

HB529 INTRODUCED



1 HB529
2 ARRTLSS-1
3 By Representative Faulkner
4 RFD: Ways and Means General Fund
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SYNOPSIS:

Under existing law, no additional tax is levied on consumable vapor products beyond the general sales tax.

This bill would levy a tax on these products and provide for the reporting, collection, and distribution of the proceeds from this tax.

This bill would also provide for the permitting of retailers of these products and would impose criminal penalties for violations of this act.

A BILL
TO BE ENTITLED
AN ACT

Relating to consumable vapor product; to levy a tax on these products and provide for the reporting, collection, and distribution of the proceeds from these taxes; to provide for recordkeeping; to amend Sections 28-11-2, 28-11-7 and 28-11-17.1, Code of Alabama 1975, to provide for the permitting of retailers of these products; and to provide criminal penalties for violations of these provisions.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. For the purposes of Sections 1 through 6,



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29 the following terms have the respective meanings ascribed to
30 them by this section:

31 (1) CONSUMABLE VAPOR PRODUCT. The same meaning as the
32 term defined in Section 40-23-1, Code of Alabama 1975.

33 (2) DEPARTMENT. The Alabama Department of Revenue.

34 (3) PERSON. Any individual, corporation, partnership,
35 limited liability company, association, limited liability
36 partnership, or other organization that engages in any
37 for-profit or not-for-profit activities.

38 Section 2. (a) Beginning October 1, 2026, there is
39 levied an excise tax upon all consumable vapor product sold at
40 wholesale in this state or imported into this state for use,
41 consumption, or sale at retail. The tax shall be ten cents
42 (\$0.10) per milliliter of a consumable vapor product. The tax
43 shall not apply to sales between licensed wholesalers, being
44 the purpose and intent of this provision that the tax levied
45 is a levy on the ultimate consumer or user of consumable vapor
46 products with the wholesaler acting merely as an agent of the
47 state for the collection and payment of the tax to the state.

48 (b) (1) Except as provided in subdivision (2), the tax
49 shall be in addition to all other licenses and taxes levied by
50 law.

51 (2) The tax levied in subsection (a) shall be exclusive
52 and shall be in lieu of any other or additional county or
53 municipal taxes or license fees imposed on the sale or use of
54 consumable vapor products, and any act of the Legislature or
55 an ordinance or resolution by a taxing authority passed or
56 enacted on or before October 1, 2026, imposing a local tax or



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57 local license fee on consumable vapor products is void.

58 (c) The tax shall not apply to any consumable vapor
59 product exported from this state for which proof of export is
60 available in the form of a bill of lading, shipping document,
61 and/or invoice.

62 Section 3. The proceeds from the tax levied in Section
63 2 and the penalties collected under the provisions of this act
64 shall be remitted to the department, which shall retain the
65 amount necessary to fund the administrative costs of
66 collecting the tax. The balance of the proceeds collected
67 shall be distributed quarterly as follows:

68 (1) Fifty percent to the State Treasury to the State
69 General Fund.

70 (2) Twenty-five percent to the counties in the state on
71 a basis of the ratio of the population of each county to the
72 total population of all counties in the state, as determined
73 in the most recent federal census prior to the distribution.

74 (3) Twenty-five percent to the municipalities in the
75 state on a basis of the ratio of the population of each
76 municipality to the total population of all municipalities in
77 the state, as determined in the most recent federal census
78 prior to distribution.

79 Section 4. (a)(1) Before any person engages in the
80 business of selling consumable vapor products on which the tax
81 levied in Section 2 has not been paid to the department, the
82 person shall apply for a license in a manner provided by rule
83 of the department. The license shall be a condition precedent
84 to engaging or continuing in the business of selling vapor



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85 product. Failure to submit a properly completed license
86 application may result in a delay in processing the
87 application or denial of the license.

88 (2) The department shall assess the penalties under
89 Section 40-25-16.1, Code of Alabama 1975, on any person who
90 engages in the business of selling any consumable vapor
91 product for which a license is required by this act without
92 having first obtained and subsequently retained a valid
93 license.

94 (b) On or before the 20th day of each month, each
95 person on whom the tax is imposed shall submit a statement to
96 the department showing the amounts utilized in the measurement
97 of the tax and all other information required by the
98 department and shall pay to the department the amount of tax
99 shown due.

