof. No individual under the age of 21 years may misrepresent his or her age for the purpose of purchasing or attempting to purchase tobacco, tobacco products, alternative nicotine products, or electronic nicotine delivery systems. If questioned about his or her age during an attempt to purchase or receive tobacco, tobacco products, alternative nicotine products, or electronic nicotine delivery systems, an individual under the age of 21 years shall state his or her true age. A photograph or video recording of any individual under the age of 21 years assisting in an inspection or enforcement action shall be taken prior to the investigation. The appearance of an individual under the age of 21 years participating in an inspection or enforcement action shall not be altered at the time of the inspection~~."

"§28-11-5

The board may use funding, if available, from the Department of Mental Health, other state or federal agencies, grants, and private or public organizations to enforce this chapter and to provide and distribute prevention materials related to tobacco, tobacco products, alternative nicotine products, e-liquids, and electronic nicotine delivery systems ~~and nicotine prevention materials~~ to retail tobacco merchants and specialty retailers of electronic nicotine delivery systems. The materials shall provide information regarding state and federal laws that prohibit access to tobacco, tobacco products, alternative nicotine products, e-liquids,

and electronic nicotine delivery systems by individuals under ~~the age of~~ 21 years of age and other appropriate information. The board may also provide consultation services for establishing programs to minimize or eliminate sales of tobacco, tobacco products, alternative nicotine products, e-liquids, and electronic nicotine delivery systems to individuals under ~~the age of~~ 21 years of age pursuant to the responsible vendor program."

"§28-11-6.1

~~(a)~~ No tobacco, tobacco product, alternative nicotine product, e-liquid, or electronic nicotine delivery system shall be distributed by use of a vending machine~~ unless the machine:~~

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

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

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

"§28-11-6.2

(a) No tobacco, tobacco product, alternative nicotine product, e-liquid, or electronic nicotine delivery system

shall be ~~distributed~~ sold, furnished, or given away at retail through a self-service display unless the display ~~is a vending machine as permitted under Section 28-11-6.1 or~~ is located in a tobacco specialty store or at a specialty retailer of electronic nicotine delivery systems and is located in an area in which individuals under 21 years of age are not permitted access.

(b) A violation of this section shall be subject to the penalties provided in Section 28-11-9."

"§28-11-7

(a)(1) Any person who distributes tobacco, tobacco products, electronic nicotine delivery systems, or alternative nicotine products within this state shall first obtain a permit from the board for each location of distribution. ~~There is no fee for the permit.~~ Upon application, there shall be a one-time, nonrefundable filing fee of fifty dollars ($50), in addition to a permit fee of one hundred fifty dollars ($150), which shall be renewed annually. The one-time filing fee shall apply only to new applicants for a permit on or after the effective date of the act amending this section.

(2) The fees collected under this subsection shall be distributed as follows:

a. Seventy-five percent shall be deposited into the Tobacco Licensing and Compliance Fund to be used for operational costs of enforcing this chapter and tobacco and nicotine prevention education.

b. Twenty-five percent shall be deposited into the Public Safety Fund of the Alabama State Law Enforcement Agency

to be used for the enforcement of this chapter.

(b) ~~Any person who maintains~~No person may maintain a tobacco, tobacco product, electronic nicotine delivery system, e-liquid, or alternative nicotine product vending machine~~ on his or her property in this state shall first obtain a permit from the board for each machine at each machine location. The permit for each machine shall be posted in a conspicuous place on the machine~~.

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

(d) ~~A permit is not transferable or assignable and shall be renewed annually. Notwithstanding the foregoing, if~~If a location for which a permit ~~is~~has been obtained is sold or transferred, the permit, after submission of an application to transfer and a transfer fee of fifty dollars ($50), ~~shall~~may be transferred to the person obtaining control of the location ~~and shall be valid for 30 days after the transfer during which time a new permit shall be obtained~~, subject to approval by the board. The transferee shall meet any requirements, established by the rule of the board, required for a permit holder. The permitted transfer shall be effective for the duration of the license year, and the transferee shall renew the permit annually as provided in subsection (a). If a permitted business moves to a new location within the same governing jurisdiction, the business owner may apply for a location transfer as provided in this subsection. No more than one of each transfer type shall occur during a permit year.

