

SB271 INTRODUCED



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2 By Senator Gudger
3 RFD: Judiciary
4 First Read: 02-May-23
5
6 2023 Regular Session



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SYNOPSIS:

Under existing law, the Alcoholic Beverage Control (ABC) Board regulates and enforces the sale of tobacco, tobacco products, alternative nicotine products, and electronic nicotine delivery systems.

Under existing law, to assist with the enforcement of the laws prohibiting sales to a minor, an individual under 21 years of age may operate under the supervision of a law enforcement officer to attempt to purchase tobacco products, alternative nicotine products, and electronic nicotine delivery systems. The minor is prohibited from misrepresenting his or her age to the retail licensee.

This bill would revise the definition of "electronic nicotine delivery system" to include delivery of substances other than tobacco.

This bill would prohibit the minor from using a fake or forged identification and would require the minor to present his or her true identification when requested by the retail licensee.

This bill would further provide for the distribution of tobacco products through a vending machine.

Under existing law, there is no fee for a permit to distribute tobacco, tobacco products, electronic



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29 nicotine delivery systems, or alternative nicotine
30 products.

31 This bill would require a one-time application
32 fee and an annual permit fee for the distribution of
33 those products.

34 Under existing law, the board may assess a
35 permit holder and, if applicable, an employee of the
36 permit holder, an administrative penalty for a
37 violation of the tobacco retail laws.

38 This bill would increase the penalty that may be
39 assessed.

40 Under existing law, all fines collected by the
41 ABC Board for the enforcement of the tobacco retail
42 laws are distributed to the General Fund.

43 This bill would create the Tobacco Licensing and
44 Compliance Fund in the State Treasury and would
45 distribute all fines, fees, and other funds collected
46 in the administration and enforcement of the tobacco
47 retail laws to the fund and provide for its
48 administration.

49 This bill would further provide for the
50 membership of the advisory board to the Alcoholic
51 Beverage Control Board.

52 Under existing law, a minor under 21 years of
53 age who possesses any tobacco, tobacco product,
54 alternative nicotine product, electronic delivery
55 system, or false proof of identification shall be
56 issued a uniform nontraffic citation and fined.



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57 This bill would increase the fine for a
58 violation and would require the minor's driver license
59 to be suspended on a third or subsequent conviction.

60 This bill would increase the authorized
61 administrative penalty for certain tobacco advertising
62 violations.

63 Under existing law, the Department of Revenue
64 maintains a directory listing all e-liquid
65 manufacturers and manufacturers of alternative nicotine
66 authorized to be distributed in the state.

67 This bill would require a manufacturer to meet
68 certain requirements before being approved for the
69 directory.

70 This bill would also further provide for the
71 requirement to post signage warning of the dangers of
72 tobacco product use by tobacco retailers.

73 This bill would provide rulemaking authority.

74 Section 111.05 of the Constitution of Alabama of
75 2022, prohibits a general law whose purpose or effect
76 would be to require a new or increased expenditure of
77 local funds from becoming effective with regard to a
78 local governmental entity without enactment by a 2/3
79 vote unless: it comes within one of a number of
80 specified exceptions; it is approved by the affected
81 entity; or the Legislature appropriates funds, or
82 provides a local source of revenue, to the entity for
83 the purpose.

84 The purpose or effect of this bill would be to



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85 require a new or increased expenditure of local funds
86 within the meaning of the amendment. However, the bill
87 does not require approval of a local governmental
88 entity or enactment by a 2/3 vote to become effective
89 because it comes within one of the specified exceptions
90 contained in the amendment.

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A BILL

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TO BE ENTITLED

95

AN ACT

96

97 Relating to the Alcoholic Beverage Control
98 Board; to amend Sections 28-11-2, 28-11-3, 28-11-5,
99 28-11-6.1, 28-11-7, 28-11-9, 28-11-10, 28-11-12,
100 28-11-13, 28-11-14, 28-11-16, 28-11-17.1, and 28-11-18,
101 Code of Alabama 1975, to revise the definition of
102 "electronic nicotine delivery system" to include
103 delivery of substances other than tobacco; to further
104 provide for the sale of tobacco and other related
105 products to minors; to further provide for the
106 distribution of tobacco products through a vending
107 machine; to provide fees for the retail sale of certain
108 tobacco products; to increase penalties for certain
109 violations; to establish the Tobacco Licensing and
110 Compliance Fund in the State Treasury and provide for
111 its administration; to further provide for the
112 membership of the advisory board to the Alcoholic



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113 Beverage Control Board; to further provide for the
114 requirement of tobacco retailers to post signage
115 warning of the dangers of tobacco product use; to
116 require the board to adopt rules; to repeal Sections
117 28-11-15 and 28-11-19, Code of Alabama 1975, and in
118 connection therewith would have as its purpose or
119 effect the requirement of a new or increased
120 expenditure of local funds within the meaning of
121 Section 111.05 of the Constitution of Alabama of 2022.

