

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2024 REGULAR SESSION
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Amend printed copy of **HB 11/GA**

Beginning on page 1, line 3, and continuing through page 9, line 19 delete language in its entirety and replace in lieu thereof:

"➔Section 1. KRS 438.305 is amended to read as follows:

As used in KRS 438.305 to 438.340, unless the context requires otherwise:

(1) **"Advertise" means the publication or dissemination of an advertisement;**

(2) **"Advertisement":**

(a) Means any written or verbal statement, illustration, or depiction intended and used to increase the sales of e-liquids or vapor products;

(b) Includes any:

1. Written, printed, graphic, or other material;

2. Billboard, sign, or other outdoor display;

3. Public transit card;

4. Other periodical literature or publication;

5. Radio or television broadcast; or

6. Other media; and

(c) Does not include:

1. Any label affixed to any e-liquid or vapor product, or any individual covering, carton, or other wrapper that constitutes a part of the labeling under Section

Amendment No. SFA 1

Rep. Sen. Shelley Funke Frommeyer

Committee Amendment _____

Signed: _____

Floor Amendment _____

LRD Drafter: _____

Adopted: _____

Date: _____

Rejected: _____

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3 of this Act; or

2. Any editorial or other reading material in any periodical, publication, or newspaper for publication if no money or valuable consideration is paid or promised, directly or indirectly, by any permit holder, and which is not written by or at the direction of the permit holder;

(3) (a) "Alternative nicotine product" means a noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means.

(b) "Alternative nicotine product" does not include any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act;

~~(4)(2)~~ "Applicant" means a person who applies for a permit under Section 2 of this Act;

(5) "Delivery sale":

(a) Means a sale of e-liquids or vapor products to a consumer in this Commonwealth in which:

1. The consumer submits the order for the sale:

a. By telephone;

b. Over the internet; or

c. Through the mail or another delivery system; or

2. The e-liquids or vapor products are shipped through a delivery service; and

(b) Does not include:

1. A sale of e-liquids or vapor products not for personal consumption to a person who is a manufacturer, distributor, or retailer; or

2. Any sale on a social media platform;

(6) "Delivery service" means a person, including the United States Postal Service, that is

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engaged in the delivery of letters, packages, or containers;

(7) "Department" means the Department of Alcoholic Beverage Control;

(8) "Distributor" means a person who has been granted a permit under Section 3 of this Act

that:

(a) Distributes, sells, barter, or exchanges e-liquid or vapor products in this Commonwealth for the purpose of resale; or

(b) Purchases e-liquid or vapor products directly from a manufacturer or distributor for the purpose of resale in this Commonwealth;

(9) "E-liquid":

(a) Means a solution that:

1. Contains propylene glycol, vegetable glycerin, nicotine, or flavorings; and

2. Is intended to be used in a vapor product; and

(b) Does not include:

1. Marijuana or tetrahydrocannabinols as defined in KRS 218A.010;

2. Hemp or industrial hemp as defined in KRS 260.850;

3. Medicinal cannabis as defined in KRS 218B.010; or

4. Cannabidiol as defined in KRS 217.039;

(10) "Employee" has the same meaning as in Section 3401(c) of the Internal Revenue Code;

(11) "Flavoring" means a food grade additive or synthetic flavoring substance that is used to add flavor;

(12) "Manufacturer":

(a) Means any person who manufactures or produces tobacco products, e-liquids, or vapor products within or without this Commonwealth; and

(b) Includes a repacker or relabeler that is engaged in manufacturing e-liquids or vapor products in this state;

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(13) "Market" or "marketing" means any act or process of promoting the sale of e-liquids or vapor products, including but not limited to sponsorship of sporting events, point-of-sale advertising, and promotion of products specifically designed to appeal to certain demographics;

(14)~~(3)~~ "Nonresident wholesaler" means any person who purchases cigarettes or other tobacco products directly from the manufacturer and maintains a permanent location or locations outside this state at which Kentucky cigarette tax evidence is attached or from which Kentucky cigarette tax is reported and paid;

(15)~~(4)~~ **"Packaging" means any receptacle that contains a finished e-liquid or vapor product;**

(16) "Permit" means a written authorization issued by the department allowing the holder to manufacture, sell, or otherwise deal in e-liquid or vapor products;

(17) "Person" has the same meaning as in KRS 139.010;