100 (c) A licensee who timely files a return with the
101 payment due may deduct from the amount of tax payable with the
102 return a discount of 4.75 percent of the amount of tax payable
103 to the state. If the person does not remit the full amount
104 listed as due on the tax return, any discount claimed by the
105 person is disallowed.

106 (d) It is the duty of every person receiving, storing,
107 selling, or handling consumable vapor products subject to the
108 tax to keep and preserve all documents relating to the
109 purchase, sale, exchange, or receipt of all consumable vapor
110 products subject to the tax. Any authorized representative of
111 the department may audit and inspect this documentation during
112 normal business hours of the seller. The purchaser shall



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113 retain all purchase invoices from the source for every
114 purchase of consumable vapor products received for a period of
115 90 days at the purchaser's location. At the end of the 90
116 days, the purchase records shall be maintained with the
117 required books and records for a period of three years from
118 the date of purchase.

119 Section 5. (a) Any person subject to this act who fails
120 to make any report required of them by the department or who
121 fails to keep any of the records required by this act shall be
122 guilty of a Class B misdemeanor. Each month of such failure
123 shall constitute a separate offense. Consumable vapor products
124 shall be included in the informational report for tobacco
125 products filed with the department pursuant to and subject to
126 the penalties of Section 40-23-260, Code of Alabama 1975.

127 (b) Any taxpayer who violates this section may be
128 restrained from continuing in business, and the proper
129 prosecution shall be instituted in the name of the State of
130 Alabama by the Attorney General or by the counsel of the
131 department until the person complies with this act.

132 Section 6. (a) The Alabama Alcoholic Beverage Control
133 Board or any law enforcement officer may confiscate any
134 consumable vapor product in the possession of a person selling
135 or offering for sale consumable vapor products that does not
136 hold the permit required pursuant to Section 28-11-7, Code of
137 Alabama 1975.

138 (b) Any product confiscated pursuant to this section
139 shall be contraband and destroyed in a manner provided by the
140 board.



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141 Section 7. Sections 28-11-2, 28-11-7, and 28-11-17.1
142 Code of Alabama 1975, are amended to read as follows:

143 "§28-11-2

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

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

157 (2) BOARD. The Alabama Alcoholic Beverage Control
158 Board.

159 (3) CHILD-RESISTANT PACKAGING. Liquid nicotine
160 container packaging meeting the requirements of 15 U.S.C. §
161 1472a.

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

164 (5) DISTRIBUTION. To sell, barter, exchange, or give
165 tobacco or tobacco products for promotional purposes or for
166 gratis.

167 (6) ELECTRONIC NICOTINE DELIVERY SYSTEM. Any electronic
168 device that uses a battery and heating element in combination



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169 with an e-liquid or tobacco to produce a vapor that delivers
170 nicotine to the individual inhaling from the device to
171 simulate smoking, and includes, but is not limited to,
172 products that may be offered to, purchased by, or marketed to
173 consumers as an electronic cigarette, electronic cigar,
174 electronic cigarillo, electronic pipe, electronic hookah, vape
175 pen, vape tool, vaping device, or any variation of these
176 terms. The term also includes any e-liquid intended to be
177 vaporized in any device included in this subdivision.

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

181 (8) E-LIQUID. A liquid that contains nicotine and may
182 include flavorings or other ingredients that are intended for
183 use in an electronic nicotine delivery system. This term also
184 includes "consumable vapor product" as the term is defined in
185 Section 40-23-1.

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

193 (10) FDA. The United States Food and Drug
194 Administration.

195 (11) LIQUID NICOTINE CONTAINER. A bottle or other
196 container of a liquid product that is intended to be vaporized



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197 and inhaled using an electronic nicotine delivery system. The
198 term does not include a container holding liquid that is
199 intended for use in a vapor product if the container is
200 pre-filled and sealed by the manufacturer and is not intended
201 to be opened by the consumer.

202 (12) MINOR. Any individual under the age of 19 years.

203 (13) PERSON. Any natural person, firm, partnership,
204 association, company, corporation, or other entity. Person
205 does not include a manufacturer or wholesaler of tobacco or
206 tobacco products nor does it include employees of the permit
207 holder.

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

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

215 b. United States Uniform Service Identification.

216 c. A valid passport.