122 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

123 Section 1. Sections 28-11-2, 28-11-3, 28-11-5,
124 28-11-6.1, 28-11-7, 28-11-9, 28-11-10, 28-11-12, 28-11-13,
125 28-11-14, 28-11-16, 28-11-17.1, and 28-11-18, Code of Alabama
126 1975, are amended to read as follows:

127 "§28-11-2

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

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



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141 (2) BOARD. The Alabama Alcoholic Beverage Control
142 Board.

143 (3) CHILD-RESISTANT PACKAGING. Liquid nicotine
144 container packaging meeting the requirements of 15 U.S.C. §
145 1472a.

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

148 (5) DELIVERY SALE OF ELECTRONIC NICOTINE DELIVERY
149 SYSTEMS OR ALTERNATIVE NICOTINE PRODUCTS. The same meaning as
150 in defined in Section 13A-12-3.1. The term also includes the
151 delivery sale of e-liquids.

152 ~~(5)~~ (6) DISTRIBUTION. To sell, barter, exchange, or give
153 tobacco or tobacco products for promotional purposes or for
154 gratis.

155 ~~(6)~~ (7) ELECTRONIC NICOTINE DELIVERY SYSTEM. Any
156 electronic device that uses a battery and heating element in
157 combination with an e-liquid or tobacco, or substitutes
158 thereof, to produce a vapor that delivers nicotine or other
159 substances to the individual inhaling from the device to
160 simulate smoking, and includes, but is not limited to,
161 products that may be offered to, purchased by, or marketed to
162 consumers as an electronic cigarette, electronic cigar,
163 electronic cigarillo, electronic pipe, electronic hookah, vape
164 pen, vape tool, vaping device, or any variation of these
165 terms. The term also includes any e-liquid intended to be
166 vaporized in any device included in this subdivision.

167 ~~(7)~~ (8) ELECTRONIC NICOTINE DELIVERY SYSTEM RETAILER.
168 Any retail business which offers for sale electronic nicotine



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169 delivery systems.

170 ~~(8)~~ (9) E-LIQUID. A liquid that contains nicotine or
171 other substances and may include flavorings or other
172 ingredients that are intended for use in an electronic
173 nicotine delivery system.

174 ~~(9)~~ (10) E-LIQUID MANUFACTURER. Any person who
175 manufactures, fabricates, assembles, processes, mixes,
176 prepares, labels, repacks, or relabels an e-liquid to be
177 sealed in final packaging intended for consumer use. This term
178 includes an owner of a brand or formula for an e-liquid who
179 contracts with another person to complete the fabrication and
180 assembly of the product to the brand or formula owner's
181 standards.

182 (11) E-LIQUID OR TOBACCO SUBSTITUTE. Products that may
183 be used in conjunction with an electronic cigarette or other
184 electronic battery-powered device to deliver nicotine or other
185 substances, including, but not limited to CBD oil, THC oil,
186 herbal extracts, and nicotine salts, or analogs thereof, into
187 the body through the inhalation of vapor.

188 ~~(10)~~ (12) FDA. The United States Food and Drug
189 Administration.

190 ~~(11)~~ (13) LIQUID NICOTINE CONTAINER. A bottle or other
191 container of a liquid product that is intended to be vaporized
192 and inhaled using an electronic nicotine delivery system. The
193 term does not include a container holding liquid that is
194 intended for use in a vapor product if the container is
195 pre-filled and sealed by the manufacturer and is not intended
196 to be opened by the consumer.



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197 ~~(12)~~ (14) MINOR. Any individual under ~~the age of 19-21~~
198 years of age.

199 ~~(13)~~ (15) PERSON. Any natural person, firm, partnership,
200 association, company, corporation, or other entity. Person
201 does not include a manufacturer or wholesaler of tobacco or
202 tobacco products nor does it include employees of the permit
203 holder.

204 ~~(14)~~ (16) PROOF OF IDENTIFICATION. Any one or more of
205 the following documents used for purposes of determining the
206 age of an individual purchasing, attempting to purchase, or
207 receiving tobacco, tobacco products, electronic nicotine
208 delivery systems, or alternative nicotine products:

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

211 b. United States Uniform Service Identification.

