

As Introduced

**133rd General Assembly
Regular Session
2019-2020**

H. B. No. 347

Representative Patton

A BILL

To amend section 2927.02 of the Revised Code to 1
place restrictions on retailers of vapor 2
products. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2927.02 of the Revised Code be 4
amended to read as follows: 5

Sec. 2927.02. (A) As used in this section and sections 6
2927.021 and 2927.022 of the Revised Code: 7

(1) "Age verification" means a service provided by an 8
independent third party (other than a manufacturer, producer, 9
distributor, wholesaler, or retailer of cigarettes, other 10
tobacco products, alternative nicotine products, or papers used 11
to roll cigarettes) that compares information available from a 12
commercially available database, or aggregate of databases, that 13
regularly are used by government and businesses for the purpose 14
of age and identity verification to personal information 15
provided during an internet sale or other remote method of sale 16
to establish that the purchaser is twenty-one years of age or 17
older. 18

(2) (a) "Alternative nicotine product" means, subject to 19

division (A) (2) (b) of this section, an electronic smoking 20
device, vapor product, or any other product or device that 21
consists of or contains nicotine that can be ingested into the 22
body by any means, including, but not limited to, chewing, 23
smoking, absorbing, dissolving, or inhaling. 24

(b) "Alternative nicotine product" does not include any of 25
the following: 26

(i) Any cigarette or other tobacco product; 27

(ii) Any product that is a "drug" as that term is defined 28
in 21 U.S.C. 321(g) (1); 29

(iii) Any product that is a "device" as that term is 30
defined in 21 U.S.C. 321(h); 31

(iv) Any product that is a "combination product" as 32
described in 21 U.S.C. 353(g). 33

(3) "Cigarette" includes clove cigarettes and hand-rolled 34
cigarettes. 35

(4) "Distribute" means to furnish, give, or provide 36
cigarettes, other tobacco products, alternative nicotine 37
products, or papers used to roll cigarettes to the ultimate 38
consumer of the cigarettes, other tobacco products, alternative 39
nicotine products, or papers used to roll cigarettes. 40

(5) "Electronic smoking device" means any device that can 41
be used to deliver aerosolized or vaporized nicotine or any 42
other substance to the person inhaling from the device including 43
an electronic cigarette, electronic cigar, electronic hookah, 44
vaping pen, or electronic pipe. "Electronic smoking device" 45
includes any component, part, or accessory of such a device, 46
whether or not sold separately, and includes any substance 47

intended to be aerosolized or vaporized during the use of the 48
device. "Electronic smoking device" does not include any product 49
that is a drug, device, or combination product, as those terms 50
are defined or described in 21 U.S.C. 321 and 353(g). 51

(6) "Proof of age" means a driver's license, a commercial 52
driver's license, a military identification card, a passport, or 53
an identification card issued under sections 4507.50 to 4507.52 54
of the Revised Code that shows that a person is eighteen years 55
of age or older. 56

(7) "Tobacco product" means any product that is made or 57
derived from tobacco or that contains any form of nicotine, if 58
it is intended for human consumption or is likely to be 59
consumed, whether smoked, heated, chewed, absorbed, dissolved, 60
inhaled, or ingested by any other means, including, but not 61
limited to, a cigarette, an electronic smoking device, a cigar, 62
pipe tobacco, chewing tobacco, snuff, or snus. "Tobacco product" 63
also means any component or accessory used in the consumption of 64
a tobacco product, such as filters, rolling papers, pipes, blunt 65
or hemp wraps, and liquids used in electronic smoking devices, 66
whether or not they contain nicotine. "Tobacco product" does not 67
include any product that is a drug, device, or combination 68
product, as those terms are defined or described in 21 U.S.C. 69
321 and 353(g). 70

(8) "Vapor product" means a product, other than a 71
cigarette or other tobacco product as defined in Chapter 5743. 72
of the Revised Code, that contains or is made or derived from 73
nicotine and that is intended and marketed for human 74
consumption, including by smoking, inhaling, snorting, or 75
sniffing. "Vapor product" includes any component, part, or 76
additive that is intended for use in an electronic smoking 77

device, a mechanical heating element, battery, or electronic 78
circuit and is used to deliver the product. "Vapor product" does 79
not include any product that is a drug, device, or combination 80
product, as those terms are defined or described in 21 U.S.C. 81
321 and 353(g). "Vapor product" includes any product containing 82
nicotine, regardless of concentration. 83

(9) "Vending machine" has the same meaning as "coin 84
machine" in section 2913.01 of the Revised Code. 85

(B) No manufacturer, producer, distributor, wholesaler, or 86
retailer of cigarettes, other tobacco products, alternative 87
nicotine products, or papers used to roll cigarettes, no agent, 88
employee, or representative of a manufacturer, producer, 89
distributor, wholesaler, or retailer of cigarettes, other 90
tobacco products, alternative nicotine products, or papers used 91
to roll cigarettes, and no other person shall do any of the 92
following: 93

(1) Give, sell, or otherwise distribute cigarettes, other 94
tobacco products, alternative nicotine products, or papers used 95
to roll cigarettes to any person under twenty-one years of age; 96

(2) Give away, sell, or distribute cigarettes, other 97
tobacco products, alternative nicotine products, or papers used 98
to roll cigarettes in any place that does not have posted in a 99
conspicuous place a legibly printed sign in letters at least 100
one-half inch high stating that giving, selling, or otherwise 101
distributing cigarettes, other tobacco products, alternative 102
nicotine products, or papers used to roll cigarettes to a person 103
under twenty-one years of age is prohibited by law; 104

(3) Knowingly furnish any false information regarding the 105
name, age, or other identification of any person under twenty- 106

one years of age with purpose to obtain cigarettes, other 107
tobacco products, alternative nicotine products, or papers used 108
to roll cigarettes for that person; 109

