

SECOND REGULAR SESSION
[P E R F E C T E D]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 841
97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASSON.

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TERRY L. SPIELER, Secretary.

5875S.05P

AN ACT

To repeal sections 407.925, 407.926, 407.927, 407.929, 407.931, 407.933, and 407.934, RSMo, and to enact in lieu thereof seven new sections relating to alternative nicotine or vapor products, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 407.925, 407.926, 407.927, 407.929, 407.931, 407.933, 2 and 407.934, RSMo, are repealed and seven new sections enacted in lieu thereof, 3 to be known as sections 407.925, 407.926, 407.927, 407.929, 407.931, 407.933, and 4 407.934, to read as follows:

407.925. As used in sections 407.925 to [407.932] **407.934**, the following 2 terms mean:

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

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

13 [(2)] (3) "Distribute", a conveyance to the public by sale, barter, gift or

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

14 sample;

15 [(3)] (4) "Minor", a person under the age of eighteen;

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

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

26 [(6)] (7) "Proof of age", a driver's license or other generally accepted
27 means of identification that contains a picture of the individual and appears on
28 its face to be valid;

29 [(7)] (8) "Rolling papers", paper designed, manufactured, marketed, or
30 sold for use primarily as a wrapping or enclosure for tobacco, which enables a
31 person to roll loose tobacco into a smokable cigarette;

32 [(8)] (9) "Sample", a tobacco product, **alternative nicotine product,**
33 **or vapor product** distributed to members of the general public at no cost or at
34 nominal cost for product promotional purposes;

35 [(9)] (10) "Sampling", the distribution to members of the general public
36 of tobacco product, **alternative nicotine product or vapor product** samples;

37 [(10)] (11) "Tobacco products", any substance containing tobacco leaf,
38 including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing
39 tobacco, or dipping tobacco **but does not include alternative nicotine**
40 **products, or vapor products**;

41 [(11)] (12) "Vapor product", **any non-combustible product**
42 **containing nicotine that employs a heating element, power source,**
43 **electronic circuit, or other electronic, chemical or mechanical means,**
44 **regardless of shape or size, that can be used to produce vapor from**
45 **nicotine in a solution or other form. Vapor product includes any**
46 **electronic cigarette, electronic cigar, electronic cigarillo, electronic**
47 **pipe, or similar product or device and any vapor cartridge or other**
48 **container of nicotine in a solution or other form that is intended to be**
49 **used with or in an electronic cigarette, electronic cigar, electronic**

50 **cigarillo, electronic pipe, or similar product or device. Vapor product**
51 **does not include any alternative nicotine product or tobacco product;**

52 (13) "Vending machine", any mechanical electric or electronic, self-service
53 device which, upon insertion of money, tokens or any other form of payment,
54 dispenses tobacco products, **alternative nicotine products, or vapor**
55 **products.**

407.926. 1. Any person or entity who sells tobacco products, **alternative**
2 **nicotine products, or vapor products** shall deny the sale of such tobacco
3 products to any person who is less than eighteen years of age.

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

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

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

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

13 (2) Include a depiction of a pack of cigarettes at least two inches high
14 defaced by a red diagonal diameter of a surrounding red circle, and the words
15 "Under 18".

407.929. 1. A person or entity selling tobacco products, **alternative**
2 **nicotine products, or vapor products** or rolling papers or distributing
3 tobacco product, **alternative nicotine product, or vapor product** samples

4 shall require proof of age from a prospective purchaser or recipient if an ordinary
5 person would conclude on the basis of appearance that such prospective purchaser
6 or recipient may be under the age of eighteen.

7 2. The operator's or chauffeur's license issued pursuant to the provisions
8 of section 302.177, or the operator's or chauffeur's license issued pursuant to the
9 laws of any state or possession of the United States to residents of those states
10 or possessions, or an identification card as provided for in section 302.181, or the
11 identification card issued by any uniformed service of the United States, or a
12 valid passport shall be presented by the holder thereof upon request of any agent
13 of the division of liquor control or any owner or employee of an establishment that
14 sells tobacco, **alternative nicotine products, or vapor products**, for the
15 purpose of aiding the registrant, agent or employee to determine whether or not
16 the person is at least eighteen years of age when such person desires to purchase
17 or possess tobacco products, **alternative nicotine products, or vapor**
18 **products** procured from a registrant. Upon such presentation, the owner or
19 employee of the establishment shall compare the photograph and physical
20 characteristics noted on the license, identification card or passport with the
21 physical characteristics of the person presenting the license, identification card
22 or passport.

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

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

407.931. 1. It shall be unlawful for any person to sell, provide or
2 distribute tobacco products, **alternative nicotine products, or vapor**
3 **products** to persons under eighteen years of age.

4 2. [By January 1, 2002,] All vending machines that dispense tobacco
5 products, **alternative nicotine products, or vapor products** shall be located
6 within the unobstructed line of sight and under the direct supervision of an adult
7 responsible for preventing persons less than eighteen years of age from

8 purchasing any tobacco product, **alternative nicotine product, or vapor**
9 **product** from such machine or shall be equipped with a lock-out device to
10 prevent the machines from being operated until the person responsible for
11 monitoring sales from the machines disables the lock. Such locking device shall
12 be of a design that prevents it from being left in an unlocked condition and which
13 will allow only a single sale when activated. A locking device shall not be
14 required on machines that are located in areas where persons less than eighteen
15 years of age are not permitted or prohibited by law. An owner of an
16 establishment whose vending machine is not in compliance with the provisions
17 of this subsection shall be subject to the penalties contained in subsection 5 of
18 this section. A determination of noncompliance may be made by a local law
19 enforcement agency or the division of liquor control. Nothing in this section shall
20 apply to a vending machine if located in a factory, private club or other location
21 not generally accessible to the general public.

