

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Substitute No. 2 for Senate Bill No. 26, Page 2, Section
2 84.400, Line 14, by inserting after all of said section and line the following:

3
4 "407.925. As used in sections ~~[407.925]~~ 407.924 to 407.934, the following terms mean:

5 (1) "Alternative nicotine product", any noncombustible product containing nicotine that is intended
6 for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. Alternative
7 nicotine product does not include any vapor product, tobacco product or any product regulated as a drug or
8 device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic
9 Act;

10 (2) ~~["Center of youth activities", any playground, school or other facility, when such facility is being
11 used primarily by persons under the age of eighteen for recreational, educational or other purposes;~~

12 ~~_____ (3)]~~ "Distribute", a conveyance to the public by sale, barter, gift or sample;

13 ~~[(4)]~~ (3) "Minor", a person under ~~[the]~~ twenty-one years of age ~~[of eighteen]~~;

14 ~~[(5)]~~ (4) "Municipality", the city, village or town within which tobacco products, alternative nicotine
15 products, or vapor products are sold or distributed or, in the case of tobacco products, alternative nicotine
16 products or vapor products that are not sold or distributed within a city, village or town, the county in which
17 they are sold or distributed;

18 ~~[(6)]~~ (5) "Person", an individual, partnership, copartnership, firm, company, public or private
19 corporation, association, joint stock company, trust, estate, political subdivision or any agency, board,
20 department or bureau of the state or federal government, or any other legal entity which is recognized by law
21 as the subject of rights and duties;

22 ~~[(7)]~~ (6) "Proof of age", a driver's license or other generally accepted means of identification that
23 contains a picture of the individual and appears on its face to be valid;

24 ~~[(8)]~~ (7) "Rolling papers", paper designed, manufactured, marketed, or sold for use primarily as a
25 wrapping or enclosure for tobacco, which enables a person to roll loose tobacco into a smokable cigarette;

26 ~~[(9)]~~ (8) "Sample", a tobacco product, alternative nicotine product, or vapor product distributed to
27 members of the general public at no cost or at nominal cost for product promotional purposes;

28 ~~[(10)]~~ (9) "Sampling", the distribution to members of the general public of tobacco product,
29 alternative nicotine product, or vapor product samples;

30 ~~[(11)]~~ (10) "Tobacco products", any substance containing tobacco leaf, including, but not limited to,
31 cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco but does not include alternative
32 nicotine products, or vapor products;

33 ~~[(12)]~~ (11) "Vapor product", any noncombustible product containing nicotine that employs a heating
34 element, power source, electronic circuit, or other electronic, chemical or mechanical means, regardless of
35 shape or size, that can be used to produce vapor from nicotine in a solution or other form. Vapor product
36 includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or
37 device and any vapor cartridge or other container of nicotine in a solution or other form that is intended to be
38 used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product
39 or device. Vapor product does not include any alternative nicotine product or tobacco product;

40 ~~[(13)]~~ (12) "Vending machine", any mechanical, electric, or electronic self-service device ~~[which]~~

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1 that, upon insertion of money, tokens, or any other form of payment, dispenses tobacco products, alternative
2 nicotine products, or vapor products.

3 407.926. 1. Any person or entity who sells tobacco products, alternative nicotine products, or vapor
4 products shall deny the sale of such tobacco products to ~~[any person who is less than eighteen years of age]~~
5 minors.

6 2. Any person or entity who sells or distributes tobacco products, alternative nicotine products, or
7 vapor products by mail or through the internet in this state in violation of subsection 1 of this section shall be
8 assessed a fine of two hundred fifty dollars for the first violation and five hundred dollars for each subsequent
9 violation.

10 3. Alternative nicotine products and vapor products shall ~~[only]~~ not be sold to ~~[persons eighteen~~
11 ~~years of age or older,]~~ minors, shall be subject to local and state sales tax, ~~[but]~~ and shall not be otherwise
12 taxed or regulated as tobacco products.