212 c. A valid passport.

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

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

219 ~~(15)~~ (17) RESPONSIBLE VENDOR PROGRAM. A program
220 administered by the board to encourage and support vendors in
221 training employees in legal and responsible sales practices.

222 ~~(16)~~ (18) SAMPLER. Any business or person who
223 distributes tobacco or tobacco products for promotional
224 purposes.



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225 ~~(17)~~ (19) SELF-SERVICE DISPLAY. A display that contains
226 tobacco or tobacco products and is located in an area openly
227 accessible to purchasers at retail and from which the
228 purchasers can readily access tobacco or tobacco products
229 without the assistance of the tobacco permit holder or an
230 employee of the permit holder. A display case that holds
231 tobacco or tobacco products behind locked doors does not
232 constitute a self-service display.

233 ~~(18)~~ (20) SPECIALTY RETAILER OF ELECTRONIC NICOTINE
234 DELIVERY SYSTEMS. A business establishment at which any of the
235 following are true:

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

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

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

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



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253 ~~e.e.~~ e.f. Twenty percent or more of the total shelf space,
254 including retail floor shelf space and shelf space in areas
255 accessible only to employees, is allocated for the offering,
256 displaying, or storage of electronic nicotine delivery
257 systems.

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

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

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

267 ~~(19)~~ (21) TOBACCO or TOBACCO PRODUCT. Any product made
268 or derived from tobacco that is intended for human
269 consumption, including any component, part, or accessory of a
270 tobacco product, except for raw materials other than tobacco
271 used in manufacturing a component, part, or accessory of a
272 tobacco product, but does not include an article that is a
273 drug under Section 201(g) (1) of the Federal Food, Drug, and
274 Cosmetic Act, a device under Section 201(h) of the Federal
275 Food, Drug, and Cosmetic Act, or a combination product
276 described in Section 503(g) of the Federal Food, Drug, and
277 Cosmetic Act.

278 ~~(20)~~ (22) TOBACCO PERMIT. A permit issued by the board
279 to allow the permit holder to engage in the distribution of
280 tobacco, tobacco products, electronic nicotine delivery



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281 systems, or alternative nicotine products at the location
282 identified in the permit.

283 ~~(21)~~ (23) TOBACCO SPECIALTY STORE. A business that
284 derives at least 75 percent of its revenue from tobacco or
285 tobacco products."

286 "§28-11-3

287 The board, in conjunction with federal, state, and
288 local law enforcement agencies, shall enforce state and
289 federal laws that prohibit the distribution of tobacco,
290 tobacco products, alternative nicotine products, and
291 electronic nicotine delivery systems to individuals under the
292 age of 21 years. Notwithstanding the foregoing, for purposes
293 of inspections and enforcement actions undertaken pursuant to
294 this section, individuals under the age of 21 years may be
295 enlisted to attempt to purchase or purchase tobacco, tobacco
296 products, alternative nicotine products, and electronic
297 nicotine delivery systems, provided that individuals under the
298 age of 18 years shall have the prior written consent of a
299 parent or legal guardian, and provided further that the
300 individuals shall be directly supervised during the conduct of
301 each inspection or enforcement action by an enforcement agent
302 of the board or a law enforcement officer, ~~or by a sheriff or~~
303 ~~head of police of any county, city, town, or other political~~
304 ~~subdivision, or by a deputy or officer thereof. No individual~~
305 ~~under the age of 21 years may misrepresent his or her age for~~
306 ~~the purpose of purchasing or attempting to purchase tobacco,~~
307 ~~tobacco products, alternative nicotine products, or electronic~~
308 ~~nicotine delivery systems. If questioned about his or her age~~



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309 ~~during an attempt to purchase or receive tobacco, tobacco~~
310 ~~products, alternative nicotine products, or electronic~~
311 ~~nicotine delivery systems, an individual under the age of 21~~
312 ~~years shall state his or her true age. A photograph or video~~
313 ~~recording of any individual under the age of 21 years~~
314 ~~assisting in an inspection or enforcement action shall be~~
315 ~~taken prior to the investigation. The appearance of an~~
316 ~~individual under the age of 21 years participating in an~~
317 ~~inspection or enforcement action shall not be altered at the~~
318 ~~time of the inspection."~~

319 "§28-11-5

320 The board may use funding, if available, from the
321 Department of Mental Health, other state or federal agencies,
322 grants, and private or public organizations to enforce this
323 chapter and to provide and distribute prevention materials
324 related to tobacco, tobacco products, alternative nicotine
325 products, and electronic nicotine delivery systems ~~and~~
326 ~~nicotine prevention materials~~ to retail tobacco merchants and
327 specialty retailers of electronic nicotine delivery systems.
328 The materials shall provide information regarding state and
329 federal laws that prohibit access to tobacco, tobacco
330 products, alternative nicotine products, and electronic
331 nicotine delivery systems by individuals under the age of 21
332 years and other appropriate information. The board may also
333 provide consultation services for establishing programs to
334 minimize or eliminate sales of tobacco, tobacco products,
335 alternative nicotine products, and electronic nicotine
336 delivery systems to individuals under the age of 21 years



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337 pursuant to the responsible vendor program."