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

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

223 (15) RESPONSIBLE VENDOR PROGRAM. A program administered
224 by the board to encourage and support vendors in training



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225 employees in legal and responsible sales practices.

226 (16) SAMPLER. Any business or person who distributes
227 tobacco or tobacco products for promotional purposes.

228 (17) SELF-SERVICE DISPLAY. A display that contains
229 tobacco or tobacco products and is located in an area openly
230 accessible to purchasers at retail and from which the
231 purchasers can readily access tobacco or tobacco products
232 without the assistance of the tobacco permit holder or an
233 employee of the permit holder. A display case that holds
234 tobacco or tobacco products behind locked doors does not
235 constitute a self-service display.

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

239 a. The sale of electronic nicotine delivery systems
240 accounts for more than 35 percent of the total quarterly gross
241 receipts for the establishment.

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

245 c. Twenty percent or more of the total shelf space,
246 including retail floor shelf space and shelf space in areas
247 accessible only to employees, is allocated for the offering,
248 displaying, or storage of electronic nicotine delivery
249 systems.

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

252 e. Samples of electronic nicotine delivery systems are



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253 offered to customers.

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

258 (19) TOBACCO or TOBACCO PRODUCT. Any product made or
259 derived from tobacco that is intended for human consumption,
260 including any component, part, or accessory of a tobacco
261 product, except for raw materials other than tobacco used in
262 manufacturing a component, part, or accessory of a tobacco
263 product, but does not include an article that is a drug under
264 Section 201(g) (1) of the Federal Food, Drug, and Cosmetic Act,
265 a device under Section 201(h) of the Federal Food, Drug, and
266 Cosmetic Act, or a combination product described in Section
267 503(g) of the Federal Food, Drug, and Cosmetic Act.

268 (20) TOBACCO PERMIT. A permit issued by the board to
269 allow the permit holder to engage in the distribution of
270 tobacco, tobacco products, electronic nicotine delivery
271 systems, or alternative nicotine products at the location
272 identified in the permit.

273 (21) TOBACCO SPECIALTY STORE. A business that derives
274 at least 75 percent of its revenue from tobacco or tobacco
275 products."

276 "§28-11-7

277 (a) (1) Any person who distributes tobacco, or tobacco
278 products, ~~electronic nicotine delivery systems, or alternative~~
279 ~~nicotine products~~ within this state shall first obtain a
280 permit from the board for each location of distribution. There



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281 is no fee for the permit.

282 (2) Any person who distributes alternative nicotine
283 products or electronic nicotine delivery systems within this
284 state shall first obtain a permit from the board for each
285 location of distribution. An annual fee of one hundred fifty
286 dollars (\$150) is established for this permit. The proceeds
287 from this permit fee shall be credited to the board and used
288 for the operational costs of enforcing this chapter.

289 (b) Any person who maintains a tobacco, tobacco
290 product, electronic nicotine delivery system, or alternative
291 nicotine product vending machine on his or her property in
292 this state shall first obtain a permit from the board for each
293 machine at each machine location. The permit for each machine
294 shall be posted in a conspicuous place on the machine.

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

297 (d) A permit is not transferable or assignable and
298 shall be renewed annually. Notwithstanding the foregoing, if a
299 location for which a permit is obtained is sold or
300 transferred, the permit shall be transferred to the person
301 obtaining control of the location and shall be valid for 30
302 days after the transfer during which time a new permit shall
303 be obtained.

304 (e) If feasible, the board by rule may adopt procedures
305 for the issuance and renewal of permits which combine tobacco
306 permit procedures with the application and licensing
307 procedures for alcoholic beverages."

308 "§28-11-17.1



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309 (a) (1) Beginning March 1, 2022, or other date not more
310 than 30 days following a premarket tobacco application
311 submission deadline issued by the FDA, whichever is later,
312 every e-liquid manufacturer and manufacturer of alternative
313 nicotine products whose products are sold in this state,
314 whether directly or through a distributor, retailer, or
315 similar intermediary or intermediaries, shall execute and
316 deliver on a form prescribed by the commissioner, a
317 certification to the commissioner certifying, under penalty of
318 perjury, either of the following:

319 a. The product was on the market in the United States
320 as of August 8, 2016, and the manufacturer has applied for a
321 marketing order pursuant to 21 U.S.C. § 387j for the e-liquid,
322 e-liquid in combination with an electronic nicotine delivery
323 system, or alternative nicotine product that was on the market
324 in the United States as of April 12, 2022 and the manufacturer
325 applied for a marketing order pursuant to 21 U.S.C. § 387j on
326 or before May 14, 2022; whichever is applicable, by
327 submitting a premarket tobacco product application on or
328 before September 9, 2020, to the FDA; and either of the
329 following is true:

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

332 2. The FDA has issued a no marketing order for the
333 e-liquid, e-liquid in combination with an electronic nicotine
334 delivery system, or alternative nicotine product, whichever is
335 applicable, from the FDA; however, the agency or a federal
336 court has issued a stay order or injunction during the



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337 pendency of the manufacturer's appeal of the no marketing
338 order.

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

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

350 (b) Any manufacturer submitting a certification
351 pursuant to subsection (a) shall notify the commissioner
352 within 30 days of any material change to the certification,
353 including issuance by the FDA of any of the following:

354 (1) A market order or other authorization pursuant to
355 21 U.S.C. § 387j.

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

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

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

363 (c) The commissioner shall develop and maintain a
364 directory listing all e-liquid manufacturers and manufacturers



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365 of alternative nicotine products that have provided
366 certifications that comply with subsection (a) and all
367 products that are listed in those certifications.

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

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

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

376 (3) Send monthly notifications to each wholesaler,
377 jobber, semijobber, retailer, importer, or distributor of
378 tobacco products that have qualified or registered with the
379 Department of Revenue, by electronic communication, containing
380 a list of all changes that have been made to the directory in
381 the previous month. In lieu of sending monthly notifications,
382 the commissioner may make the information available in a
383 prominent place on the Department of Revenue's public website.

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

387 (e) Notwithstanding subsection (a), if an e-liquid
388 manufacturer or manufacturer of alternative nicotine products
389 can demonstrate to the commissioner that the FDA has issued a
390 rule, guidance, or any other formal statement that temporarily
391 exempts a product from the federal premarket tobacco
392 application requirements, the product may be added to the



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393 directory upon request by the manufacturer if the manufacturer
394 provides sufficient evidence that the product is compliant
395 with the federal rule, guidance, or other formal statement, as
396 applicable.

397 (f) Each certifying e-liquid manufacturer and
398 manufacturer of alternative nicotine products shall pay an
399 initial fee of two thousand dollars (\$2,000) to offset the
400 costs incurred by the department for processing the
401 certifications and operating the directory. The commissioner
402 shall collect an annual renewal fee of five hundred dollars
403 (\$500) to offset the costs associated with maintaining the
404 directory and satisfying the requirements of this section. The
405 fees received under this section by the department shall be
406 used by the department exclusively for processing the
407 certifications and operating and maintaining the directory.
408 After the payment of these expenses, two-thirds of the
409 remaining funds shall be deposited into the General Fund, and
410 the remaining one-third shall be distributed evenly to the
411 Alabama State Law Enforcement Agency and to the board.

412 (g) Beginning on September 1, 2021, no e-liquid,
413 e-liquid in combination with an electronic nicotine delivery
414 system, or alternative nicotine product that, in the case of
415 any such product, contains synthetic nicotine or nicotine
416 derived from a source other than tobacco may be sold or
417 otherwise distributed in this state without first obtaining
418 approval from the FDA for sale as a drug under Section
419 201(g)(1) of the Federal Food, Drug, and Cosmetic Act, a
420 device under Section 201(h) of the Federal Food, Drug, and



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421 Cosmetic Act, a combination product described in Section
422 503(g) of the Federal Food, Drug, and Cosmetic Act, or some
423 other medical purpose.

424 (h) (1) Beginning May 1, 2022, or on the date that the
425 Department of Revenue first makes the directory available for
426 public inspection on its website as provided in subsection
427 (d), whichever is later, an e-liquid manufacturer or
428 manufacturer of alternative nicotine products who offers for
429 sale a product not listed on the directory is subject to a one
430 thousand dollars (\$1,000) daily fine for each product offered
431 for sale in violation of this section until the offending
432 product is removed from the market or until the offending
433 product is properly listed on the directory.

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

436 (i) The commissioner shall adopt rules for the
437 implementation and enforcement of this section."

438 Section 8. The department shall enforce this act and
439 may adopt rules to administer and enforce this act.

440 Section 9. This act shall become effective on October
441 1, 2025.