13 4. (1) Any nicotine liquid container that is sold at retail in this state shall satisfy the child-resistant
14 effectiveness standards set forth in 16 CFR 1700.15(b) as in effect on August 28, 2015, when tested in
15 accordance with the method described in 16 CFR 1700.20 as in effect on August 28, 2015.

16 (2) For the purposes of this subsection, "nicotine liquid container" shall mean a bottle or other
17 container of liquid or other substance containing nicotine if the liquid or substance is sold, marketed, or
18 intended for use in a vapor product. A "nicotine liquid container" shall not include a liquid or other substance
19 containing nicotine in a cartridge that is sold, marketed, or intended for use in a vapor product, provided that
20 such cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer.

21 (3) Any person who engages in retail sales of liquid nicotine containers in this state in violation of
22 this subsection shall be assessed a fine of two hundred fifty dollars for the first violation and five hundred
23 dollars for each subsequent violation.

24 (4) The department of health and senior services may adopt rules necessary to carry out the
25 provisions of this subsection. Any rule or portion of a rule, as that term is defined in section 536.010, that is
26 created under the authority delegated in this section shall become effective only if it complies with and is
27 subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter
28 536 are nonseverable and if any of the powers vested with the general assembly under chapter 536 to review,
29 to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the
30 grant of rulemaking authority and any rule proposed or adopted after August 28, 2015, shall be invalid and
31 void.

32 (5) The provisions of this subsection and any rules adopted hereunder shall be null, void, and of no
33 force and effect upon the effective date of the final regulations issued by the federal Food and Drug
34 Administration or from any other federal agency if such regulations mandate child-resistant effectiveness
35 standards for nicotine liquid containers.

36 407.927. The owner of an establishment at which tobacco products, alternative nicotine products,
37 vapor products, or rolling papers are sold at retail or through vending machines shall cause to be prominently
38 displayed in a conspicuous place at every display from which tobacco products, alternative nicotine products,
39 or vapor products are sold and on every vending machine where tobacco products are purchased a sign that
40 shall:

41 (1) Contain in red lettering at least one-half inch high on a white background the following: "It is a
42 violation of state law for cigarettes, other tobacco products, alternative nicotine products, or vapor products to
43 be sold or otherwise provided to any person under the age of ~~[eighteen]~~ twenty-one or for such person to
44 purchase, attempt to purchase or possess cigarettes, other tobacco products, alternative nicotine products or
45 vapor products."; and

46 (2) Include a depiction of a pack of cigarettes at least two inches high defaced by a red diagonal
47 diameter of a surrounding red circle, and the words "Under ~~[18]~~ 21".

48 407.929. 1. A person or entity selling tobacco products, alternative nicotine products, or vapor
49 products or rolling papers or distributing tobacco product, alternative nicotine product, or vapor product
50 samples shall require proof of age from a prospective purchaser or recipient if an ordinary person would
51 conclude on the basis of appearance that such prospective purchaser or recipient may be ~~[under the age of~~
52 ~~eighteen]~~ a minor.

53 2. The operator's or chauffeur's license issued pursuant to the provisions of section 302.177, or the

1 operator's or chauffeur's license issued pursuant to the laws of any state or possession of the United States to
 2 residents of those states or possessions, or an identification card as provided for in section 302.181, or the
 3 identification card issued by any uniformed service of the United States, or a valid passport shall be presented
 4 by the holder thereof upon request of any agent of the division of ~~[liquor]~~ alcohol and tobacco control or any
 5 owner or employee of an establishment that sells tobacco, alternative nicotine products, or vapor products, for
 6 the purpose of aiding the registrant, agent or employee to determine whether or not the person is ~~[at least~~
 7 ~~eighteen years of age]~~ a minor when such person desires to purchase or possess tobacco products, alternative
 8 nicotine products, or vapor products procured from a registrant. Upon such presentation, the owner or
 9 employee of the establishment shall compare the photograph and physical characteristics noted on the
 10 license, identification card or passport with the physical characteristics of the person presenting the license,
 11 identification card or passport.

