

As Introduced

**133rd General Assembly
Regular Session
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H. B. No. 346

Representative Patton

A BILL

To amend section 2927.02 of the Revised Code to 1
prohibit the sale of flavored electronic smoking 2
devices and flavored vapor products and to 3
establish a committee to study the health risks 4
associated with such products. 5

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

Section 1. That section 2927.02 of the Revised Code be 6
amended to read as follows: 7

Sec. 2927.02. (A) As used in this section and sections 8
2927.021 and 2927.022 of the Revised Code: 9

(1) "Age verification" means a service provided by an 10
independent third party (other than a manufacturer, producer, 11
distributor, wholesaler, or retailer of cigarettes, other 12
tobacco products, alternative nicotine products, or papers used 13
to roll cigarettes) that compares information available from a 14
commercially available database, or aggregate of databases, that 15
regularly are used by government and businesses for the purpose 16
of age and identity verification to personal information 17
provided during an internet sale or other remote method of sale 18
to establish that the purchaser is twenty-one years of age or 19

older. 20

(2) (a) "Alternative nicotine product" means, subject to 21
division (A) (2) (b) of this section, an electronic smoking 22
device, vapor product, or any other product or device that 23
consists of or contains nicotine that can be ingested into the 24
body by any means, including, but not limited to, chewing, 25
smoking, absorbing, dissolving, or inhaling. 26

(b) "Alternative nicotine product" does not include any of 27
the following: 28

(i) Any cigarette or other tobacco product; 29

(ii) Any product that is a "drug" as that term is defined 30
in 21 U.S.C. 321(g) (1); 31

(iii) Any product that is a "device" as that term is 32
defined in 21 U.S.C. 321(h); 33

(iv) Any product that is a "combination product" as 34
described in 21 U.S.C. 353(g). 35

(3) "Cigarette" includes clove cigarettes and hand-rolled 36
cigarettes. 37

(4) "Characterizing flavor" means a taste or aroma, other 38
than the taste or aroma of tobacco, emitted either prior to or 39
during consumption of a tobacco product. "Characterizing flavor" 40
includes tastes or aromas relating to food or drink of any sort, 41
menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, 42
candy, cocoa, dessert, alcoholic beverages, herbs, or spices. 43

(5) "Distribute" means to furnish, give, or provide 44
cigarettes, other tobacco products, alternative nicotine 45
products, or papers used to roll cigarettes to the ultimate 46
consumer of the cigarettes, other tobacco products, alternative 47

nicotine products, or papers used to roll cigarettes. 48

~~(5)~~ (6) "Electronic smoking device" means any device that 49
can be used to deliver aerosolized or vaporized nicotine or any 50
other substance to the person inhaling from the device including 51
an electronic cigarette, electronic cigar, electronic hookah, 52
vaping pen, or electronic pipe. "Electronic smoking device" 53
includes any component, part, or accessory of such a device, 54
whether or not sold separately, and includes any substance 55
intended to be aerosolized or vaporized during the use of the 56
device. "Electronic smoking device" does not include any product 57
that is a drug, device, or combination product, as those terms 58
are defined or described in 21 U.S.C. 321 and 353(g). 59

~~(6) "Proof of age" means a driver's license, a commercial 60
driver's license, a military identification card, a passport, or 61
an identification card issued under sections 4507.50 to 4507.52 62
of the Revised Code that shows that a person is eighteen years 63
of age or older. 64~~

(7) "Flavored electronic smoking device" means any 65
electronic smoking device with a characterizing flavor. 66

(8) "Flavored vapor product" means any vapor product with 67
a characterizing flavor. 68

(9) "Tobacco product" means any product that is made or 69
derived from tobacco or that contains any form of nicotine, if 70
it is intended for human consumption or is likely to be 71
consumed, whether smoked, heated, chewed, absorbed, dissolved, 72
inhaled, or ingested by any other means, including, but not 73
limited to, a cigarette, an electronic smoking device, a cigar, 74
pipe tobacco, chewing tobacco, snuff, or snus. "Tobacco product" 75
also means any component or accessory used in the consumption of 76

a tobacco product, such as filters, rolling papers, pipes, blunt 77
or hemp wraps, and liquids used in electronic smoking devices, 78
whether or not they contain nicotine. "Tobacco product" does not 79
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). 82

