

**As Passed by the House**

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**Sub. H. B. No. 144**

**Representative Kunze**

**Cosponsors: Representatives Gonzales, Duffey, Hood, Ruhl, Strahorn,  
Becker, Pillich, Grossman, Hackett, Stebelton, Wachtmann, Brown, Lynch,  
Sears, Smith, Amstutz, Baker, Blair, Boose, Brenner, Buchy, Burkley, Butler,  
DeVitis, Green, Hagan, C., Hayes, Huffman, Johnson, McClain, Patmon,  
Pelanda, Romanchuk, Scherer, Sprague, Young Speaker Batchelder**

**A B I L L**

To amend sections 2151.87, 2927.02, 2927.021, and 1  
2927.022 of the Revised Code to include 2  
alternative nicotine products within the 3  
restrictions that apply to the sale or 4  
distribution to, and possession or use by, minors 5  
of cigarettes and other tobacco products.

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

**Section 1.** That sections 2151.87, 2927.02, 2927.021, and 8  
2927.022 of the Revised Code be amended to read as follows: 9

**Sec. 2151.87.** (A) As used in this section: 10

(1) ~~"Cigarette~~ "Alternative nicotine product," "cigarette," 11  
and "tobacco product" have the same meanings as in section 2927.02 12  
of the Revised Code. 13

(2) "Youth smoking education program" means a private or 14  
public agency program that is related to tobacco use, prevention, 15

and cessation, that is carried out or funded by the department of 16  
health pursuant to section 3701.84 of the Revised Code, that 17  
utilizes educational methods focusing on the negative health 18  
effects of smoking and using tobacco products, and that is not 19  
more than twelve hours in duration. 20

(B) No child shall do any of the following unless accompanied 21  
by a parent, spouse who is eighteen years of age or older, or 22  
legal guardian of the child: 23

(1) Use, consume, or possess cigarettes, other tobacco 24  
products, alternative nicotine products, or papers used to roll 25  
cigarettes; 26

(2) Purchase or attempt to purchase cigarettes, other tobacco 27  
products, alternative nicotine products, or papers used to roll 28  
cigarettes; 29

(3) Order, pay for, or share the cost of cigarettes, other 30  
tobacco products, alternative nicotine products, or papers used to 31  
roll cigarettes; 32

(4) Except as provided in division (E) of this section, 33  
accept or receive cigarettes, other tobacco products, alternative 34  
nicotine products, or papers used to roll cigarettes. 35

(C) No child shall knowingly furnish false information 36  
concerning that child's name, age, or other identification for the 37  
purpose of obtaining cigarettes, other tobacco products, 38  
alternative nicotine products, or papers used to roll cigarettes. 39

(D) A juvenile court shall not adjudicate a child a 40  
delinquent or unruly child for a violation of division (B)(1), 41  
(2), (3), or (4) or (C) of this section. 42

(E)(1) It is not a violation of division (B)(4) of this 43  
section for a child to accept or receive cigarettes, other tobacco 44  
products, alternative nicotine products, or papers used to roll 45

cigarettes if the child is required to do so in the performance of  
the child's duties as an employee of that child's employer and the  
child's acceptance or receipt of cigarettes, other tobacco  
products, alternative nicotine products, or papers used to roll  
cigarettes occurs exclusively within the scope of the child's  
employment.

(2) It is not a violation of division (B)(1), (2), (3), or  
(4) of this section if the child possesses, purchases or attempts  
to purchase, orders, pays for, shares the cost of, or accepts or  
receives cigarettes, other tobacco products, alternative nicotine  
products, or papers used to roll cigarettes while participating in  
an inspection or compliance check conducted by a federal, state,  
local, or corporate entity at a location at which cigarettes,  
other tobacco products, alternative nicotine products, or papers  
used to roll cigarettes are sold or distributed.

(3) It is not a violation of division (B)(1) or (4) of this  
section for a child to accept, receive, use, consume, or possess  
cigarettes, other tobacco products, alternative nicotine products,  
or papers used to roll cigarettes while participating in a  
research protocol if all of the following apply:

(a) The parent, guardian, or legal custodian of the child has  
consented in writing to the child participating in the research  
protocol.

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

(c) The child is participating in the research protocol at  
the facility or location specified in the research protocol.