(e) If feasible, the board by rule may adopt procedures

for the issuance and renewal of permits which combine tobacco permit procedures with the application and licensing procedures for alcoholic beverages."

"§28-11-9

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

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

a. Hear and decide all contested applications for permits.

b. Hear and decide all charges against any permit holder or employee of a permit holder for violations of this chapter, the law, or the rules of the board.

c. Revoke or suspend permits as provided in this chapter.

d. Levy administrative fines upon permit holders ~~or employees of permit holders~~.

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

(b) The board, or a hearing commission appointed by the board, upon finding that a permit holder or any partner, member, employee, officer, or director of the permit holder has violated any of the laws of this state or the United

States relating to the manufacture, sale, possession, or transportation of tobacco, tobacco products, electronic nicotine delivery systems, e-liquids, or alternative nicotine products, or that the permit holder has acted in a manner prejudicial to the welfare, health, peace, temperance, and safety of the people of the community or of the state, ~~may~~ upon due notice and hearing, may levy administrative fines or suspend or revoke the permit issued by the board, or a combination of all three, as provided in subsection (e). In all cases where the board or hearing commission ~~shall levy~~levies an administrative fine or ~~suspend or revoke~~ suspends or revokes a permit, ~~it~~the board shall set forth its findings of fact, the evidence from which the findings of facts are made, and the reasons upon which its actions are based.

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

(d) The maximum length of suspension of a permit pursuant to this chapter shall be one year. A permit holder shall be ineligible to hold a permit pursuant to this chapter for the location where the violation occurred until the expiration or removal of the suspension. A permit holder whose

permit is revoked by the board or the hearing commission shall be, at the discretion of the board or hearing commission, ineligible to hold a permit pursuant to this chapter until the expiration of one year from the date the permit is revoked at the location where the violation occurred.

(e) The following administrative ~~fines may~~penalties shall be levied for violations of this chapter~~ against valid permit holders or employees, or both~~:

(1) ~~Upon conviction for~~For a first violation at a location in a two-year period~~by the permit holder or an employee of the permit holder~~, the board or hearing commission may levy a fine against the permit holder of not more than five hundred dollars ($500)~~may offer the permit holder an opportunity to provide training sessions administered by the Responsible Vendor Program in lieu of an administrative fine upon the permit holder and the employee, if the violation is by an employee, of not more than two hundred dollars ($200)~~.

(2) ~~Upon conviction of~~For a second violation at the same location within a two-year period, the board or hearing commission ~~may~~shall levy an administrative fine upon the permit holder~~ and the employee, if the violation is by an employee,~~ of not more than ~~four hundred dollars ($400)~~seven hundred fifty dollars ($750).

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

~~(4) Upon conviction of~~(3) For a ~~fourth~~third or subsequent violation at the same location within a two-year period, the board or hearing commission ~~may~~shall levy an administrative fine upon the permit holder ~~and the employee, if the violation is by an employee,~~ of not more than one thousand dollars ($1,000) and may suspend or revoke the permit.

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

"§28-11-10

The Tobacco Licensing and Compliance Fund is hereby created in the State Treasury. The fund shall be administered by the Licensing and Compliance Division of the board. All fees and other funds collected by the board pursuant to this chapter shall be deposited into the ~~State General Fund.~~State Treasury to the credit of the fund. Amounts deposited into the fund shall be budgeted and allotted in accordance with Sections 41-4-80 through 41-4-96 and Sections 41-19-1 through 41-19-12. Monies in the fund shall be used by the Licensing and Compliance Division of the board for tobacco and nicotine prevention education, operational costs associated with regulating permitted locations, and the enforcement of this chapter."

"§28-11-12

(a) An advisory board shall be established to monitor

the implementation of this chapter. The advisory board shall meet at least quarterly. Representation shall consist of one representative from each of the following:

(1) The Office of the Governor.

(2) The Office of the Attorney General.

(3) The Department of Mental Health.

(4) The Department of Public Health.

(5) The Alcoholic Beverage Control Board.

(6) The Senate as appointed by the Lieutenant Governor.

(7) The House of Representatives as appointed by the Speaker of the House of Representatives.

(8) The ~~Alabama Oilmen's Association and the Alabama Convenience Store Operators~~Petroleum & Convenience Marketers of Alabama Association as appointed by the Governor and selected from three nominees submitted by the association.