~~(8)~~ (10) "Vapor product" means a product, other than a 83
cigarette or other tobacco product as defined in Chapter 5743. 84
of the Revised Code, that contains or is made or derived from 85
nicotine and that is intended and marketed for human 86
consumption, including by smoking, inhaling, snorting, or 87
sniffing. "Vapor product" includes any component, part, or 88
additive that is intended for use in an electronic smoking 89
device, a mechanical heating element, battery, or electronic 90
circuit and is used to deliver the product. "Vapor product" does 91
not include any product that is a drug, device, or combination 92
product, as those terms are defined or described in 21 U.S.C. 93
321 and 353(g). "Vapor product" includes any product containing 94
nicotine, regardless of concentration. 95

~~(9)~~ (11) "Vending machine" has the same meaning as "coin 96
machine" in section 2913.01 of the Revised Code. 97

(B) No manufacturer, producer, distributor, wholesaler, or 98
retailer of cigarettes, other tobacco products, alternative 99
nicotine products, or papers used to roll cigarettes, no agent, 100
employee, or representative of a manufacturer, producer, 101
distributor, wholesaler, or retailer of cigarettes, other 102
tobacco products, alternative nicotine products, or papers used 103
to roll cigarettes, and no other person shall do any of the 104
following: 105

(1) Give, sell, or otherwise distribute cigarettes, other 106

tobacco products, alternative nicotine products, or papers used	107
to roll cigarettes to any person under twenty-one years of age;	108
(2) Give away, sell, or distribute cigarettes, other	109
tobacco products, alternative nicotine products, or papers used	110
to roll cigarettes in any place that does not have posted in a	111
conspicuous place a legibly printed sign in letters at least	112
one-half inch high stating that giving, selling, or otherwise	113
distributing cigarettes, other tobacco products, alternative	114
nicotine products, or papers used to roll cigarettes to a person	115
under twenty-one years of age is prohibited by law;	116
(3) Knowingly furnish any false information regarding the	117
name, age, or other identification of any person under twenty-	118
one years of age with purpose to obtain cigarettes, other	119
tobacco products, alternative nicotine products, or papers used	120
to roll cigarettes for that person;	121
(4) Manufacture, sell, or distribute in this state any	122
pack or other container of cigarettes containing fewer than	123
twenty cigarettes or any package of roll-your-own tobacco	124
containing less than six-tenths of one ounce of tobacco;	125
(5) Sell cigarettes or alternative nicotine products in a	126
smaller quantity than that placed in the pack or other container	127
by the manufacturer;	128
(6) Give, sell, or otherwise distribute alternative	129
nicotine products, papers used to roll cigarettes, or tobacco	130
products other than cigarettes over the internet or through	131
another remote method without age verification;	132
<u>(7) Give away, sell, or otherwise distribute flavored</u>	133
<u>electronic smoking devices or flavored vapor products that have</u>	134
<u>not received approval from the United States food and drug</u>	135

<u>administration.</u>	136
(C) No person shall sell or offer to sell cigarettes,	137
other tobacco products, or alternative nicotine products by or	138
from a vending machine, except in the following locations:	139
(1) An area within a factory, business, office, or other	140
place not open to the general public;	141
(2) An area to which persons under twenty-one years of age	142
are not generally permitted access;	143
(3) Any other place not identified in division (C) (1) or	144
(2) of this section, upon all of the following conditions:	145
(a) The vending machine is located within the immediate	146
vicinity, plain view, and control of the person who owns or	147
operates the place, or an employee of that person, so that all	148
cigarettes, other tobacco product, and alternative nicotine	149
product purchases from the vending machine will be readily	150
observed by the person who owns or operates the place or an	151
employee of that person. For the purpose of this section, a	152
vending machine located in any unmonitored area, including an	153
unmonitored coatroom, restroom, hallway, or outer waiting area,	154
shall not be considered located within the immediate vicinity,	155
plain view, and control of the person who owns or operates the	156
place, or an employee of that person.	157
(b) The vending machine is inaccessible to the public when	158
the place is closed.	159
(c) A clearly visible notice is posted in the area where	160
the vending machine is located that states the following in	161
letters that are legibly printed and at least one-half inch	162
high:	163

