

CHAPTER 149

(HB 142)

AN ACT relating to products that contain nicotine.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 438.345 is repealed, reenacted as a new section of KRS Chapter 158, and amended to read as follows:

- (1) As used in this section:
 - (a) "Alternative nicotine product" has the same meaning as in KRS 438.305;
 - (b) "Tobacco product" has the same meaning as in KRS 438.305; and
 - (c) "Vapor product" has the same meaning as in KRS 438.305.
- (2) The use of any tobacco product, alternative nicotine product, or vapor product:
 - (a) Shall be prohibited for all persons and at all times on or in all property, including any vehicle, that is owned, operated, leased, or contracted for use by a local board of education;
 - (b) Shall be prohibited for all students while attending or participating in any school-related student trip or student activity; and
 - (c) Shall be prohibited for school district employees, volunteers, and all other individuals affiliated with a school while the user is attending or participating in any school-related student trip or student activity and is in the presence of a student or students.
- (3) ~~On or before July 1, 2020,~~ Each local board of education shall implement this section by adopting written policies that prohibit the use of tobacco products, alternative nicotine products, and vapor products pursuant to this section. The policies shall provide for:
 - (a) *The distribution of evidence-based, age-appropriate nicotine prevention and cessation material to all students of the district at the beginning of each school year;*
 - (b) *Access to evidence-based, age-appropriate nicotine prevention and cessation material throughout the school year for all students of the district;*
 - (c) Adequate notice regarding the policy to be provided to students, parents and guardians, school employees, and the general public;
 - ~~(d)(b)~~ A requirement to post signage on or in all property, including any vehicle, that is owned, operated, leased, or contracted for use by a local board of education, clearly stating that use of tobacco products, alternative nicotine products, and vapor products is prohibited at all times and by all persons on or in the property; and
 - ~~(e)(c)~~ A requirement that school employees enforce the policies.
- (4)
 - (a) A person *who violates*~~in violation of~~ subsection (2) of this section, or policies adopted by a local board of education pursuant to subsection (3) of this section, shall be subject to penalties as set forth by the local board of education.
 - (b) *In the district's code of acceptable behavior and discipline formulated under KRS 158.148(5), each local board of education shall include a policy which, at a minimum, provides that if a student under the age of twenty-one (21) violates subsection (2) of this section, then the district will confiscate the alternative nicotine products, tobacco products, or vapor products and:*
 1. *For the first incident, the school counselor or other school-based mental health services provider shall provide to the parent or guardian and the student evidence-based, age-appropriate nicotine cessation information to include but not be limited to materials, programs, and referrals for treatment;*

2. *A second incident shall result in providing information as required in subparagraph 1. of this paragraph and disciplinary action as determined by the board and included in the district's code of acceptable behavior and discipline; and*
 3. *The third and subsequent incidents may result in an in-school or out-of-school suspension of that student. The school shall provide the opportunity for a student to complete an evidence-based, age-appropriate nicotine education program during an in-school suspension.*
- (5) Nothing in this section shall be interpreted or construed to:
- (a) Permit use of a tobacco product, alternative nicotine product, or vapor product, where it is otherwise restricted by this section, other state or federal law, administrative regulation, or executive order;
 - (b) Prevent a local board of education or any other local governmental entity from adopting local ordinances, regulations, or policies relating to use of a tobacco product, alternative nicotine product, or a vapor product, in public places of employment, and nonenclosed areas, that are more restrictive than what is provided for in this section; or
 - (c) Repeal any existing local ordinances, regulations, or policies that provide restrictions on the use of a tobacco product, alternative nicotine product, or vapor product, in addition to those provided for in this section.
- (6) *By August 1, 2024, the department, after consultation with the Cabinet for Health and Family Services, shall post on its website nicotine awareness information to include but not be limited to the various types of products containing nicotine, the health issues associated with nicotine, and a list of evidence-based cessation programs available to school districts.*
- (7) *The department, regional educational cooperatives, and local boards of education may identify and apply for grant opportunities relating to nicotine usage, including but not limited to nicotine cessation, vaping, and tobacco products containing nicotine, and the health consequences of the use of nicotine products.*
- (8) *No later than August 1 of each year, each local board of education shall submit a report to the department that includes:*
- (a) *The number of behavior incidents for each product defined in subsection (1) of this section, listed by school and grade; and*
 - (b) *The number of incidents in paragraph (a) of this subsection for which medical intervention was provided, listed by school, grade, and product.*
- (9) *No later than September 1 of each year, the department shall submit a report to the Legislative Research Commission for referral to the Interim Joint Committee on Education that compiles all of the data required in subsection (8) of this section.* ~~Each local board of education may choose, up to three (3) years after June 27, 2019, to opt out of subsections (2) to (4) of this section.~~

Signed by Governor April 9, 2024.