(9) The Alabama Retail Association as appointed by the Governor and selected from three nominees submitted by the association.

(10) The Alabama ~~Grocers'~~Grocers Association as appointed by the Governor and selected from three nominees submitted by the association.

(11) The Breathe Easier Alliance of Alabama as appointed by the Governor and selected from three nominees submitted by the entity.

(12) The Alabama State Law Enforcement Agency.

(13) The Department of Revenue.

(14) The Alabama Chapter of the American Academy of Pediatrics, as appointed by the entity.

(15) The executive director of Children First.

(b) The ~~membership~~appointing authorities of the advisory board shall ~~be~~coordinate their appointments to assure membership is inclusive and ~~reflect~~reflects the racial, gender, geographic, ~~urban/rural~~urban, rural, and economic diversity of the state.

(c) The chair of the advisory board shall be a representative from the board who shall be responsible for the conduct of the meetings and any correspondence derived therefrom.

(d) Other than the legislative appointees, each representative shall be appointed by his or her respective department head, and shall hold the appointment for a one-year term.

(e) A representative may be reappointed as deemed appropriate by his or her department head, or in the case of legislative appointees, the Lieutenant Governor or Speaker of the House of Representatives.

(f) The advisory board may issue written recommendations for program modification to the board."

"§28-11-13

(a)(1) ~~It is unlawful for any~~An individual under ~~the age of~~ 21 years of age may not~~to~~ purchase, use, possess, or transport tobacco, a tobacco product, an electronic nicotine delivery system or other electronic battery-powered device capable of being used to deliver any e-liquid, e-liquid substitute, tobacco, CBD oil, herbal extract, or nicotine salt, or any analog thereof, or any other substance to the

individual through the inhalation of vapor, or an alternative nicotine product within this state.

(2) For purposes of this subsection, a violation is committed upon possession of an electronic nicotine delivery system or other electronic battery-powered device as described in subdivision (1), irrespective of which particular e-liquid or other substance, if any, was contained in the device.

(b) ~~It shall not be unlawful for~~ Notwithstanding subsection (a), an individual under ~~the age of~~ 21 years of age who is an employee of a tobacco, tobacco product, electronic nicotine delivery system, or alternative nicotine product permit holder ~~to~~may handle, transport, or sell tobacco, a tobacco product, an electronic nicotine delivery system, or an alternative tobacco product, provided ~~if~~ the employee is acting within the line and scope of employment and the permit holder, or an employee of the permit holder who is 21 years of age or older, is present.

~~(b)~~(c) ~~It is unlawful for any~~An individual under ~~the age of~~ 21 years of age may not~~to~~ present or offer to another person proof of identification which is false, fraudulent, or not actually his or her own proof of identification in order to buy, receive, or otherwise obtain, or attempt to buy, receive, or otherwise obtain, any tobacco, tobacco product, electronic nicotine delivery system, e-liquid, or alternative nicotine product.

(d)(1) Except as otherwise provided, a violation of this chapter by a person under 18 years of age shall constitute a delinquent act and be subject to the exclusive

jurisdiction of the juvenile court.

(2) A violation of this chapter by an individual 18 years of age or older but under 21 years of age shall be punished as follows and assessed no other court costs or fees:

a. For a first violation, a written warning.

b. For a second violation, community service of eight hours.

c. For a third or subsequent violation, community service of 16 hours and a fine of one hundred dollars ($100).

~~(c)~~(e) If ~~a minor~~an individual under 18 years of age is cited for any violation under this section, the citing agency shall make reasonable efforts to notify a parent, legal guardian, or legal custodian of the ~~minor unless the minor~~individual that the individual was cited for the violation. This subsection does not apply if the individual has been emancipated by court order or operation of law."

"§28-11-14

(a)(1) Any tobacco, tobacco product, alternative nicotine product, e-liquid, electronic nicotine delivery system, or false proof of identification found in the possession of an individual under ~~the age of~~ 21 years of age is contraband and subject to seizure by any law enforcement officer.