(4) Manufacture, sell, or distribute in this state any 110
pack or other container of cigarettes containing fewer than 111
twenty cigarettes or any package of roll-your-own tobacco 112
containing less than six-tenths of one ounce of tobacco; 113

(5) Sell cigarettes or alternative nicotine products in a 114
smaller quantity than that placed in the pack or other container 115
by the manufacturer; 116

(6) Give, sell, or otherwise distribute alternative 117
nicotine products, papers used to roll cigarettes, or tobacco 118
products other than cigarettes over the internet or through 119
another remote method without age verification. 120

(C) No person shall sell or offer to sell cigarettes, 121
other tobacco products, or alternative nicotine products by or 122
from a vending machine, except in the following locations: 123

(1) An area within a factory, business, office, or other 124
place not open to the general public; 125

(2) An area to which persons under twenty-one years of age 126
are not generally permitted access; 127

(3) Any other place not identified in division (C) (1) or 128
(2) of this section, upon all of the following conditions: 129

(a) The vending machine is located within the immediate 130
vicinity, plain view, and control of the person who owns or 131
operates the place, or an employee of that person, so that all 132
cigarettes, other tobacco product, and alternative nicotine 133
product purchases from the vending machine will be readily 134

observed by the person who owns or operates the place or an 135
employee of that person. For the purpose of this section, a 136
vending machine located in any unmonitored area, including an 137
unmonitored coatroom, restroom, hallway, or outer waiting area, 138
shall not be considered located within the immediate vicinity, 139
plain view, and control of the person who owns or operates the 140
place, or an employee of that person. 141

(b) The vending machine is inaccessible to the public when 142
the place is closed. 143

(c) A clearly visible notice is posted in the area where 144
the vending machine is located that states the following in 145
letters that are legibly printed and at least one-half inch 146
high: 147

"It is illegal for any person under the age of 21 to 148
purchase tobacco or alternative nicotine products." 149

(D) The following are affirmative defenses to a charge 150
under division (B) (1) of this section: 151

(1) The person under twenty-one years of age was 152
accompanied by a parent, spouse who is twenty-one years of age 153
or older, or legal guardian of the person under twenty-one years 154
of age. 155

(2) The person who gave, sold, or distributed cigarettes, 156
other tobacco products, alternative nicotine products, or papers 157
used to roll cigarettes to a person under twenty-one years of 158
age under division (B) (1) of this section is a parent, spouse 159
who is twenty-one years of age or older, or legal guardian of 160
the person under twenty-one years of age. 161

(E) It is not a violation of division (B) (1) or (2) of 162
this section for a person to give or otherwise distribute to a 163

person under twenty-one years of age cigarettes, other tobacco 164
products, alternative nicotine products, or papers used to roll 165
cigarettes while the person under twenty-one years of age is 166
participating in a research protocol if all of the following 167
apply: 168

(1) The parent, guardian, or legal custodian of the person 169
under twenty-one years of age has consented in writing to the 170
person under twenty-one years of age participating in the 171
research protocol. 172

(2) An institutional human subjects protection review 173
board, or an equivalent entity, has approved the research 174
protocol. 175

(3) The person under twenty-one years of age is 176
participating in the research protocol at the facility or 177
location specified in the research protocol. 178

(F) (1) As used in this division, "retail establishment 179
that primarily sells vapor products" means a retail 180
establishment in which at least ninety per cent of the revenue 181
derives from vapor products. 182

(2) No operator of a retail establishment that primarily 183
sells vapor products shall recklessly permit a person under the 184
age of twenty-one to enter the establishment. 185

(3) No operator of a retail establishment that sells vapor 186
products shall recklessly sell a vapor product in open display 187
and accessible to the public without the intervention of a store 188
employee. 189

(G) (1) Whoever violates division (B) (1), (2), (4), (5), or 190
(6) or (C) of this section is guilty of illegal distribution of 191
cigarettes, other tobacco products, or alternative nicotine 192

products. Except as otherwise provided in this division, illegal 193
distribution of cigarettes, other tobacco products, or 194
alternative nicotine products is a misdemeanor of the fourth 195
degree. If the offender previously has been convicted of a 196
violation of division (B) (1), (2), (4), (5), or (6) or (C) of 197
this section, illegal distribution of cigarettes, other tobacco 198
products, or alternative nicotine products is a misdemeanor of 199
the third degree. 200

(2) Whoever violates division (B) (3) of this section is 201
guilty of permitting a person under twenty-one years of age to 202
use cigarettes, other tobacco products, or alternative nicotine 203
products. Except as otherwise provided in this division, 204
permitting a person under twenty-one years of age to use 205
cigarettes, other tobacco products, or alternative nicotine 206
products is a misdemeanor of the fourth degree. If the offender 207
previously has been convicted of a violation of division (B) (3) 208
of this section, permitting a person under twenty-one years of 209
age to use cigarettes, other tobacco products, or alternative 210
nicotine products is a misdemeanor of the third degree. 211

~~(G)~~(3) Whoever violates division (F) (2) or (3) of this 212
section is guilty of a misdemeanor of the second degree. 213

(H) Any cigarettes, other tobacco products, alternative 214
nicotine products, or papers used to roll cigarettes that are 215
given, sold, or otherwise distributed to a person under twenty- 216
one years of age in violation of this section and that are used, 217
possessed, purchased, or received by a person under twenty-one 218
years of age in violation of section 2151.87 of the Revised Code 219
are subject to seizure and forfeiture as contraband under 220
Chapter 2981. of the Revised Code. 221

Section 2. That existing section 2927.02 of the Revised 222

Code is hereby repealed.

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