(F) If a juvenile court finds that a child violated division  
(B)(1), (2), (3), or (4) or (C) of this section, the court may do  
either or both of the following:

(1) Require the child to attend a youth smoking education

program or other smoking treatment program approved by the court, 77  
if one is available; 78

(2) Impose a fine of not more than one hundred dollars. 79

(G) If a child disobeys a juvenile court order issued 80  
pursuant to division (F) of this section, the court may do any or 81  
all of the following: 82

(1) Increase the fine imposed upon the child under division 83  
(F)(2) of this section; 84

(2) Require the child to perform not more than twenty hours 85  
of community service; 86

(3) Suspend for a period of thirty days the temporary 87  
instruction permit, probationary driver's license, or driver's 88  
license issued to the child. 89

(H) A child alleged or found to have violated division (B) or 90  
(C) of this section shall not be detained under any provision of 91  
this chapter or any other provision of the Revised Code. 92

**Sec. 2927.02.** (A) As used in this section and ~~section~~ 93  
sections 2927.021 and 2927.022 of the Revised Code: 94

(1) "Age verification" means a service provided by an 95  
independent third party (other than a manufacturer, producer, 96  
distributor, wholesaler, or retailer of cigarettes, other tobacco 97  
products, alternative nicotine products, or papers used to roll 98  
cigarettes) that compares information available from public 99  
records to personal information provided during an internet sale 100  
or other remote method of sale to establish that the purchaser is 101  
eighteen years of age or older. 102

(2)(a) "Alternative nicotine product" means, subject to 103  
division (A)(2)(b) of this section, an electronic cigarette or any 104  
other product or device that consists of or contains nicotine that 105  
can be ingested into the body by any means, including, but not 106

<u>limited to, chewing, smoking, absorbing, dissolving, or inhaling.</u>	107
<u>(b) "Alternative nicotine product" does not include any of</u>	108
<u>the following:</u>	109
<u>(i) Any cigarette or other tobacco product;</u>	110
<u>(ii) Any product that is a "drug" as that term is defined in</u>	111
<u>21 U.S.C. 321(g)(1);</u>	112
<u>(iii) Any product that is a "device" as that term is defined</u>	113
<u>in 21 U.S.C. 321(h);</u>	114
<u>(iv) Any product that is a "combination product" as described</u>	115
<u>in 21 U.S.C. 353(g).</u>	116
<u>(3) "Child" has the same meaning as in section 2151.011 of</u>	117
<u>the Revised Code.</u>	118
<del>(2)</del> <u>(4) "Cigarette" includes clove cigarettes and hand-rolled</u>	119
<u>cigarettes.</u>	120
<del>(3)</del> <u>(5) "Distribute" means to furnish, give, or provide</u>	121
<u>cigarettes, other tobacco products, <u>alternative nicotine products,</u></u>	122
<u>or papers used to roll cigarettes to the ultimate consumer of the</u>	123
<u>cigarettes, other tobacco products, <u>alternative nicotine products,</u></u>	124
<u>or papers used to roll cigarettes.</u>	125
<del>(4)</del> <u>(6)(a) "Electronic cigarette" means, subject to division</u>	126
<u>(A)(6)(b) of this section, any electronic product or device that</u>	127
<u>produces a vapor that delivers nicotine or any other substance to</u>	128
<u>the person inhaling from the device to simulate smoking and that</u>	129
<u>is likely to be offered to or purchased by consumers as an</u>	130
<u>electronic cigarette, electronic cigar, electronic cigarillo, or</u>	131
<u>electronic pipe.</u>	132
<u>(b) "Electronic cigarette" does not include any item,</u>	133
<u>product, or device described in divisions (A)(2)(b)(i) to (iv) of</u>	134
<u>this section.</u>	135
<u>(7) "Proof of age" means a driver's license, a commercial</u>	136

driver's license, a military identification card, a passport, or 137  
an identification card issued under sections 4507.50 to 4507.52 of 138  
the Revised Code that shows that a person is eighteen years of age 139  
or older. 140

~~(5)~~(8) "Tobacco product" means any product that is made from 141  
tobacco, including, but not limited to, a cigarette, a cigar, pipe 142  
tobacco, chewing tobacco, or snuff. 143