(2) Prohibited tobacco, tobacco products, electronic nicotine delivery systems, e-liquids, and alternative nicotine products kept, stored, or deposited in any place in this state for the purpose of unlawful sale or unlawful disposition or unlawful furnishing or distribution, and the vessels and

receptacles in which the products are contained are declared to be contraband and shall be seized and forfeited to the state and may be condemned for destruction pursuant to the procedures set out in Article 11 of Chapter 4 concerning alcoholic beverages.

(3) Prohibited tobacco, tobacco products, electronic nicotine delivery systems, e-liquids, and alternative nicotine products may be searched for, seized, and ordered to be destroyed pursuant to the procedures set out in Article 11 of Chapter 4 concerning alcoholic beverages.

(b) In any criminal prosecutions against a person for a violation of this chapter, on conviction, the court may order the destruction of any prohibited tobacco, tobacco products, electronic nicotine delivery systems, e-liquids, and alternative nicotine products which were: (i) sold, offered for sale, possessed, or otherwise disposed of by the defendant; (ii) employed by the defendant for use or disposition at any unlawful establishment by the defendant; (iii) possessed or used in conducting the business of a tobacco dealer; or (iv) used as evidence in the case.

(c) All fixtures, equipment, materials, and personal property used in substantial connection with the sale or possession of tobacco, tobacco products, electronic nicotine delivery systems, e-liquids, and alternative nicotine products involved in a violation of this article shall be subject to the same seizure and forfeiture procedures as provided pursuant to Article 11 of Chapter 4.

(d) The board shall dispose of electronic nicotine

delivery systems, e-liquids, and alternative nicotine products seized under this chapter by destruction as provided by rule of the board. Any person from whom an electronic nicotine delivery system, e-liquid, or alternative nicotine product is seized and destroyed pursuant to this section shall be subject to a fee, to be determined based on the cost of the destruction and disposal of the electronic nicotine delivery system, e-liquid, or alternative nicotine product as hazardous waste. ~~Any individual under the age of 21 years violating Section 28-11-13 shall be issued a citation similar to a uniform nontraffic citation and shall be fined not less than ten dollars ($10) nor more than fifty dollars ($50) for each violation, and shall be assessed no other court costs or fees.~~

~~(b) Notwithstanding any other provision of law, the disposition of any violation shall be within the jurisdiction of the district or municipal court and not the juvenile court. Violations shall not be considered criminal offenses and shall be administratively adjudicated by the district or municipal court.~~

(e) Nothing in this section shall apply to any manufacturer of alternative nicotine products that were commercially marketed in the United States before February 15, 2007."

"§28-11-16

"(a)(1) A retailer or manufacturer of electronic nicotine delivery systems, e-liquids, or alternative nicotine products may not advertise an electronic nicotine delivery system, e-liquid, or an alternative nicotine product in any of

the following ways:

a. As a tobacco cessation product.

b. As a healthier alternative to smoking.

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

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

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

(b)(1) A specialty retailer of electronic nicotine delivery systems or manufacturer of tobacco, tobacco products, electronic nicotine delivery systems, e-liquids, or alternative nicotine products may not in any way sponsor, finance, or advertise a scholarship of any kind using the brand name of any tobacco product, alternative nicotine product, e-liquid, or electronic nicotine delivery system.

(2) A specialty retailer of electronic nicotine delivery systems or manufacturer of tobacco, tobacco products, electronic nicotine delivery systems, e-liquids, or alternative nicotine products may not use the brand name of any tobacco product, alternative nicotine product, e-liquid, or electronic nicotine delivery system to advertise at or sponsor any event at a stadium, concert, sporting event, or other public performance event for which individuals ~~aged~~ 21 years of age or older make up less than 85 percent of the

total age demographic of ~~performing participants~~individuals performing at the event.

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

(4) No specialty retailer of electronic nicotine delivery systems shall allow anyone under 21 years of age to be on the permitted premises.

(c)(1) A violation of subsection (a) or subsection (b) shall result in a ~~one hundred dollar ($100)~~three hundred dollar ($300) fine for the first occurrence.

(2) A second or subsequent violation of subsection (a) or subsection (b) shall result in a ~~five hundred dollar ($500)~~seven hundred fifty dollar ($750) fine per occurrence.