338 "§28-11-6.1

339 (a) No tobacco, tobacco product, alternative nicotine
340 product, or electronic nicotine delivery system shall be
341 distributed by use of a vending machine unless the machine÷

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

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

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

354 "§28-11-7

355 (a) Any person who distributes tobacco, tobacco
356 products, electronic nicotine delivery systems, or alternative
357 nicotine products within this state shall first obtain a
358 permit from the board for each location of distribution. ~~There~~

359 ~~is no fee for the permit.~~ Upon application, there shall be a
360 one-time, nonrefundable filing fee of fifty dollars (\$50), in
361 addition to a permit fee of one hundred fifty dollars (\$150),
362 which shall be renewed annually. The fees collected under this
363 subsection shall be distributed as follows:

364 (1) Seventy-five percent of these funds shall be



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365 deposited into the Tobacco Licensing and Compliance Fund to be
366 used for operational costs of enforcing this chapter and
367 tobacco and nicotine prevention education.

368 (2) Twenty-five percent shall be deposited into the
369 Public Safety Fund of the Alabama State Law Enforcement Agency
370 to be used for the enforcement of this chapter.

371 (b) ~~(1) Any person who maintains~~No person may maintain a
372 tobacco, tobacco product, electronic nicotine delivery system,
373 or alternative nicotine product vending machine ~~on his or her~~
374 ~~property in this state shall first obtain a permit from the~~
375 ~~board for each machine at each machine location. The permit~~
376 ~~for each machine shall be posted in a conspicuous place on the~~
377 ~~machine.~~ unless the person is a permit holder of the board and
378 the vending machine is located on the permitted premises of
379 the permit holder.

380 (2) On any application for a permit, the applicant
381 shall document the location of any vending machine on the
382 premises to be permitted.

383 (3) A current permit holder in good standing with the
384 board, after notification to the board, may place a machine on
385 the permitted premises of the permit holder.

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

388 ~~A permit is not transferable or assignable and~~
389 ~~shall be renewed annually. Notwithstanding the foregoing, if~~
390 If a location for which a permit ~~is~~ has been obtained is sold
391 or transferred, the permit, after submission of an application
392 to transfer and a transfer fee of fifty dollars (\$50), shall



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393 may be transferred to the person obtaining control of the
394 location ~~and shall be valid for 30 days after the transfer~~
395 ~~during which time a new permit shall be obtained,~~ subject to
396 approval by the board. The transferee shall meet any
397 requirements, established by rule of the board, required for a
398 permit holder. The permitted transfer shall be effective for
399 the duration of the license year, and the transferee shall
400 renew the permit annually as provided in subsection (a).

401 (e) If feasible, the board by rule may adopt procedures
402 for the issuance and renewal of permits which combine tobacco
403 permit procedures with the application and licensing
404 procedures for alcoholic beverages."

405 "§28-11-9

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

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

412 a. Hear and decide all contested applications for
413 permits.

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

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

419 d. Levy administrative fines upon permit holders or
420 employees of permit holders.



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

426 (b) The board, or a hearing commission appointed by the
427 board, upon finding that a permit holder or any partner,
428 member, employee, officer, or director of the permit holder
429 has violated any of the laws of this state or the United
430 States relating to the manufacture, sale, possession, or
431 transportation of tobacco, tobacco products, electronic
432 nicotine delivery systems, or alternative nicotine products,
433 or that the permit holder has acted in a manner prejudicial to
434 the welfare, health, peace, temperance, and safety of the
435 people of the community or of the state, may upon due notice
436 and hearing, levy administrative fines or suspend or revoke
437 the permit issued by the board, or a combination of all three.
438 In all cases where the board or hearing commission shall levy
439 an administrative fine or suspend or revoke a permit, it shall
440 set forth its findings of fact, the evidence from which the
441 findings of facts are made, and the reasons upon which its
442 actions are based.

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



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449 suspension of the permit until the administrative fine is
450 paid.

