

Regular Session, 2014

SENATE BILL NO. 12

BY SENATORS GALLOT, DORSEY-COLOMB AND PEACOCK

ENVIRONMENTAL HEALTH. Prohibits the sale of electronic cigarettes and vapor pens to persons under age 18. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 14:91.8 and R.S. 26:910 and 910.1(A) and to enact R.S.
3 14:91.6(B)(6) and (7) and R.S. 26:901(28) and (29), relative to offenses affecting the
4 health and morals of minors; to prohibit the sale or other distribution of alternative
5 nicotine products, electronic cigarettes, and vapor pens to persons under the age of
6 eighteen; to provide definitions; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 14:91.8 is hereby amended and reenacted, and R.S. 14:91.6(B)(6)
9 and (7) are hereby enacted to read as follows:

10 §91.6. Unlawful distribution of sample tobacco products **or alternative nicotine**
11 **products** to persons under age eighteen; penalty

12 * * *

13 B. For purposes of this Section, the following definitions apply:

14 * * *

15 **(6)(a) "Alternative nicotine product" means a product, including an**
16 **electronic cigarette or vaporizer, that consists of or contains nicotine that can**
17 **be ingested into the body by chewing, absorbing, dissolving, or inhaling, or by**

1 **any other means.**

2 **(b) "Alternative nicotine product" does not include:**

3 **(i) A product that is a drug pursuant to 21 U.S.C. 321(g)(1).**

4 **(ii) A device pursuant to 21 U.S.C. 321(h).**

5 **(iii) A combination product described in 21 U.S.C. 353(g).**

6 **(7)(a) "Electronic cigarette" and "vaporizer" mean a product or device**
 7 **that produces a vapor, regardless of the means or method by which the vapor**
 8 **is produced, that delivers nicotine or other substances to the person inhaling**
 9 **from the device to simulate smoking and is likely to be offered to or purchased**
 10 **by consumers as an electronic cigarette, electronic cigar, electronic cigarillo,**
 11 **electronic pipe, or similar device.**

12 **(b) "Electronic cigarette" and "vaporizer" do not include:**

13 **(i) A product that is a drug pursuant to 21 U.S.C. 321(g)(1).**

14 **(ii) A device pursuant to 21 U.S.C. 321(h).**

15 **(iii) A combination product described in 21 U.S.C. 353(g).**

16 * * *

17 §91.8. Unlawful sale, purchase, or possession of tobacco **or alternative nicotine**
 18 **product**; signs required; penalties

19 A. This Section shall be known and may be cited as the "Prevention of Youth
 20 Access to Tobacco **and Alternative Nicotine Products** Law".

21 B. It is the intent of the legislature that enforcement of this Section shall be
 22 implemented in an equitable manner throughout the state. For the purpose of
 23 equitable and uniform implementation and application of state and local laws and
 24 regulations, the provisions of this Section shall supersede existing or subsequently
 25 adopted local ordinances or regulations which relate to the sale, promotion, and
 26 distribution of tobacco products **or alternative nicotine products**. It is the intent
 27 of the legislature that this Section shall be equitably enforced so as to ensure the
 28 eligibility for and receipt of any federal funds or grants the state now receives or may
 29 receive relating to the provisions of this Section.

1 C. It is unlawful for any manufacturer, distributor, retailer, or other person
2 knowingly to sell or distribute any tobacco product **or any alternative nicotine**
3 **product** to a person under the age of eighteen. However, it shall not be unlawful for
4 a person under the age of eighteen to accept receipt of a tobacco product **or an**
5 **alternative nicotine product** from an employer when required in the performance
6 of such person's duties. At the point of purchase, a sign in type not less than 30-point
7 type shall be displayed that reads "LOUISIANA LAW PROHIBITS THE SALE OF
8 TOBACCO **OR ALTERNATIVE NICOTINE PRODUCT** TO PERSONS
9 UNDER AGE 18".

10 D. It is unlawful for a vending machine operator to place in use a vending
11 machine to vend any tobacco product **or any alternative nicotine product**
12 automatically, unless the machine displays a sign or sticker in not less than 22-point
13 type on the front of the machine stating, "LOUISIANA LAW PROHIBITS THE
14 SALE OF TOBACCO **OR ALTERNATIVE NICOTINE PRODUCT** TO
15 PERSONS UNDER AGE 18", or words of similar meaning.

16 E. It is unlawful for any person under the age of eighteen to buy any tobacco
17 product **or any alternative nicotine product**.