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

(d) A retailer or manufacturer of tobacco, tobacco products, electronic nicotine delivery systems, e-liquids, or alternative nicotine products may not advertise, market, or

offer for sale tobacco, a tobacco product, an electronic nicotine delivery system, an e-liquid, or an alternative nicotine product in any of the following ways:

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

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

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

(4) By using, in the labeling or design of the product, its packaging, or in its advertising or marketing materials, trade dress, trademarks, branding, or other related imagery

that depicts or signifies characters or symbols that are known to appeal primarily to minors, including, but not limited to, superheroes, comic book characters, video game characters, television show characters, movie characters, mythical creatures, unicorns, or that otherwise incorporates related imagery or scenery.

(e) The board may adopt rules to implement this section, including rules regarding the suitability of labels and procedures to reject advertising that appeals to minors, including, but not limited to, the design of a product, its packaging, or its advertising or marketing materials, trade dress, trademarks, branding, or other related imagery. The board may adopt rules to implement an appeal process to review any labels that are denied.

(f) Any item found in violation of subsection (d) is a prohibited item and shall be considered contraband and may be seized as provided by Section 28-11-14 by an agent of the board or any law enforcement officer.

(g) A specialty retailer of electronic nicotine delivery systems may have a sign indicating the trade name of the business. However, no additional signs, banners, or flashing lights of any kind may be visible to the public from outside of the business advertising that the business sells electronic nicotine delivery systems, alternative nicotine products, or e-liquids, including any depictions or representations of any such products."

"§28-11-17.1

(a)(1) Beginning ~~March 1, 2022~~October 1, 2024, or other

date not more than 30 days following a premarket tobacco application submission deadline issued by the FDA, whichever is later, every e-liquid manufacturer and manufacturer of alternative nicotine products whose products are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the commissioner, a certification to the commissioner certifying, under penalty of perjury, whether the product contains any synthetic nicotine or nicotine derived from a source other than tobacco, and that ~~either~~ any of the following apply:

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

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

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

order.

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

c. For electronic nicotine delivery system and e-liquid products containing nicotine derived from tobacco or any other source, the product was commercially marketed in the United States as of April 12, 2022, and the manufacturer applied for a marketing order pursuant to 21 U.S.C. § 387j on or before May 14, 2022; provided, such products meet the following requirements: (i) The product is not a single use or disposable electronic nicotine delivery system; and (ii) the product does not use a sealed, prefilled, and disposable cartridge of nicotine in a solution.

(2) In addition to the requirements in subdivision (1), each manufacturer shall provide:

a. A ~~a~~ copy of the cover page of the premarket tobacco application with evidence of receipt of the application by the FDA or a copy of the cover page of the marketing order or other authorization issued pursuant to 21 U.S.C. § 387j, whichever is applicable.

b. Information that clearly identifies each product, submission tracking number (STN), product name, product subcategory, characterizing flavor, and product SKU number.

(b) Any manufacturer submitting a certification pursuant to subsection (a) shall notify the commissioner

within 30 days of any material change to the certification, including issuance by the FDA of any of the following:

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

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

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

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

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

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

(1) Make the directory available for public inspection on its website by May 1, 2022.

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

(3) Remove from the directory any product that the board determines is a prohibited item pursuant to Section 28-11-16(d).

~~(3)~~ (4) Send monthly notifications to each wholesaler,

jobber, semijobber, retailer, importer, or distributor of tobacco products that have qualified or registered with the Department of Revenue, by electronic communication, containing a list of all changes that have been made to the directory in the previous month. In lieu of sending monthly notifications, the commissioner may make the information available in a prominent place on the Department of Revenue's public website.

~~(4)~~ (e) Information required to be listed in the directory shall not be subject to the confidentiality and disclosure provisions in Section 40-2A-10.

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

~~(f)~~ (g) Each certifying e-liquid manufacturer and manufacturer of alternative nicotine products shall pay an initial fee of two thousand dollars ($2,000) to offset the costs incurred by the department for processing the certifications and operating the directory. The commissioner shall collect an annual renewal fee of five hundred dollars ($500) to offset the costs associated with maintaining the directory and satisfying the requirements of this section. The

fees received under this section by the department shall be used by the department exclusively for processing the certifications and operating and maintaining the directory. After the payment of these expenses, ~~two-thirds~~one-half of the remaining funds shall be deposited into the State General Fund, and the remaining ~~one-third~~one-half shall be distributed evenly to the Alabama State Law Enforcement Agency and to the Licensing and Compliance Division of the board to be used for the enforcement of this chapter.