(18) "Proof of age" means a driver's license or other documentary or written evidence of an individual's age;

(19)~~(5)~~ "Resident wholesaler" means any person who purchases at least seventy-five percent (75%) of all cigarettes or other tobacco products purchased by that person directly from the cigarette manufacturer on which the cigarette tax provided for in KRS 138.130 to 138.205 is unpaid, and who maintains an established place of business in this state at which the person attaches cigarette tax evidence or receives untaxed cigarettes;

(20)~~(6)~~ **"Retailer" means a person, other than a manufacturer or distributor, who in the ordinary course of the person's regular trade or business:**

(a) Acquires any form of e-liquid or vapor products for the purpose of resale to an end consumer; and

(b) Sells an e-liquid or a vapor product to another person for money or other

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consideration;

(21) "Sale" or "sell" means to exchange or otherwise furnish any e-liquid or vapor product to any individual of legal age for monetary value;

(22) "Sample" means a tobacco product, alternative nicotine product, *e-liquid*, or vapor product distributed to members of the general public at no cost;

(23) "Social media" or "social media platform" means an online forum, website, or application that satisfies each of the following criteria:

(a) Allows users to upload content or view the content or activity of other users;

(b) Employs algorithms that analyze user data to select content for users; and

(c) Has any of the following features:

1. Infinite scrolling;

2. Push notifications or alerts to inform the user about specific activities or events related to the user's account;

3. Displays personal interactive metrics that indicate the number of times:

a. Other users have reacted to content; or

b. The content posted has been shared or reposted by other users;

4. Auto-play video or video that begins to play without the user selecting that video; or

5. Live-streaming function that allows a user or advertiser to broadcast live video content in real time;

(24)(7) "Subjobber" means any person who purchases tobacco products, on which the Kentucky cigarette tax has been paid, from a wholesaler licensed pursuant to KRS 138.195, and makes them available to a retail establishment for resale;

(25) "Tamper-evident package" means a package:

(a) Having at least one (1) indicator or barrier to entry that, if breached or missing,

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can reasonably be expected to provide visible evidence to consumers that tampering has occurred; and

(b) Designed to remain intact when handled in a reasonable manner during the manufacture, distribution, and retail display of the e-liquid container or vapor product;

~~(26)~~~~(8)~~ (a) "Tobacco product":

(a) Means any cigarette, cigar, snuff, smokeless tobacco product, smoking tobacco, chewing tobacco, and any kind or form of tobacco prepared in a manner suitable for chewing or smoking, or both, or any kind or form of tobacco that is suitable to be placed in a person's mouth~~;~~;

(b) ~~["Tobacco product" also]~~Means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product, except for raw materials other than tobacco used in manufacturing any component, part, or accessory of a tobacco product, in accordance with the federal Tobacco Control Act, Pub. L. No. 111-31; and

(c) ~~(b) "Tobacco product"]~~Does not include any alternative nicotine product, e-liquid, vapor product, or product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act; and

~~(27)~~~~(9)~~ (a) "Vapor product":

(a) Means any noncombustible product that employs a heating element, battery, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size and including the component parts and accessories thereto, that can be used to deliver vaporized nicotine or other substances to users inhaling from the device;

(b) ~~["Vapor product"]~~Includes but is not limited to any device deemed to be an

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electronic nicotine delivery system by the United States Food and Drug Administration, any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and every variation thereof, regardless of whether marketed as such, and any vapor cartridge or other container of a liquid solution or other material that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar product or device; **and** ~~;~~

~~(c)(b)~~ ~~["Vapor product"]~~ Does not include any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

➔SECTION 2. A NEW SECTION OF KRS 438.305 TO 438.340 IS CREATED TO READ AS FOLLOWS:

(1) A manufacturer, distributor, or retailer shall not sell e-liquid or vapor products in this Commonwealth without a permit issued by the department.

(2) Each application for a permit shall include the following information:

(a) The name, telephone number, and address of the applicant;

(b) The name, telephone number, and address of the facility; and

(c) The name, telephone number, title, and address of the person responsible for the facility.

(3) (a) A manufacturer permit is valid for five (5) years from the date of issuance.