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

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

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

33 5. Any owner of the establishment where tobacco products, **alternative**
34 **nicotine products, or vapor products** are available for sale who violates
35 subsection 3 of this section, in addition to the penalties established in subsection
36 4 of this section, shall be penalized in the following manner:

- 37 (1) For the first violation per location within two years, a reprimand shall
38 be issued by the division of liquor control;
- 39 (2) For the second violation per location within two years, the division of
40 liquor control shall issue a citation prohibiting the outlet from selling tobacco
41 products, **alternative nicotine products, or vapor products** for a
42 twenty-four-hour period;
- 43 (3) For the third violation per location within two years, the division of

44 liquor control shall issue a citation prohibiting the outlet from selling tobacco
45 products, **alternative nicotine products, or vapor products** for a
46 forty-eight-hour period;

47 (4) For the fourth and any subsequent violations per location within two
48 years, the division of liquor control shall issue a citation prohibiting the outlet
49 from selling tobacco products for a five-day period.

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

53 (1) An in-house or other tobacco compliance employee training program
54 was in place to provide the employee with information on the state and federal
55 regulations regarding [tobacco] sales **of tobacco products, alternative**
56 **nicotine products, or vapor products** to minors. Such training program
57 must be attended by all employees who sell tobacco products, **alternative**
58 **nicotine products, or vapor products** to the general public;

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

63 (3) Such in-house or other tobacco compliance training meets the
64 minimum training criteria, which shall not exceed a total of ninety minutes in
65 length, established by the division of liquor control.

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

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

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

74 8. If a sale is made by an employee of the owner of an establishment in
75 violation of sections 407.925 to 407.934, the employee shall be guilty of an offense
76 established in subsections 1, 2 and 3 of this section. If a vending machine is in
77 violation of section 407.927, the owner of the establishment shall be guilty of an
78 offense established in subsections 3 and 4 of this section. If a sample is
79 distributed by an employee of a company conducting the sampling, such employee

80 shall be guilty of an offense established in subsections 3 and 4 of this section.

81 9. A person cited for selling, providing or distributing any tobacco product,
82 **alternative nicotine product, or vapor product** to any individual less than
83 eighteen years of age in violation of subsection 1, 2 or 3 of this section shall
84 conclusively be presumed to have reasonably relied on proof of age of the
85 purchaser or recipient, and such person shall not be found guilty of such violation
86 if such person raises and proves as an affirmative defense that such individual
87 presented a driver's license or other government-issued photo identification
88 purporting to establish that such individual was eighteen years of age or older.

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

407.933. 1. No person less than eighteen years of age shall purchase,
2 attempt to purchase or possess cigarettes [or], other tobacco products,
3 **alternative nicotine products, or vapor products** unless such person is an
4 employee of a seller of cigarettes [or], tobacco products, **alternative nicotine**
5 **products, or vapor products** and is in such possession to effect a sale in the
6 course of employment, or an employee of the division of liquor control for
7 enforcement purposes pursuant to subsection 5 of section 407.934.

8 2. Any person less than eighteen years of age shall not misrepresent his
9 or her age to purchase cigarettes [or], tobacco products, **alternative nicotine**
10 **products, or vapor products**.

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

13 (1) For the first violation, the person is guilty of an infraction and shall
14 have any cigarettes [or], tobacco products, **alternative nicotine products, or**
15 **vapor products** confiscated;

16 (2) For a second violation and any subsequent violations, the person is
17 guilty of an infraction, shall have any cigarettes [or], tobacco products,
18 **alternative nicotine products, or vapor products** confiscated and shall
19 complete a tobacco education or smoking cessation program, if available.

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

4 2. [Beginning January 1, 2002,] The department of revenue shall permit
5 persons to designate through the internet or by including a place on all sales tax

6 license applications for the applicant to designate himself or herself as a seller
7 of tobacco products, **alternative nicotine products, or vapor products** and
8 to provide a list of all locations where the applicant sells such products.

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

14 4. The division of liquor control shall have the authority to inspect stores
15 and tobacco outlets for compliance with all laws related to access of tobacco
16 products, **alternative nicotine products, or vapor products** to minors. The
17 division may employ a person seventeen years of age, with parental consent, to
18 attempt to purchase tobacco for the purpose of inspection or enforcement of
19 tobacco laws.

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

26 (1) The minor shall be seventeen years of age;

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

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

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

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

40 (6) The minor shall carry his or her own identification showing the
41 minor's correct date of birth and shall, upon request, produce such identification

42 to the seller of the tobacco product, **alternative nicotine product, or vapor**
43 **product**;

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

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

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

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

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

60 (a) The signed consent form of the minor's parent or legal guardian;

61 (b) A Polaroid photograph of the minor;

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

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

66 (e) The name of each establishment visited by the minor, and the date and
67 time of each visit.

68 6. If the state, county, municipal or other local law enforcement authority
69 uses minors in investigations or in enforcing or determining violations of this
70 chapter or any local ordinance and does not comply with the mandatory
71 guidelines established by the supervisor of liquor control in subsection 5 of this
72 section, the supervisor of liquor control shall not take any disciplinary action
73 against the establishment or seller pursuant to this chapter based on an alleged
74 violation discovered when using a minor and shall not cooperate in any way with
75 the state, county, municipal or other local law enforcement authority in
76 prosecuting any alleged violation discovered when using a minor.

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