12 3. Any person who shall, without authorization from the department of revenue, reproduce, alter,
 13 modify or misrepresent any chauffeur's license, motor vehicle operator's license or identification card shall be
 14 deemed guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than one thousand
 15 dollars, and confinement for not more than one year, or by both such fine and imprisonment.

16 4. Reasonable reliance on proof of age or on the appearance of the purchaser or recipient shall be a
 17 defense to any action for a violation of subsections 1, 2 and 3 of section 407.931. No person shall be liable
 18 for more than one violation of subsections 2 and 3 of section 407.931 on any single day.

19 407.930. The state preempts the field of regulating the sale of tobacco products, alternative nicotine
 20 products, and vapor products, and the provisions of sections 407.924 to 407.934 shall supercede any local
 21 laws, ordinances, orders, rules, or regulations enacted by a county, municipality, or other political subdivision
 22 to regulate the sale of tobacco products, alternative nicotine products, or vapor products.

23 407.931. 1. It shall be unlawful for any person to sell, provide, or distribute tobacco products,
 24 alternative nicotine products, or vapor products to ~~[persons under eighteen years of age]~~ a minor.

25 2. All vending machines that dispense tobacco products, alternative nicotine products, or vapor
 26 products shall be located within the unobstructed line of sight and under the direct supervision of an adult
 27 responsible for preventing ~~[persons less than eighteen years of age]~~ minors from purchasing any tobacco
 28 product, alternative nicotine product, or vapor product from such machine or shall be equipped with a lock-
 29 out device to prevent the machines from being operated until the person responsible for monitoring sales
 30 from the machines disables the lock. Such locking device shall be of a design that prevents it from being left
 31 in an unlocked condition and which will allow only a single sale when activated. A locking device shall not
 32 be required on machines that are located in areas where ~~[persons less than eighteen years of age]~~ minors are
 33 not permitted or prohibited by law. An owner of an establishment whose vending machine is not in
 34 compliance with the provisions of this subsection shall be subject to the penalties contained in subsection 5 of
 35 this section. A determination of noncompliance may be made by a local law enforcement agency or the
 36 division of ~~[liquor]~~ alcohol and tobacco control. Nothing in this section shall apply to a vending machine if
 37 located in a factory, private club or other location not generally accessible to the general public.

38 3. No person or entity shall sell, provide or distribute any tobacco product, alternative nicotine
 39 product, or vapor product or rolling papers to any minor, or sell any individual cigarettes to any person in this
 40 state. This subsection shall not apply to the distribution by family members on property that is not open to
 41 the public.

42 4. Any person including, but not limited to, a sales clerk, owner or operator who violates subsection
 43 1, 2 or 3 of this section or section 407.927 shall be penalized as follows:

- 44 (1) For the first offense, twenty-five dollars;
- 45 (2) For the second offense, one hundred dollars;
- 46 (3) For a third and subsequent offense, two hundred fifty dollars.

47 5. Any owner of the establishment where tobacco products, alternative nicotine products, or vapor
 48 products are available for sale who violates subsection 3 of this section, in addition to the penalties
 49 established in subsection 4 of this section, shall be penalized in the following manner:

- 50 (1) For the first violation per location within two years, a reprimand shall be issued by the division
 51 of ~~[liquor]~~ alcohol and tobacco control;
- 52 (2) For the second violation per location within two years, the division of ~~[liquor]~~ alcohol and
 53 tobacco control shall issue a citation prohibiting the outlet from selling tobacco products, alternative nicotine

1 products, or vapor products for a twenty-four-hour period;

2 (3) For the third violation per location within two years, the division of ~~[liquor]~~ alcohol and tobacco
3 control shall issue a citation prohibiting the outlet from selling tobacco products, alternative nicotine
4 products, or vapor products for a forty-eight-hour period;

5 (4) For the fourth and any subsequent violations per location within two years, the division of
6 ~~[liquor]~~ alcohol and tobacco control shall issue a citation prohibiting the outlet from selling tobacco products
7 for a five-day period.