451 (d) The maximum length of suspension of a permit
452 pursuant to this chapter shall be one year. A permit holder
453 shall be ineligible to hold a permit pursuant to this chapter
454 for the location where the violation occurred until the
455 expiration or removal of the suspension. A permit holder whose
456 permit is revoked by the board or the hearing commission shall
457 be, at the discretion of the board or hearing commission,
458 ineligible to hold a permit pursuant to this chapter until the
459 expiration of one year from the date the permit is revoked at
460 the location where the violation occurred.

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

464 (1) ~~Upon conviction for~~ For a first violation by the
465 permit holder or an employee of the permit holder, the board
466 or hearing commission may offer the permit holder an
467 opportunity to provide training sessions administered by the
468 Responsible Vendor Program in lieu of an administrative fine
469 upon the permit holder and the employee, if the violation is
470 by an employee, of not more than ~~two hundred dollars (\$200)~~
471 five hundred dollars (\$500).

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



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477 hundred fifty dollars (\$750).

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

483 ~~(4)~~ (3) ~~Upon conviction of~~ For a ~~fourth~~ third or
484 subsequent violation at the same location within a ~~two-year~~
485 four-year period, the board or hearing commission may levy an
486 administrative fine upon the permit holder and the employee,
487 if the violation is by an employee, of not more than one
488 thousand dollars (\$1,000) and may suspend or revoke the
489 permit.

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

494 "§28-11-10

495 (a) The Tobacco Licensing and Compliance Fund is hereby
496 created in the State Treasury. The fund shall be administered
497 by the Licensing and Compliance Division of the board. All
498 fees and other funds collected by the board pursuant to this
499 chapter shall be deposited into the ~~State General Fund~~State
500 Treasury to the credit of the fund. Amounts deposited into the
501 fund shall be budgeted and allotted in accordance with
502 Sections 41-4-80 through 41-4-96 and Sections 41-19-1 through
503 41-19-12, Code of Alabama 1975. Monies in the fund shall be
504 used by the Licensing and Compliance Division of the board for



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505 tobacco and nicotine prevention education, operational costs
506 associated with regulating permitted locations, and the
507 enforcement of this chapter."

508 "§28-11-12

509 (a) An advisory board shall be established to monitor
510 the implementation of this chapter. The advisory board shall
511 meet at least quarterly. Representation shall consist of one
512 representative from each of the following:

513 (1) The Office of the Governor.

514 (2) The Office of the Attorney General.

515 (3) The Department of Mental Health.

516 (4) The Department of Public Health.

517 (5) The Alcoholic Beverage Control Board.

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

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

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

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

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

531 (11) The Alabama State Law Enforcement Agency.

532 (12) The Department of Revenue.



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533 (b) The membership of the advisory board shall be
534 inclusive and reflect the racial, gender, geographic,
535 ~~urban/rural~~urban, rural, and economic diversity of the state.

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

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

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

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

550 "§28-11-13

551 (a) (1) It is unlawful for any individual under the age
552 of 21 years to purchase, use, possess, or transport tobacco, a
553 tobacco product, an electronic nicotine delivery system, or an
554 alternative nicotine product within this state.

555 ~~(2) It shall not be unlawful for~~ Notwithstanding
556 subdivision (1), an individual under the age of 21 years who
557 is an employee of a tobacco, tobacco product, electronic
558 nicotine delivery system, or alternative nicotine product
559 permit holder ~~to~~ may handle, transport, or sell tobacco, a
560 tobacco product, an electronic nicotine delivery system, or an



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561 alternative tobacco product, ~~if~~ provided the employee is
562 acting within the line and scope of employment and the permit
563 holder, or an employee of the permit holder who is 21 years of
564 age or older, is present.

565 (b) It is unlawful for any individual under the age of
566 21 years to present or offer to another person proof of
567 identification which is false, fraudulent, or not actually his
568 or her own proof of identification in order to buy, receive,
569 or otherwise obtain, or attempt to buy, receive, or otherwise
570 obtain, any tobacco, tobacco product, electronic nicotine
571 delivery system, or alternative nicotine product.

572 (c) If ~~a minor~~ an individual under 19 years of age is
573 cited for any violation under this section, the citing agency
574 shall make reasonable efforts to notify a parent, legal
575 guardian, or legal custodian of the ~~minor~~ individual that the
576 individual was cited for the violation. unless ~~This subsection~~
577 does not apply the minor if the individual has been
578 emancipated by court order or operation of law."