~~(g)~~ (h) Beginning on September 1, 2021, no e-liquid, e-liquid in combination with an electronic nicotine delivery system, or alternative nicotine product that, in the case of any such product, contains synthetic nicotine or nicotine derived from a source other than tobacco may be sold or otherwise distributed in this state without either first certifying that a premarket tobacco product application was successfully submitted to the FDA and accepted for filing by May 14, 2022, in accordance with the applicable requirements under Section 201(rr) of the Federal Food, Drug, and Cosmetic Act, or obtaining approval from the FDA for sale as a drug under Section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act, a device under Section 201(h) of the Federal Food, Drug, and Cosmetic Act, a combination product described in Section 503(g) of the Federal Food, Drug, and Cosmetic Act, or some other medical purpose.

~~(h)~~ (i)(1) ~~Beginning May 1, 2022, or on the date that the Department of Revenue first makes the directory available for public inspection on its website as provided in subsection~~

~~(d), whichever is later, an~~An e-liquid manufacturer or manufacturer of alternative nicotine products or electronic nicotine delivery systems who ~~offers for sale~~sells, furnishes, or gives away a product not listed on the directory is subject to a one thousand dollars ($1,000) daily fine for each product offered for sale in violation of this section until the offending product is removed from the market or until the offending product is properly listed on the directory. For purposes of this subdivision "sale" includes a delivery sale of e-liquids or electronic nicotine delivery systems or alternative nicotine products, as defined under this chapter.

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

(j)(1) When any retail permit holder offers for sale a product not listed on the directory, the board shall assess the following administrative penalties:

a. For a first offense within a four-year period, an administrative penalty of five hundred dollars ($500).

b. For a second offense within a four-year period, an administrative penalty of seven hundred fifty dollars ($750).

c. For a third or subsequent offense within a four-year period, an administrative penalty of one thousand dollars ($1,000). In addition, the board may suspend or revoke the permit of the permit holder.

(2) All products offered for sale and not listed on the directory shall be considered a prohibited item and declared to be contraband and may be seized and forfeited as provided in Section 28-11-14 by agents of the board or any law

enforcement officer.

(k) Any fine collected for a violation of this section shall be deposited into the Education Trust Fund to the credit of the State Board of Education to be used for the establishment and administration of vape awareness, education, and prevention programs and the provision of drug education and prevention curriculum, as provided in Section 2 of the act amending this section.

~~(i)~~ (l) The ~~commissioner~~Alcoholic Beverage Control Board and the Commissioner of Revenue shall adopt rules for the implementation and enforcement of this section.

(m) Nothing in this section shall apply to any manufacturer of alternative nicotine products that were commercially marketed in the United States before February 15, 2007."

"§28-11-18

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

(b) A ~~specialty~~ retailer of tobacco, tobacco products, alternative nicotine products, e-liquids, or electronic nicotine delivery systems shall display in a prominent area of the retail store near the point of sale, an 8 1/2 x 11 inch ~~a~~ sign or signs containing~~which contains~~ the following statements:

(1) "ALABAMA LAW STRICTLY PROHIBITS THE PURCHASE OF TOBACCO, TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS,

E-LIQUIDS, AND ELECTRONIC NICOTINE DELIVERY SYSTEMS BY PERSONS UNDER ~~THE AGE OF~~ 21 YEARS OF AGE. PROOF OF AGE IS REQUIRED."

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

~~(3)~~(2) "WARNING: TOBACCO, TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, E-LIQUIDS, ELECTRONIC NICOTINE DELIVERY SYSTEMS, AND VAPING PRODUCTS OFFERED FOR SALE IN THIS STORE CONTAIN NICOTINE UNLESS OTHERWISE MARKED. NICOTINE IS A HIGHLY ADDICTIVE CHEMICAL WHICH CAN HARM BRAIN DEVELOPMENT IN CHILDREN AND ADOLESCENTS AND WHICH POSES SERIOUS HEALTH RISKS TO PREGNANT WOMEN AND THEIR BABIES.