(b) An application for a manufacturer permit shall include the following:

1. Adequate assurances that the facility will comply with applicable tobacco products good manufacturing practices promulgated under 21 U.S.C. sec. 387f(e) of the Food, Drug, and Cosmetic Act;

2. Adequate assurances that the manufacturer will comply with the applicable

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ingredient listing required by 21 U.S.C. sec 387d(a)(1) of the Food, Drug, and Cosmetic Act; and

3. A nonrefundable annual application fee of one thousand dollars (\$1,000).

(4) (a) A distributor of e-liquid or vapor products shall not distribute e-liquid or vapor products without a valid permit.

(b) A distributor permit is valid for one (1) year from the date of issuance.

(c) An application for a distributor permit shall include a nonrefundable annual application fee of five hundred dollars (\$500).

(5) (a) A retailer of e-liquid or vapor products shall not sell e-liquid or vapor products without a valid permit.

(b) A retailer permit issued is valid for one (1) year from the date of issuance.

(c) An application for a retailer permit shall include a nonrefundable annual application fee of one hundred fifty dollars (\$150) for each retail location to be licensed.

(d) A retailer shall not sell more than two (2) vapor products or five (5) bottles or packages of e-liquids in one (1) transaction to a final consumer.

(6) A permit holder under this section shall retain all invoices for at least two (2) years.

(7) (a) A permit shall not be transferred:

1. From the permit holder to another person; or

2. From the location where the permit was approved or renewed to another location;

unless approved by the department.

(b) The department shall allow a permit to be transferred under paragraph (a) of this subsection if the permit has not been suspended or revoked and the new permit holder or location meets the requirements under this section.

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- (8) (a) The department shall grant or deny a completed application for a permit within sixty (60) days of receipt by the department; and
- (b) If a completed application for a permit is denied, the department shall:
1. State the reasons for the denial; and
 2. Inform the applicant that it may reapply within thirty (30) days after the date of the denial without an application fee for the reapplication.

➔SECTION 3. A NEW SECTION OF KRS 438.305 TO 438.340 IS CREATED TO READ AS FOLLOWS:

- (1) Manufacturers, distributors, and retailers shall comply with the following requirements:
- (a) Any e-liquid that contains ingredients not listed in the definition of e-liquid in Section 1 of this Act shall be considered mislabeled and adulterated;
 - (b) An e-liquid container shall use a child proof cap that has the child-resistant effectiveness set forth in the federal poison prevention packaging standards, 16 C.F.R. 1700.15(b)(1);
 - (c) An e-liquid container or a vapor product that contains e-liquid shall use a tamper-evident package;
 - (d) The label on an e-liquid container shall meet the nicotine addictiveness warning statement requirements set forth in 21 C.F.R. 1143.3;
 - (e) The package containing the e-liquid or vapor product shall contain:
 1. The name of the manufacturer or distributor; and
 2. The address of the manufacturer or distributor firmly affixed to or printed on the package, which may include when located on the package:
 - a. A scannable bar code; or
 - b. A quick response code;
 - (f) Retailers shall display signage that states "unaccompanied persons under the age

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of 21 are not allowed on the premises", "e-liquids and vapor products are not for sale to persons under the age of 21", or "underage sales prohibited"; and

(g) 1. Retailers selling e-liquids or vapor products shall display the products behind a counter or in an enclosed display that is not accessible to the customer.

2. A retailer that prohibits the presence of any persons under the age of twenty-one (21) years on its retail premises shall not be subject to subparagraph 1. of this paragraph.

(2) A manufacturer, distributor, or retailer of e-liquids or vapor products shall not sell or offer for sale any e-liquid or vapor product that uses, in the labeling or design of the product, packaging, or marketing materials:

(a) The following terms:

1. "Candy," "candies," or variants in spelling such as "kandy" or "kandeez," except for the use of the name of a permit holder, including the permit holder's assumed name;

2. "Bubble gum," "cotton candy," "gummy bear," "lollipop," or other variants of these words, except for the use of the name of a permit holder, including the permit holder's assumed name;

3. "Cake," "cupcake," "pie," or any other variation of these words, or any other term referencing types of "cakes," "cupcakes," or "pies" that do not include the foregoing words; or

4. "Ice cream," "sherbert," "popsicle," "fudge bar," "bomb pop," or any other variation of these words;

(b) Images of or references to cartoons, cartoon characters, superheroes, television shows, video games, and movies, or other similar characters or references commonly used to market products to persons under twenty-one (21) years of age;

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or

(c) Trade dress, trademarks, or other related imagery that imitate or replicate trade dress, trademarks, or other imagery of:

1. Food brands or products that have been commonly marketed to persons under twenty-one (21) years of age such as brands of breakfast cereals, cookies, juice drinks, soft drinks, ice creams, and frozen pops; or
2. School supplies.