579 "§28-11-14

580 (a) (1) Any tobacco, tobacco product, alternative
581 nicotine product, electronic nicotine delivery system, or
582 false proof of identification found in the possession of an
583 individual under the age of 21 years is contraband and subject
584 to seizure by agents of the board or any law enforcement
585 officer.

586 (2) Prohibited tobacco, tobacco products, electronic
587 nicotine delivery systems, and alternative nicotine products
588 kept, stored, or deposited in any place in this state for the



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589 purpose of unlawful sale or unlawful disposition or unlawful
590 furnishing or distribution, and the vessels and receptacles in
591 which the products are contained, are declared to be
592 contraband and shall be seized and forfeited to the state and
593 may be condemned for destruction pursuant to the procedures of
594 Article 11 of Chapter 4.

595 (3) Prohibited tobacco, tobacco products, electronic
596 nicotine delivery systems, and alternative nicotine products
597 may be searched for, seized, and ordered to be destroyed
598 pursuant to the procedures of Article 11 of Chapter 4.

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

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

616 (d) The board shall dispose of electronic nicotine



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617 delivery systems and alternative nicotine products seized
618 under this section by destruction as provided by rule of the
619 board. Any person from whom an electronic nicotine delivery
620 system or alternative nicotine product is seized and
621 destroyed pursuant to this section shall be subject to a fee,
622 to be determined based on the cost of the destruction and
623 disposal of the electronic nicotine delivery system or
624 alternative nicotine product as hazardous waste.

625 (e) (1) Any individual ~~under the age of~~ who is 18 or
626 more years of age but under 21 years of age ~~violating who~~
627 violates Section 28-11-13 shall be issued a citation similar
628 to a uniform nontraffic citation and shall be fined not less
629 than ~~ten dollars (\$10)~~ fifty dollars (\$50) nor more than ~~fifty~~
630 ~~dollars (\$50)~~ two hundred dollars (\$200) for each violation,
631 and shall be assessed no other court costs or fees. In
632 addition, on a third or subsequent conviction, including
633 convictions in district court or municipal court, the court
634 shall forward a record of the applicable convictions to the
635 Secretary of the Alabama State Law Enforcement Agency and the
636 secretary shall suspend the driving privileges or driver
637 license of the individual for a period of not less than three
638 months nor more than six months.

639 ~~(b)~~ (2) Notwithstanding any other provision of law, the
640 disposition of any violation of Section 28-11-13 for any
641 individual 18 or more years of age but under 21 years of age
642 shall be within the jurisdiction of the district or municipal
643 court and not the juvenile court. Violations shall not be
644 considered criminal offenses and shall be administratively



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645 adjudicated by the district or municipal court.

646 (f) Any individual under 18 years of age who violates
647 Section 28-11-13 shall be adjudicated to have committed a
648 delinquent act, as defined under Section 12-15-102, and shall
649 be fined not less than fifty dollars (\$50) nor more than two
650 hundred dollars (\$200). The disposition of the individual
651 shall be subject to the exclusive jurisdiction of the juvenile
652 court."

653 "§28-11-16

654 (a) (1) A retailer or manufacturer of electronic
655 nicotine delivery systems or alternative nicotine products may
656 not advertise an electronic nicotine delivery system or an
657 alternative nicotine product in any of the following ways:

- 658 a. As a tobacco cessation product.
- 659 b. As a healthier alternative to smoking.
- 660 c. As available for purchase in any variety of flavors
661 other than tobacco, mint, or menthol on any outdoor billboard.
- 662 d. On any outdoor billboard located within 1,000 feet
663 of any public or private K-12 school or public playground.

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

669 (b) (1) A specialty retailer of electronic nicotine
670 delivery systems or manufacturer of tobacco, tobacco products,
671 electronic nicotine delivery systems, or alternative nicotine
672 products may not in any way sponsor, finance, or advertise a



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673 scholarship of any kind using the brand name of any tobacco
674 product, alternative nicotine product, or electronic nicotine
675 delivery system.

676 (2) A specialty retailer of electronic nicotine
677 delivery systems or manufacturer of tobacco, tobacco products,
678 electronic nicotine delivery systems, or alternative nicotine
679 products may not use the brand name of any tobacco product,
680 alternative nicotine product, or electronic nicotine delivery
681 system to advertise at or sponsor any event at a stadium,
682 concert, sporting event, or other public performance event for
683 which individuals aged 21 years or older make up less than 85
684 percent of the total age demographic of ~~performing~~
685 ~~participants~~ individuals performing at the event.

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

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

699 (2) A second or subsequent violation of subsection (a)
700 or subsection (b) shall result in a ~~five hundred dollar (\$500)~~



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701 seven hundred fifty dollar (\$750) fine per occurrence.