~~(6)~~(9) "Vending machine" has the same meaning as "coin 144  
machine" in section 2913.01 of the Revised Code. 145

(B) No manufacturer, producer, distributor, wholesaler, or 146  
retailer of cigarettes, other tobacco products, alternative 147  
nicotine products, or papers used to roll cigarettes, no agent, 148  
employee, or representative of a manufacturer, producer, 149  
distributor, wholesaler, or retailer of cigarettes, other tobacco 150  
products, alternative nicotine products, or papers used to roll 151  
cigarettes, and no other person shall do any of the following: 152

(1) Give, sell, or otherwise distribute cigarettes, other 153  
tobacco products, alternative nicotine products, or papers used to 154  
roll cigarettes to any child; 155

(2) Give away, sell, or distribute cigarettes, other tobacco 156  
products, alternative nicotine products, or papers used to roll 157  
cigarettes in any place that does not have posted in a conspicuous 158  
place a sign stating that giving, selling, or otherwise 159  
distributing cigarettes, other tobacco products, alternative 160  
nicotine products, or papers used to roll cigarettes to a person 161  
under eighteen years of age is prohibited by law; 162

(3) Knowingly furnish any false information regarding the 163  
name, age, or other identification of any child with purpose to 164  
obtain cigarettes, other tobacco products, alternative nicotine 165  
products, or papers used to roll cigarettes for that child; 166

(4) Manufacture, sell, or distribute in this state any pack 167

or other container of cigarettes containing fewer than twenty 168  
cigarettes ~~or~~, any package of roll-your-own tobacco containing 169  
less than six-tenths of one ounce of tobacco, or any one-time use 170  
alternative nicotine product; 171

(5) Sell cigarettes in a smaller quantity than that placed in 172  
the pack or other container by the manufacturer; 173

(6) Give, sell, or otherwise distribute alternative nicotine 174  
products, papers used to roll cigarettes, or tobacco products 175  
other than cigarettes over the internet or through another remote 176  
method without age verification. 177

(C) No person shall sell or offer to sell cigarettes ~~or~~, 178  
other tobacco products, or alternative nicotine products by or 179  
from a vending machine, except in the following locations: 180

(1) An area within a factory, business, office, or other 181  
place not open to the general public; 182

(2) An area to which children are not generally permitted 183  
access; 184

(3) Any other place not identified in division (C)(1) or (2) 185  
of this section, upon all of the following conditions: 186

(a) The vending machine is located within the immediate 187  
vicinity, plain view, and control of the person who owns or 188  
operates the place, or an employee of that person, so that all 189  
cigarettes ~~and~~, other tobacco product, and alternative nicotine 190  
product purchases from the vending machine will be readily 191  
observed by the person who owns or operates the place or an 192  
employee of that person. For the purpose of this section, a 193  
vending machine located in any unmonitored area, including an 194  
unmonitored coatroom, restroom, hallway, or outer waiting area, 195  
shall not be considered located within the immediate vicinity, 196  
plain view, and control of the person who owns or operates the 197  
place, or an employee of that person. 198

(b) The vending machine is inaccessible to the public when the place is closed.	199 200
(D) The following are affirmative defenses to a charge under division (B)(1) of this section:	201 202
(1) The child was accompanied by a parent, spouse who is eighteen years of age or older, or legal guardian of the child.	203 204
(2) The person who gave, sold, or distributed cigarettes, other tobacco products, <u>alternative nicotine products</u> , or papers used to roll cigarettes to a child under division (B)(1) of this section is a parent, spouse who is eighteen years of age or older, or legal guardian of the child.	205 206 207 208 209
(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 child cigarettes, other tobacco products, <u>alternative nicotine products</u> , or papers used to roll cigarettes while the child is participating in a research protocol if all of the following apply:	210 211 212 213 214
(1) The parent, guardian, or legal custodian of the child has consented in writing to the child participating in the research protocol.	215 216 217
(2) An institutional human subjects protection review board, or an equivalent entity, has approved the research protocol.	218 219
(3) The child is participating in the research protocol at the facility or location specified in the research protocol.	220 221
(F)(1) Whoever violates division (B)(1), (2), (4), <del>or (5)</del> , <u>or (6)</u> or (C) of this section is guilty of illegal distribution of cigarettes <del>or</del> , other tobacco products, <u>or alternative nicotine products. Except as otherwise provided in this division, illegal distribution of cigarettes, other tobacco products, or alternative nicotine products is</u> a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of division	222 223 224 225 226 227 228