(3) A manufacturer, distributor, or retailer of e-liquids or vapor products shall not advertise or market any e-liquids or vapor product except in the following manner:

(a) 1. Any advertisement placed in or on broadcast or cable television, streaming services, radio, print, or digital communications, or any event marketing or sponsorships shall only be made where at least eighty-five percent (85%) of the intended audience is reasonably expected to be twenty-one (21) years of age or older, as determined by reliable, up-to-date audience composition demographic data or event organizer restrictions.

2. Any advertising statement shall be consistent with the e-liquid's or vapor product's labeling;

(b) Advertisements shall not:

1. Be materially false or untrue;
2. Contain any health or therapeutic claims; or
3. When on a billboard sign, be within one thousand (1,000) feet of an elementary or secondary school, playground, or youth center; and

(c) Advertisements for e-liquids or vapor products shall be prohibited on social media.

➔SECTION 4. A NEW SECTION OF KRS 438.305 TO 438.340 IS CREATED TO READ AS FOLLOWS:

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- (1) A retailer shall not make a delivery sale of e-liquid or vapor products without a retail permit granted by the department under Section 2 of this Act.
- (2) (a) A retailer shall only enter into a delivery sale transaction to a person who is twenty-one (21) years of age or older through its own website that utilizes age verification software to enter the retailer's website.
- (b) The age verification shall occur through an independent, third-party age verification software, service, or technology that compares information available from public records to the personal information entered by the purchaser during the ordering process that establishes the purchaser is twenty-one (21) years of age or older.
- (3) (a) Before e-liquids or vapor products are shipped in a delivery sale, a retailer shall be paid in full for the purchase and shall accept payment from the purchaser by a:
1. Check drawn on an account in the purchaser's name;
 2. Credit card issued in the purchaser's name; or
 3. Debit card issued in the purchaser's name.
- (b) Upon receipt of payment in full, a retailer shall only ship e-liquids or vapor products to that purchaser.
- (4) A retailer taking a delivery sale order shall request the electronic mail address of the purchaser.

➔Section 5. KRS 438.310 is amended to read as follows:

- (1) No person shall sell or cause to be sold any tobacco product, alternative nicotine product, e-liquid, or vapor product at retail to any person under the age of twenty-one (21), or solicit any person under the age of twenty-one (21) to purchase any tobacco product, alternative nicotine product, e-liquid, or vapor product at retail.
- (2) Any person who sells tobacco products, alternative nicotine products, e-liquids, or vapor

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products at retail shall cause to be posted in a conspicuous place in his or her establishment a notice stating that it is illegal to sell tobacco products, alternative nicotine products, e-liquids, or vapor products to persons under age twenty-one (21).

- (3) Any person selling tobacco products, alternative nicotine products, e-liquids, or vapor products shall require proof of age from a prospective buyer or recipient if the person has reason to believe that the prospective buyer or recipient is under the age of twenty-one (21).
- (4) A person who violates subsection (1) or (2) of this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for a first violation and a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) for any subsequent violation. The fine shall be administered by the Department of Alcoholic Beverage Control using a civil enforcement procedure.

➔Section 6. KRS 438.311 is amended to read as follows:

- (1) (a) Except for the provisions of KRS 438.330, it shall be unlawful for a person who has not attained the age of twenty-one (21) years:
1. To purchase or accept receipt of or to attempt to purchase or accept receipt of a tobacco product, alternative nicotine product, e-liquid, or vapor product;~~;~~ or
 2. To present or offer to any person any purported proof of age which is false, fraudulent, or not actually his or her own;~~;~~

For the purpose of purchasing or receiving any tobacco product, alternative nicotine product, e-liquid, or vapor product.

- (b) It shall not be unlawful for such a person to accept receipt of a tobacco product, alternative nicotine product, e-liquid, or vapor product from an employer when required in the performance of the person's duties.
- (2) All peace officers with general law enforcement authority and employees of the

Department of Alcoholic Beverage Control may confiscate the tobacco product, alternative nicotine product, *e-liquid*, or vapor product of a person under the age of twenty-one (21) who has violated this section. Notwithstanding any provision of law to the contrary, no other penalty shall apply to a person under the age of twenty-one (21) for a violation of this section.