"It is illegal for any person under the age of 21 to purchase tobacco or alternative nicotine products."	164
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(D) The following are affirmative defenses to a charge under division (B) (1) of this section:	166
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(1) The person under twenty-one years of age was accompanied by a parent, spouse who is twenty-one years of age or older, or legal guardian of the person under twenty-one years of age.	168
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(2) The person who gave, sold, or distributed cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to a person under twenty-one years of age under division (B) (1) of this section is a parent, spouse who is twenty-one years of age or older, or legal guardian of the person under twenty-one years of age.	172
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(E) It is not a violation of division (B) (1) or (2) of this section for a person to give or otherwise distribute to a person under twenty-one years of age cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes while the person under twenty-one years of age is participating in a research protocol if all of the following apply:	178
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(1) The parent, guardian, or legal custodian of the person under twenty-one years of age has consented in writing to the person under twenty-one years of age participating in the research protocol.	185
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(2) An institutional human subjects protection review board, or an equivalent entity, has approved the research protocol.	189
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(3) The person under twenty-one years of age is	192

participating in the research protocol at the facility or 193
location specified in the research protocol. 194

(F) (1) Whoever violates division (B) (1), (2), (4), (5), ~~or~~ 195
(6), or (7) or (C) of this section is guilty of illegal 196
distribution of cigarettes, other tobacco products, or 197
alternative nicotine products. Except as otherwise provided in 198
this division, illegal distribution of cigarettes, other tobacco 199
products, or alternative nicotine products is a misdemeanor of 200
the fourth degree. If the offender previously has been convicted 201
of a violation of division (B) (1), (2), (4), (5), ~~or~~ (6), or (7) 202
or (C) of this section, illegal distribution of cigarettes, 203
other tobacco products, or alternative nicotine products is a 204
misdemeanor of the third degree. 205

(2) Whoever violates division (B) (3) of this section is 206
guilty of permitting a person under twenty-one years of age to 207
use cigarettes, other tobacco products, or alternative nicotine 208
products. Except as otherwise provided in this division, 209
permitting a person under twenty-one years of age to use 210
cigarettes, other tobacco products, or alternative nicotine 211
products is a misdemeanor of the fourth degree. If the offender 212
previously has been convicted of a violation of division (B) (3) 213
of this section, permitting a person under twenty-one years of 214
age to use cigarettes, other tobacco products, or alternative 215
nicotine products is a misdemeanor of the third degree. 216

(G) Any cigarettes, other tobacco products, alternative 217
nicotine products, or papers used to roll cigarettes that are 218
given, sold, or otherwise distributed to a person under twenty- 219
one years of age in violation of this section and that are used, 220
possessed, purchased, or received by a person under twenty-one 221
years of age in violation of section 2151.87 of the Revised Code 222

are subject to seizure and forfeiture as contraband under	223
Chapter 2981. of the Revised Code.	224
Section 2. That existing section 2927.02 of the Revised	225
Code is hereby repealed.	226
Section 3. (A) There is hereby created a committee to	227
study the health risks associated with the use of electronic	228
smoking devices and vapor products. The committee shall consist	229
of the following members:	230
(1) Two members of the House of Representatives, one from	231
the majority party and one from the minority party, both	232
appointed by the Speaker of the House of Representatives;	233
(2) Two members of the Senate, one from the majority party	234
and one from the minority party, both appointed by the President	235
of the Senate;	236
(3) One member appointed by the Governor.	237
(B) (1) The committee shall conduct a study regarding the	238
health risks associated with the use of electronic smoking	239
devices and vapor products. In conducting this study, the	240
committee shall consider both of the following:	241
(a) The prevalence of the use of electronic smoking	242
devices and vapor products in this state;	243
(b) The effects of the use of electronic smoking devices	244
and vapor products on the human body, including the cause of any	245
adverse health effects associated with use of these products.	246
(2) Not later than six months after the effective date of	247
this section, the committee shall submit a report to the General	248
Assembly pursuant to section 101.68 of the Revised Code	249
detaileding its findings and any recommendations related to the	250

health risks associated with the use of electronic smoking	251
devices and vapor products.	252
(C) The committee shall cease to exist following the	253
submission of its report.	254