(B)(1), (2), (4), ~~or (5)~~, or (6) or (C) of this section, illegal 229  
distribution of cigarettes ~~or~~, other tobacco products, or 230  
alternative nicotine products is a misdemeanor of the third 231  
degree. 232

(2) Whoever violates division (B)(3) of this section is 233  
guilty of permitting children to use cigarettes ~~or~~, other tobacco 234  
products, or alternative nicotine products. Except as otherwise 235  
provided in this division, permitting children to use cigarettes, 236  
other tobacco products, or alternative nicotine products is a 237  
misdemeanor of the fourth degree. If the offender previously has 238  
been convicted of a violation of division (B)(3) of this section, 239  
permitting children to use cigarettes ~~or~~, other tobacco products, or 240  
alternative nicotine products is a misdemeanor of the third 241  
degree. 242

(G) Any cigarettes, other tobacco products, alternative 243  
nicotine products, or papers used to roll cigarettes that are 244  
given, sold, or otherwise distributed to a child in violation of 245  
this section and that are used, possessed, purchased, or received 246  
by a child in violation of section 2151.87 of the Revised Code are 247  
subject to seizure and forfeiture as contraband under Chapter 248  
2981. of the Revised Code. 249

**Sec. 2927.021.** (A) As used in this section and section 250  
2927.022 of the Revised Code: 251

(1) "Card holder" means any person who presents a driver's or 252  
commercial driver's license or an identification card to a seller, 253  
or an agent or employee of a seller, to purchase or receive 254  
cigarettes ~~or~~, other tobacco products, or alternative nicotine 255  
products from the seller, agent, or employee. 256

(2) "Identification card" means an identification card issued 257  
under sections 4507.50 to 4507.52 of the Revised Code. 258

(3) "Seller" means a seller of cigarettes ~~or~~, other tobacco products, or alternative nicotine products and includes any person whose gift of or other distribution of cigarettes ~~or~~, other tobacco products, or alternative nicotine products is subject to the prohibitions of section 2927.02 of the Revised Code.

(4) "Transaction scan" means the process by which a seller or an agent or employee of a seller checks, by means of a transaction scan device, the validity of a driver's or commercial driver's license or an identification card that is presented as a condition for purchasing or receiving cigarettes ~~or~~, other tobacco products, or alternative nicotine products.

(5) "Transaction scan device" means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver's or commercial driver's license or an identification card.

(B)(1) A seller or an agent or employee of a seller may perform a transaction scan by means of a transaction scan device to check the validity of a driver's or commercial driver's license or identification card presented by a card holder as a condition for selling, giving away, or otherwise distributing to the card holder cigarettes ~~or~~, other tobacco products, or alternative nicotine products.

(2) If the information deciphered by the transaction scan performed under division (B)(1) of this section fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder, or if the transaction scan indicates that the information so printed is false or fraudulent, neither the seller nor any agent or employee of the seller shall sell, give away, or otherwise distribute any cigarettes ~~or~~, other tobacco products, or alternative nicotine products to the card holder.

(3) Division (B)(1) of this section does not preclude a seller or an agent or employee of a seller from using a transaction scan device to check the validity of a document other than a driver's or commercial driver's license or an identification card, if the document includes a bar code or magnetic strip that may be scanned by the device, as a condition for selling, giving away, or otherwise distributing cigarettes ~~or~~, other tobacco products, or alternative nicotine products to the person presenting the document.

(C) Rules adopted by the registrar of motor vehicles under division (C) of section 4301.61 of the Revised Code apply to the use of transaction scan devices for purposes of this section and section 2927.022 of the Revised Code.

(D)(1) No seller or agent or employee of a seller shall electronically or mechanically record or maintain any information derived from a transaction scan, except the following:

(a) The name and date of birth of the person listed on the driver's or commercial driver's license or identification card presented by a card holder;

(b) The expiration date and identification number of the driver's or commercial driver's license or identification card presented by a card holder.

(2) No seller or agent or employee of a seller shall use the information that is derived from a transaction scan or that is permitted to be recorded and maintained under division (D)(1) of this section, except for purposes of section 2927.022 of the Revised Code.