➔Section 7. KRS 438.313 is amended to read as follows:

- (1) No wholesaler, retailer, or manufacturer of cigarettes, tobacco products, alternative nicotine products, *e-liquids*, or vapor products may distribute cigarettes, tobacco products, alternative nicotine products, or vapor products, including samples thereof, free of charge or otherwise, to any person under the age of twenty-one (21).
- (2) Any person who distributes cigarettes, tobacco products, alternative nicotine products, *e-liquids*, or vapor products, including samples thereof, free of charge or otherwise shall require proof of age from a prospective buyer or recipient if the person has reason to believe that the prospective purchaser or recipient is under the age of twenty-one (21).
- (3) Any person who violates the provisions of this section shall be fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500) for each offense. The fine shall be administered by the Department of Alcoholic Beverage Control using a civil enforcement procedure for persons eighteen (18) years of age or older.
- (4) All peace officers with general law enforcement authority and employees of the Department of Alcoholic Beverage Control may issue a uniform citation, but may not make an arrest, or take a child into custody, for a violation of this section.

➔Section 8. KRS 438.315 is amended to read as follows:

- (1) The sale of tobacco products, alternative nicotine products, *e-liquids*, or vapor products dispensed through a vending machine is prohibited to any person under the age of twenty-one (21) years.

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- (2) The purchase of tobacco products, alternative nicotine products, *e-liquids*, or vapor products dispensed through a vending machine is prohibited to any person under the age of twenty-one (21) years.
- (3) Except for vending machines located in factories or vending machines located in bars or taverns to which *persons under twenty-one (21) years of age*~~[minors]~~ are not permitted access, any vending machine from which tobacco products, alternative nicotine products, *e-liquids*, or vapor products are dispensed shall be located in the line of sight of the cashier for the retail establishment.
- (4) Any owner of a retail establishment violating this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation. The fine shall be administered by the Department of Alcoholic Beverage Control using a civil enforcement procedure for persons eighteen (18) years of age or older.
- (5) All peace officers with general law enforcement authority and employees of the Department of Alcoholic Beverage Control may issue a uniform citation, but may not make an arrest, or take a child into custody, for a violation of this section.

➔Section 9. KRS 438.320 is amended to read as follows:

Each resident wholesaler, nonresident wholesaler, or subjobber making tobacco products, *alternative tobacco products, e-liquids, or vapor products* available to a retail establishment for sale or distribution shall report the name and address of the owner of the retail establishment to the Department of Alcoholic Beverage Control in a manner specified by administrative regulations promulgated pursuant to KRS Chapter 13A.

➔Section 10. KRS 438.325 is amended to read as follows:

- (1) Each owner of a retail establishment selling or distributing tobacco products, alternative nicotine products, *e-liquids*, or vapor products shall notify each individual employed in the retail establishment as a retail sales clerk that the sale of tobacco products, alternative

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nicotine products, *e-liquids*, or vapor products to any person under the age of twenty-one (21) years and the purchase of tobacco products, alternative nicotine products, *e-liquids*, or vapor products by any person under the age of twenty-one (21) years are prohibited.

(2) Each owner of a retail establishment selling or distributing tobacco products, alternative nicotine products, *e-liquids*, or vapor products shall notify each individual employed in the retail establishment as a retail sales clerk that proof of age is required from a prospective buyer or recipient if the person has reason to believe that the prospective purchaser or recipient is under the age of twenty-one (21).

(3) The notice to employees that is required in subsection (1) of this section shall be provided before the person commences work as a retail sales clerk, or, in the case of a person employed as a retail sales clerk on March 26, 2020, within thirty (30) days of that date. The employee shall signify receipt of the notice required by this section by signing a form that states as follows:

"I understand that under the law of the Commonwealth of Kentucky it is illegal to sell or distribute tobacco products, alternative nicotine products, *e-liquids*, or vapor products to persons under the age of twenty-one (21) years and that it is illegal for persons under the age of twenty-one (21) years to purchase tobacco products, alternative nicotine products, *e-liquids*, or vapor products."

(4) The owner of the retail establishment shall maintain the signed notice that is required pursuant to subsection (3) of this section in a place and in a manner so as to be easily accessible to any employee of the Department of Alcoholic Beverage Control or the Department of Agriculture conducting an inspection of the retail establishment for the purpose of monitoring compliance in limiting the sale or distribution of tobacco products, alternative nicotine products, *e-liquids*, or vapor products to persons under the age of twenty-one (21) as provided in KRS 438.305 to 438.340.