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

705 (d) A retailer or manufacturer of tobacco, tobacco
706 products, electronic nicotine delivery systems, or alternative
707 nicotine products may not advertise, market, or offer for sale
708 tobacco, a tobacco product, an electronic nicotine delivery
709 system, or an alternative nicotine product in any of the
710 following ways:

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

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

725 (3) By using, in the labeling or design of the product,
726 its packaging, or in its advertising or marketing materials,
727 trade dress, trademarks, branding, or other related imagery
728 that imitates or replicates those of food brands or other



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729 related products that are marketed to minors, including, but
730 not limited to, breakfast cereal, cookies, juice drinks, soft
731 drinks, frozen drinks, ice creams, sorbets, sherbets, and
732 frozen pops.

733 (4) By using, in the labeling or design of the product,
734 its packaging, or in its advertising or marketing materials,
735 trade dress, trademarks, branding, or other related imagery
736 that depicts or signifies characters or symbols that are known
737 to appeal primarily to minors, including, but not limited to,
738 superheroes, comic book characters, video game characters,
739 television show characters, movie characters, mythical
740 creatures, unicorns, or that otherwise incorporates related
741 imagery or scenery.

742 (e) The board may adopt rules to implement this
743 section, including rules regarding the suitability of labels
744 and procedures to reject advertising that appeals to minors,
745 including, but not limited to, the design of a product, its
746 packaging, or its advertising or marketing materials, trade
747 dress, trademarks, branding, or other related imagery.

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

752 "§28-11-17.1

753 (a) (1) ~~Beginning March 1, 2022, or other date not~~ Not
754 more than 30 days following a premarket tobacco application
755 submission deadline issued by the FDA, ~~whichever is later,~~
756 every e-liquid manufacturer and manufacturer of alternative



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757 nicotine products whose products are sold in this state,
758 whether directly or through a distributor, retailer, or
759 similar intermediary or intermediaries, shall execute and
760 deliver on a form prescribed by the commissioner, a
761 certification to the commissioner certifying, under penalty of
762 perjury, that the product does not contain any synthetic
763 nicotine or nicotine derived from a source other than tobacco,
764 that the product may be lawfully sold and possessed in this
765 state, and that either of the following apply:

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

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

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

783 b. The manufacturer has received a marketing order or
784 other authorization under 21 U.S.C. § 387j for the e-liquid,



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785 e-liquid in combination with an electronic nicotine delivery
786 system, or alternative nicotine product, whichever is
787 applicable, from the FDA.

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

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

795 b. Information that clearly identifies each product,
796 submission tracking number (STN), product name, product
797 subcategory, characterizing flavor, FDA order date, and type
798 of order.

799 (b) Any manufacturer submitting a certification
800 pursuant to subsection (a) shall notify the commissioner
801 within 30 days of any material change to the certification,
802 including issuance by the FDA of any of the following:

803 (1) A market order or other authorization pursuant to
804 21 U.S.C. § 387j.

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

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

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

812 (c) The commissioner shall develop and maintain a



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813 directory listing all e-liquid manufacturers and manufacturers
814 of alternative nicotine products that have provided
815 certifications that comply with subsection (a) and all
816 products that are listed in those certifications.

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

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

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

825 (3) Remove from the directory any product that the
826 board determines is a prohibited item pursuant to Section
827 28-11-16(d).

828 ~~(3)~~ (4) Send monthly notifications to each wholesaler,
829 jobber, semijobber, retailer, importer, or distributor of
830 tobacco products that have qualified or registered with the
831 Department of Revenue, by electronic communication, containing
832 a list of all changes that have been made to the directory in
833 the previous month. In lieu of sending monthly notifications,
834 the commissioner may make the information available in a
835 prominent place on the Department of Revenue's public website.

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

839 ~~(e)~~ (f) Notwithstanding subsection (a), if an e-liquid
840 manufacturer or manufacturer of alternative nicotine products



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841 can demonstrate to the commissioner that the FDA has issued a
842 rule, guidance, or any other formal statement that temporarily
843 exempts a product from the federal premarket tobacco
844 application requirements, the product may be added to the
845 directory upon request by the manufacturer if the manufacturer
846 provides sufficient evidence that the product is compliant
847 with the federal rule, guidance, or other formal statement, as
848 applicable.