(3) No seller or agent or employee of a seller shall use a transaction scan device for a purpose other than the purpose specified in division (B)(1) of this section.

(4) No seller or agent or employee of a seller shall sell or

otherwise disseminate the information derived from a transaction 322  
scan to any third party, including, but not limited to, selling or 323  
otherwise disseminating that information for any marketing, 324  
advertising, or promotional activities, but a seller or agent or 325  
employee of a seller may release that information pursuant to a 326  
court order or as specifically authorized by section 2927.022 or 327  
another section of the Revised Code. 328

(E) Nothing in this section or section 2927.022 of the 329  
Revised Code relieves a seller or an agent or employee of a seller 330  
of any responsibility to comply with any other applicable state or 331  
federal laws or rules governing the sale, giving away, or other 332  
distribution of cigarettes ~~or~~, other tobacco products, or 333  
alternative nicotine products. 334

(F) Whoever violates division (B)(2) or (D) of this section 335  
is guilty of engaging in an illegal tobacco product or alternative 336  
nicotine product transaction scan, and the court may impose upon 337  
the offender a civil penalty of up to one thousand dollars for 338  
each violation. The clerk of the court shall pay each collected 339  
civil penalty to the county treasurer for deposit into the county 340  
treasury. 341

**Sec. 2927.022.** (A) A seller or an agent or employee of a 342  
seller may not be found guilty of a charge of a violation of 343  
section 2927.02 of the Revised Code in which the age of the 344  
purchaser or other recipient of cigarettes ~~or~~, other tobacco 345  
products, or alternative nicotine products is an element of the 346  
alleged violation, if the seller, agent, or employee raises and 347  
proves as an affirmative defense that all of the following 348  
occurred: 349

(1) A card holder attempting to purchase or receive 350  
cigarettes ~~or~~, other tobacco products, or alternative nicotine 351  
products presented a driver's or commercial driver's license or an 352

identification card. 353

(2) A transaction scan of the driver's or commercial driver's 354  
license or identification card that the card holder presented 355  
indicated that the license or card was valid. 356

(3) The cigarettes ~~or~~, other tobacco products, or alternative 357  
nicotine products were sold, given away, or otherwise distributed 358  
to the card holder in reasonable reliance upon the identification 359  
presented and the completed transaction scan. 360

(B) In determining whether a seller or an agent or employee 361  
of a seller has proven the affirmative defense provided by 362  
division (A) of this section, the trier of fact in the action for 363  
the alleged violation of section 2927.02 of the Revised Code shall 364  
consider any written policy that the seller has adopted and 365  
implemented and that is intended to prevent violations of section 366  
2927.02 of the Revised Code. For purposes of division (A)(3) of 367  
this section, the trier of fact shall consider that reasonable 368  
reliance upon the identification presented and the completed 369  
transaction scan may require a seller or an agent or employee of a 370  
seller to exercise reasonable diligence to determine, and that the 371  
use of a transaction scan device does not excuse a seller or an 372  
agent or employee of a seller from exercising reasonable diligence 373  
to determine, the following: 374

(1) Whether a person to whom the seller or agent or employee 375  
of a seller sells, gives away, or otherwise distributes cigarettes 376  
~~or~~, other tobacco products, or alternative nicotine products is 377  
eighteen years of age or older; 378

(2) Whether the description and picture appearing on the 379  
driver's or commercial driver's license or identification card 380  
presented by a card holder is that of the card holder. 381

(C) In any criminal action in which the affirmative defense 382  
provided by division (A) of this section is raised, the registrar 383

of motor vehicles or a deputy registrar who issued an 384  
identification card under sections 4507.50 to 4507.52 of the 385  
Revised Code shall be permitted to submit certified copies of the 386  
records of that issuance in lieu of the testimony of the personnel 387  
of or contractors with the bureau of motor vehicles in the action. 388

**Section 2.** That existing sections 2151.87, 2927.02, 2927.021, 389  
and 2927.022 of the Revised Code are hereby repealed. 390

**Section 3.** The amendments made by this act to sections 391  
2151.87, 2927.02, 2927.021, and 2927.022 of the Revised Code shall 392  
take effect sixty days after the effective date of this act. 393