8 6. Any owner of the establishment where tobacco products are available for sale who violates
9 subsection 3 of this section shall not be penalized pursuant to this section if such person documents the
10 following:

11 (1) An in-house or other tobacco compliance employee training program was in place to provide the
12 employee with information on the state and federal regulations regarding sales of tobacco products,
13 alternative nicotine products, or vapor products to minors. Such training program must be attended by all
14 employees who sell tobacco products, alternative nicotine products, or vapor products to the general public;

15 (2) A signed statement by the employee stating that the employee has been trained and understands
16 the state laws and federal regulations regarding the sale of tobacco products, alternative nicotine products, or
17 vapor products to minors; and

18 (3) Such in-house or other tobacco compliance training meets the minimum training criteria, which
19 shall not exceed a total of ninety minutes in length, established by the division of ~~[liquor]~~ alcohol and tobacco
20 control.

21 7. The exemption in subsection 6 of this section shall not apply to any person who is considered the
22 general owner or operator of the outlet where tobacco products, alternative nicotine products, or vapor
23 products are available for sale if:

24 (1) Four or more violations per location of subsection 3 of this section occur within a one-year
25 period; or

26 (2) Such person knowingly violates or knowingly allows his or her employees to violate subsection 3
27 of this section.

28 8. If a sale is made by an employee of the owner of an establishment in violation of sections 407.925
29 to 407.934, the employee shall be guilty of an offense established in subsections 1, 2 and 3 of this section. If
30 a vending machine is in violation of section 407.927, the owner of the establishment shall be guilty of an
31 offense established in subsections 3 and 4 of this section. If a sample is distributed by an employee of a
32 company conducting the sampling, such employee shall be guilty of an offense established in subsections 3
33 and 4 of this section.

34 9. A person cited for selling, providing, or distributing any tobacco product, alternative nicotine
35 product, or vapor product to ~~[any individual less than eighteen years of age]~~ a minor in violation of
36 subsection 1, 2, or 3 of this section shall conclusively be presumed to have reasonably relied on proof of age
37 of the purchaser or recipient, and such person shall not be found guilty of such violation if such person raises
38 and proves as an affirmative defense that such individual presented a driver's license or other government-
39 issued photo identification purporting to establish that such individual was ~~[eighteen years of age or older]~~
40 not a minor.

41 10. Any person adversely affected by this section may file an appeal with the administrative hearing
42 commission which shall be adjudicated pursuant to the procedures established in chapter 621.

43 407.933. 1. No ~~[person less than eighteen years of age]~~ minor shall purchase, attempt to purchase, or
44 possess cigarettes, other tobacco products, alternative nicotine products, or vapor products unless such person
45 is an employee of a seller of cigarettes, tobacco products, alternative nicotine products, or vapor products and
46 is in such possession to effect a sale in the course of employment, or an employee of the division of ~~[liquor]~~
47 alcohol and tobacco control for enforcement purposes pursuant to subsection 5 of section 407.934.

48 2. ~~[Any person less than eighteen years of age]~~ No minor shall ~~[not]~~ misrepresent his or her age to
49 purchase cigarettes, tobacco products, alternative nicotine products, or vapor products.

50 3. Any person who violates the provisions of this section shall be penalized as follows:

51 (1) For the first violation, the person is guilty of an infraction and shall have any cigarettes, tobacco
52 products, alternative nicotine products, or vapor products confiscated;

53 (2) For a second violation and any subsequent violations, the person is guilty of an infraction[~~5~~] ;

1 shall have any cigarettes, tobacco products, alternative nicotine products, or vapor products confiscated; and
 2 shall complete a tobacco education or smoking cessation program, if available.

3 407.934. 1. No person shall sell cigarettes, tobacco products, alternative nicotine products, or vapor
 4 products unless the person has a retail sales tax license.

5 2. The department of revenue shall permit persons to designate through the internet or by including a
 6 place on all sales tax license applications for the applicant to designate himself or herself as a seller of
 7 tobacco products, alternative nicotine products, or vapor products and to provide a list of all locations where
 8 the applicant sells such products.