849 ~~(f)~~ (g) Each certifying e-liquid manufacturer and
850 manufacturer of alternative nicotine products shall pay an
851 initial fee of two thousand dollars (\$2,000) to offset the
852 costs incurred by the department for processing the
853 certifications and operating the directory. The commissioner
854 shall collect an annual renewal fee of five hundred dollars
855 (\$500) to offset the costs associated with maintaining the
856 directory and satisfying the requirements of this section. The
857 fees received under this section by the department shall be
858 used by the department exclusively for processing the
859 certifications and operating and maintaining the directory.
860 After the payment of these expenses, ~~two-thirds~~ one-half of
861 the remaining funds shall be deposited into the State General
862 Fund, and the remaining ~~one-third~~ one-half shall be
863 distributed evenly to the Alabama State Law Enforcement Agency
864 and to the Licensing and Compliance Division of the board to
865 be used for the enforcement of this chapter.

866 ~~(g)~~ (h) Beginning on September 1, 2021, no e-liquid,
867 e-liquid in combination with an electronic nicotine delivery
868 system, or alternative nicotine product that, in the case of



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869 any such product, contains synthetic nicotine or nicotine
870 derived from a source other than tobacco may be sold or
871 otherwise distributed in this state without first obtaining
872 approval from the FDA for sale as a drug under Section
873 201(g) (1) of the Federal Food, Drug, and Cosmetic Act, a
874 device under Section 201(h) of the Federal Food, Drug, and
875 Cosmetic Act, a combination product described in Section
876 503(g) of the Federal Food, Drug, and Cosmetic Act, or some
877 other medical purpose.

878 ~~(h) (i) (1) Beginning May 1, 2022, or on the date that~~
879 ~~the Department of Revenue first makes the directory available~~
880 ~~for public inspection on its website as provided in subsection~~
881 ~~(d), whichever is later, an An e-liquid manufacturer or~~
882 ~~manufacturer of alternative nicotine products or electronic~~
883 ~~nicotine delivery systems who offers for sale a product not~~
884 ~~listed on the directory is subject to a one thousand dollars~~
885 ~~(\$1,000) daily fine for each product offered for sale in~~
886 ~~violation of this section until the offending product is~~
887 ~~removed from the market or until the offending product is~~
888 ~~properly listed on the directory. For purposes of this~~
889 ~~subdivision, "sale" includes a delivery sale of e-liquids or~~
890 ~~electronic nicotine delivery systems or alternative nicotine~~
891 ~~products, as defined under this chapter.~~

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

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



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

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

901 c. For a third or subsequent offense within a four-year
902 period, an administrative penalty of one thousand dollars
903 (\$1,000). In addition, the board may suspend or revoke the
904 permit of the permit holder.

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

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

913 "§28-11-18

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

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

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



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925 ELECTRONIC NICOTINE DELIVERY SYSTEMS BY PERSONS UNDER THE AGE
926 OF 21 YEARS. PROOF OF AGE IS REQUIRED."

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

930 ~~-(3)~~ (2) "WARNING: TOBACCO, TOBACCO PRODUCTS, ALTERNATIVE
931 NICOTINE PRODUCTS, ELECTRONIC NICOTINE DELIVERY SYSTEMS, AND
932 VAPING PRODUCTS OFFERED FOR SALE IN THIS STORE CONTAIN
933 NICOTINE UNLESS OTHERWISE MARKED. NICOTINE IS A HIGHLY
934 ADDICTIVE CHEMICAL WHICH CAN HARM BRAIN DEVELOPMENT IN
935 CHILDREN AND ADOLESCENTS AND WHICH POSES SERIOUS HEALTH RISKS
936 TO PREGNANT WOMEN AND THEIR BABIES."

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

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

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

951 Section 2. The Alcoholic Beverage Control Board shall
952 adopt rules to implement and administer Chapter 11 of Title



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953 28, Code of Alabama 1975.

954 Section 3. The following sections of the Code of
955 Alabama 1975, are repealed:

956 (1) Section 28-11-15, Code of Alabama 1975, relating to
957 the posting of signs regarding the sale of tobacco and tobacco
958 products.

959 (2) Section 28-11-19, Code of Alabama 1975, relating to
960 limitations on locations of specialty retailers of electronic
961 nicotine delivery systems.

962 Section 4. Although this bill would have as its purpose
963 or effect the requirement of a new or increased expenditure of
964 local funds, the bill is excluded from further requirements
965 and application under Section 111.05 of the Constitution of
966 Alabama of 2022, because the bill defines a new crime or
967 amends the definition of an existing crime.

968 Section 5. Section 2 of this act shall become effective
969 immediately and the remaining sections of this act shall
970 become effective on the first day of the third month following
971 its passage and approval by the Governor, or its otherwise
972 becoming law.