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- (5) Any owner of the retail establishment violating subsections (1) to (4) of this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation. The fine shall be administered by the Department of Alcoholic Beverage Control in a civil enforcement procedure.

➔Section 11. KRS 438.330 is amended to read as follows:

- (1) (a) The Department of Alcoholic Beverage Control and the Department of Agriculture shall carry out annually conducted random, unannounced inspections of retail establishments where tobacco products, alternative nicotine products, *e-liquids*, or vapor products are sold or distributed for the purpose of enforcing the provisions of KRS 438.305 to 438.340.
- (b) The inspections shall be conducted to the extent necessary to assure that the Commonwealth remains in compliance with Public Law 102-321 and applicable federal regulations.
- (c) The Department of Alcoholic Beverage Control and the Department of Agriculture shall also ensure that targeted inspections are conducted at those retail establishments where, and at those times when, persons under the age of twenty-one (21) years are most likely to purchase tobacco products, alternative nicotine products, *e-liquids*, or vapor products.
- (d) Persons under the age of twenty-one (21) years may be used to test compliance with the provisions of KRS 438.305 to 438.340 only if the testing is conducted under the direct supervision of the Department of Alcoholic Beverage Control, sheriff, or chief of police, or their employees, and written parental consent has been obtained.
- (e) The Department of Alcoholic Beverage Control shall prepare annually, for submission by the Governor to the Secretary of the United States Department of Health and Human Services, the report required by Section 1926 of Subpart 1 of Part

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B of Title XIX of the Federal Public Health Service Act.

- (2) The Department of Alcoholic Beverage Control shall develop and implement the survey sampling methodologies to carry out the inspections as described in this section.

➔Section 12. KRS 438.335 is amended to read as follows:

The Department of Agriculture shall carry out the provisions of KRS 438.305 to 438.340 as they relate to educating the public and sellers of tobacco products, alternative nicotine products, e-liquids, or vapor products about provisions and penalties of KRS 438.305 to 438.340. The Department of Agriculture shall be entitled to the revenue produced by one-twentieth of one cent (\$0.0005) of the three-cent (\$0.03) per pack revenue collected by the Department of Revenue from the state excise tax on the sale of cigarettes as imposed by KRS 138.140 and to keep fifty percent (50%) of any fines and application fees collected under KRS 438.305 to 438.340 to offset the costs of these education efforts.

➔Section 13. KRS 438.337 is amended to read as follows:

- (1) The Department of Alcoholic Beverage Control shall carry out the enforcement provisions of KRS 438.305 to 438.340.
- (2) The Department of Alcoholic Beverage Control shall be entitled to:
 - (a) The revenue produced by one-twentieth of one cent (\$0.0005) of the three-cent (\$0.03) per pack revenue collected by the Finance and Administration Cabinet from the state excise tax on the sale of cigarettes as imposed by KRS 138.140 to be deposited in a trust and agency account created in the State Treasury~~[-]; and [to keep]~~
 - (b) Fifty percent (50%) of any fines and application fees collected under KRS 438.305 to 438.340 to offset the costs of enforcement of KRS 438.305 to 438.340.
- (3) The Department of Alcoholic Beverage Control shall be responsible for maintaining statistics for compilation of required reports to be submitted to the United States Department of Health and Human Services.

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- (4) The Department of Alcoholic Beverage Control shall devise a plan and time frame for enforcement to determine by random inspection if the percentage of retailers or distributors making illegal sales to persons under the age of twenty-one (21) does or does not exceed federal guidelines preventing tobacco sales to persons under the age of twenty-one (21).

➔Section 14. KRS 438.345 is 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) **"E-liquid" has the same meaning as in Section 1 of this Act;**

(c) "Tobacco product" has the same meaning as in KRS 438.305; and

~~(d)~~~~(e)~~ "Vapor product" has the same meaning as in KRS 438.305.