(c) In addition to the requirements of subsection (b), a retailer of alternative nicotine products, e-liquids, or electronic nicotine delivery systems shall include the following statement on the required posted sign:

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

(d) Posted signs required by this section, at a minimum, must accurately list the type of products sold at the retail establishment. If a retailer does not sell all of the product types listed in the statements described in subsections (b) or (c), the retailer may amend the products listed on the sign to accurately reflect the type of products sold."

Section 2. (a) By July 1, 2024, the State Board of Education shall adopt a model policy for the establishment of

a vape awareness, education, and prevention program to prohibit the possession and use of prohibited tobacco, tobacco products, electronic nicotine delivery systems, e-liquids, and alternative nicotine products by students in K-12 schools.

(b) By September 1, 2024, each local board of education shall adopt a policy that, at a minimum, contains the criteria established in the model policy adopted by the State Board of Education.

(c) The model policy adopted by the State Board of Education, at a minimum, shall contain all of the following:

(1) A statement prohibiting the possession or use of tobacco, tobacco products, electronic nicotine delivery systems, e-liquids, and alternative nicotine product, as those terms are defined under Section 28-11-2, Code of Alabama 1975, by any student at a K-12 school, on a school bus, or at any school-sponsored function.

(2) A series of graduated consequences for any student who violates this policy by possessing or using tobacco, tobacco products, electronic nicotine delivery systems, e-liquids, or alternative nicotine products as prohibited by this section. Graduated consequences may include, but are not limited to, in-school suspension, out-of-school suspension, or alternative school, or any combination thereof, and shall conform with applicable disability, antidiscrimination, and education laws and school discipline policies.

(3)a. A requirement that any student in violation of the prohibition against possession or use of tobacco, tobacco products, electronic nicotine delivery systems, e-liquids, or

alternative nicotine products be required to attend and complete a vaping awareness, education, and prevention class based on curriculum established by the Drug Education Council and approved by the State Board of Education.

b. An additional requirement that on a second or subsequent violation, the student must attend and complete the vaping awareness, education, and prevention class with his or her parent or legal guardian.

(4) A model complaint form and procedure for reporting violations of this section. An anonymous report may not be the basis of imposing formal disciplinary action against a student.

(5) A procedure for the prompt investigation of reports of serious violations and complaints, specifying that the principal, assistant principal, or school resource officer is the individual responsible for the investigation.

(6) A response procedure for a school to follow upon confirmation of the possession or use of tobacco, tobacco products, electronic nicotine delivery systems, e-liquids, or alternative nicotine products as prohibited by this section.

(7) A procedure for publicizing local school board policy through publication in the student handbook, including providing notice that the policy applies to behavior occurring on school property, school buses, and at school-sponsored functions.

(8) A statement prohibiting the use of tobacco, tobacco products, electronic nicotine delivery systems, e-liquids, and alternative nicotine products, as those terms are defined

under Section 28-11-2, Code of Alabama 1975, by any teacher, administrator, or other school employee on the campus of any K-12 school.

(c) The policy adopted by each local board of education shall be included in the code of conduct policy of the local board of education and included in the student handbook.

(d) Any discipline received by a student for the possession or use of tobacco, tobacco products, electronic nicotine delivery systems, e-liquids, or alternative nicotine products at a K-12 school, on a school bus, or at any school-sponsored function in violation of this section shall be in lieu of any penalty provided under Section 28-11-13, Code of Alabama 1975.

Section 3. The Alcoholic Beverage Control Board shall adopt rules to implement and administer Chapter 11 of Title 28, Code of Alabama 1975.

Section 4. Section 28-11-15, Code of Alabama 1975, relating to the posting of signs regarding the sale of tobacco and tobacco products, is repealed.

Section 5. Section 28-11-19, Code of Alabama, 1975, relating to limitation on locations of specialty retailers of electronic nicotine delivery systems, is repealed.

Section 6. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Section 111.05 of the Constitution of Alabama of 2022, because the bill defines a new crime or amends the definition of an existing crime.

Section 7. This act shall become effective June 1, 2024.

House of Representatives

Read for the first time and referred 06-Feb-24
to the House of Representatives
committee on Judiciary

Read for the second time and placed 28-Feb-24
on the calendar:
0 amendments

Read for the third time and passed 19-Mar-24
as amended
Yeas 102
Nays 0
Abstains 0

John Treadwell
Clerk