9 3. On or before July first of each year, the department of revenue shall make available to the division
 10 of ~~[liquor]~~ alcohol and tobacco control and the department of mental health a complete list of every
 11 establishment which sells cigarettes, other tobacco products, alternative nicotine products, or vapor products
 12 in this state.

13 4. The division of ~~[liquor]~~ alcohol and tobacco control shall have the authority to inspect stores and
 14 tobacco outlets for compliance with all laws related to access of tobacco products, alternative nicotine
 15 products, or vapor products to minors. The division may employ a ~~[person seventeen years of age]~~ minor,
 16 with parental consent if the minor is under eighteen years of age, to attempt to purchase tobacco for the
 17 purpose of inspection or enforcement of tobacco laws.

18 5. The supervisor of the division of ~~[liquor]~~ alcohol and tobacco control shall not use minors to
 19 enforce the provisions of this chapter unless the supervisor promulgates rules that establish standards for the
 20 use of minors. The supervisor shall establish mandatory guidelines for the use of minors in investigations by
 21 a state, county, municipal or other local law enforcement authority which shall be followed by such authority
 22 and which shall, at a minimum, provide for the following:

23 (1) The minor shall be at least seventeen years of age;

24 (2) The minor shall have a youthful appearance, and the minor, if a male, shall not have facial hair or
 25 a receding hairline and if a female, shall not wear excessive makeup or excessive jewelry;

26 (3) The state, county, municipal or other local law enforcement agency shall obtain the consent of
 27 the minor's parent or legal guardian, if necessary, before the use of such minor on a form approved by the
 28 supervisor;

29 (4) The state, county, municipal or other local law enforcement agency shall make a photocopy of
 30 the minor's valid identification showing the minor's correct date of birth;

31 (5) Any attempt by such minor to purchase tobacco products, alternative nicotine products, or vapor
 32 products shall be videotaped or audiotaped with equipment sufficient to record all statements made by the
 33 minor and the seller of the tobacco product;

34 (6) The minor shall carry his or her own identification showing the minor's correct date of birth and
 35 shall, upon request, produce such identification to the seller of the tobacco product, alternative nicotine
 36 product, or vapor product;

37 (7) The minor shall answer truthfully any questions about his or her age and shall not remain silent
 38 when asked questions regarding his or her age;

39 (8) The minor shall not lie to the seller of the tobacco product, alternative nicotine product, or vapor
 40 product to induce a sale of tobacco products;

41 (9) The minor shall not be employed by the state, county, municipal or other local law enforcement
 42 agency on an incentive or quota basis;

43 (10) The state, county, municipal or other local law enforcement agency shall, within forty-eight
 44 hours, contact or take all reasonable steps to contact the owner or manager of the establishment if a violation
 45 occurs;

46 (11) The state, county, municipal or other local law enforcement agency shall maintain records of
 47 each visit to an establishment where a minor is used by the state, county, municipal or other local law
 48 enforcement agency for a period of at least one year following the incident, regardless of whether a violation
 49 occurs at each visit, and such records shall, at a minimum, include the following information:

50 (a) The signed consent form of the minor's parent or legal guardian, if necessary;

51 (b) A ~~[Polaroid]~~ photograph of the minor;

52 (c) A photocopy of the minor's valid identification, showing the minor's correct date of birth;

53 (d) An information sheet completed by the minor on a form approved by the supervisor; and

1 (e) The name of each establishment visited by the minor, and the date and time of each visit.
2 6. If the state, county, municipal or other local law enforcement authority uses minors in
3 investigations or in enforcing or determining violations of this chapter or any local ordinance and does not
4 comply with the mandatory guidelines established by the supervisor of ~~liquor~~ alcohol and tobacco control in
5 subsection 5 of this section, the supervisor of ~~liquor~~ alcohol and tobacco control shall not take any
6 disciplinary action against the establishment or seller pursuant to this chapter based on an alleged violation
7 discovered when using a minor and shall not cooperate in any way with the state, county, municipal or other
8 local law enforcement authority in prosecuting any alleged violation discovered when using a minor."; and
9
10 Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.