- (2) The use of any tobacco product, alternative nicotine product, **e-liquid**, 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, **e-liquids**, and vapor products pursuant to this section. The policies shall provide for:

(a) Adequate notice regarding the policy to be provided to students, parents and guardians, school employees, and the general public;

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- (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
 - (c) A requirement that school employees enforce the policies.
- (4) A person 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.
- (5) Nothing in this section shall be interpreted or construed to:
- (a) Permit use of a tobacco product, alternative nicotine product, *e-liquids*, 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, *e-liquids*, 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, *e-liquids*, or vapor product, in addition to those provided for in this section.

~~[(6) 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.]~~

➔Section 15. KRS 438.350 is amended to read as follows:

- (1) No person under the age of twenty-one (21) shall possess or use tobacco products, alternative nicotine products, *e-liquids*, or vapor products.

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- (2) Any tobacco product, alternative nicotine product, ***e-liquids***, or vapor product found in the possession of a person under the age of twenty-one (21) and in plain view of the law enforcement officer shall be confiscated by the law enforcement officer making the charge.
- (3) This section shall not apply to persons exempted as provided by KRS 438.311 and 438.330.
- (4) The terms "alternative nicotine product," "tobacco product," ***"e-liquid,"*** and "vapor product," shall have the same meanings as in KRS 438.305.

➔SECTION 16. A NEW SECTION OF KRS 438.305 TO 438.340 IS CREATED TO READ AS FOLLOWS:

- (1) If a manufacturer, distributor, or retailer violates any provision of KRS 438.305 to 438.340, the manufacturer, distributor, or retailer:**
 - (a) Shall be assessed civil penalties; or**
 - (b) May be subjected to permit suspension or revocation proceedings.**
- (2) The department may assess a civil penalty against a manufacturer, distributor, or retailer for a violation of Section 2, 3, 4, or 5 of this Act in an amount that does not exceed five thousand dollars (\$5,000). A civil penalty may be assessed in addition to other penalties allowed under KRS 438.305 to 438.340.**
- (3) Any person who sells an e-liquid or a vapor product without a permit shall be subject to the following penalties:**
 - (a) The first violation shall result in a penalty of not less than one thousand dollars (\$1,000);**
 - (b) A second violation shall result in a penalty of not less than five thousand dollars (\$5,000); and**
 - (c) A third violation shall result in a penalty of not less than ten thousand dollars (\$10,000).**

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- (4) If a retailer knowingly and intentionally sells e-liquid or vapor products to a person under twenty-one (21) years of age or knowingly, intentionally, or negligently fails to verify the age of a purchaser as required in KRS 438.305 to 438.340 and sells the person under twenty-one (21) years of age an e-liquid or a vapor product, a civil penalty for an infraction committed under this subsection of this section shall be imposed as follows:
- (a) The first violation in a twenty-four (24) month period shall result in a two hundred fifty dollar (\$250) penalty;
- (b) The second violation in a twenty-four (24) month period shall result in a fifteen hundred dollar (\$1,500) penalty; and
- (c) The third violation and subsequent violations in a thirty-six (36) month period shall result in:
1. A three thousand dollar (\$3,000) penalty; or
 2. Revocation of the retailer's permit. ➔

➔SECTION 17. A NEW SECTION OF KRS 438.305 TO 438.340 IS CREATED TO READ AS FOLLOWS:

- (1) Upon proceedings for the revocation of any permit issued under Section 2 of this Act, the Alcoholic Beverage Control Board may order a suspension of the permit for any cause for which it may revoke the license under KRS 438.305 to 438.340.
- (2) Appeals from orders of suspension and the procedure thereon shall be the same as are provided for orders of revocation in KRS Chapter 13B.
- (3) All final orders of the board may be appealed to the Circuit Court of the county where the appellant resides or the county containing the appellant's permitted premises, if any, notwithstanding KRS Chapter 13B.
- (4) A party to the administrative action may institute an appeal by filing a petition in the office of the clerk of the Circuit Court of the county where the appellant resides or the

county containing the appellant's permitted premises, if any, within thirty (30) days after the final order of the board is mailed or delivered by personal service.

(5) The board, department, permit holder or applicant, and any other parties to the administrative action shall be necessary parties to all appeals.

(6) No final order of the board issuing a permit shall become effective, and no permit under that final order shall be issued, until the expiration of the appeal period contained in KRS Chapter 13B. If an appeal from a final order has been filed as provided under KRS 13B.140, the final order shall not become effective until the appeal has been finally determined by the courts. During the pendency of any appeal, a court may dissolve the stay under this section for good cause shown.

➔Section 18. This Act takes effect January 1, 2025."