18 F.(1) It is unlawful for any person under the age of eighteen to possess any
19 tobacco product **or any alternative nicotine product**.

20 (2) However, it shall not be unlawful for a person under the age of eighteen
21 to possess a tobacco product **or any alternative nicotine product** under any of the
22 following circumstances:

23 (a) When a person under eighteen years of age is accompanied by a parent,
24 spouse, or legal guardian twenty-one years of age or older.

25 (b) In private residences.

26 (c) When the tobacco product **or the alternative nicotine product** is
27 handled during the course and scope of his employment and required in the
28 performance of such person's duties.

29 G. For purposes of this Section, the following definitions apply:

1 (1) "Tobacco product" means any cigar, cigarette, smokeless tobacco, or
2 smoking tobacco.

3 (2) "Cigar" means any roll of tobacco for smoking, irrespective of size or
4 shape, and irrespective of the tobacco being flavored, adulterated, or mixed with any
5 other ingredients, where such roll has a wrapper made chiefly of tobacco.

6 (3) "Cigarette" means any roll for smoking made wholly or in part of
7 tobacco, irrespective of size or shape and irrespective of the tobacco being flavored,
8 adulterated, or mixed with any other ingredient, where such roll has a wrapper or
9 cover made of paper, or any other material, except where such wrapper is wholly or
10 in greater part made of tobacco.

11 (4) "Smokeless tobacco" means any finely cut, ground, powdered, or leaf
12 tobacco that is intended to be placed in the oral or nasal cavity.

13 (5) "Smoking tobacco" means granulated, plug cut, crimp cut, ready rubbed,
14 and any other kind and form of tobacco prepared in such manner as to be suitable for
15 smoking in a pipe or cigarette.

16 **(6)(a) "Alternative nicotine product" means a product, including an**
17 **electronic cigarette or vaporizer, that consists of or contains nicotine that can**
18 **be ingested into the body by chewing, absorbing, dissolving, or inhaling, or by**
19 **any other means.**

20 **(b) "Alternative nicotine product" does not include:**

21 **(i) A product that is a drug pursuant to 21 U.S.C. 321(g)(1).**

22 **(ii) A device pursuant to 21 U.S.C. 321(h).**

23 **(iii) A combination product described in 21 U.S.C. 353(g).**

24 **(7)(a) "Electronic cigarette" and "vaporizer" mean a product or device**
25 **that produces a vapor, regardless of the means or method by which the vapor**
26 **is produced, that delivers nicotine or other substances to the person inhaling**
27 **from the device to simulate smoking and is likely to be offered to or purchased**
28 **by consumers as an electronic cigarette, electronic cigar, electronic cigarillo,**
29 **electronic pipe, or similar device.**

1 **(b) "Electronic cigarette" and "vaporizer" do not include:**

2 **(i) A product that is a drug pursuant to 21 U.S.C. 321(g)(1).**

3 **(ii) A device pursuant to 21 U.S.C. 321(h).**

4 **(iii) A combination product described in 21 U.S.C. 353(g).**

5 H.(1) A person who violates the provisions of this Section by selling or
6 buying tobacco products **or alternative nicotine products** shall be fined not more
7 than fifty dollars for the first violation. The penalties for subsequent violations shall
8 be a fine of not more than one hundred dollars for the second violation, a fine of not
9 more than two hundred fifty dollars for the third violation, and a fine of not more
10 than four hundred dollars for any violation thereafter.

11 (2) A person who violates the provisions of this Section by possessing
12 tobacco products **or alternative nicotine products** shall be fined not more than fifty
13 dollars for each violation.

14 I. A violation of the signage requirement of Subsection C of this Section
15 shall be deemed to be a violation by the owner of the establishment where the
16 violation occurred. A violation of the signage requirement of Subsection D of this
17 Section shall be deemed to be a violation by the owner of the vending machine. For
18 the first such violation, the owner shall be fined not more than fifty dollars. The
19 penalties for subsequent violations shall be a fine of not more than one hundred
20 dollars for the second violation, a fine of not more than two hundred fifty dollars for
21 the third violation, and a fine of not more than five hundred dollars for any violation
22 thereafter.

23 J. The law enforcement agency issuing the citation or making the arrest or
24 the clerk of the court in which a prosecution is initiated, as the case may be, shall
25 notify the commissioner of the office of alcohol and tobacco control of the action and
26 the final disposition of the matter.

27 Section 2. R.S. 26:910 and 910.1(A) are hereby amended and reenacted, and R.S.
28 26:901(28) and (29) are hereby enacted to read as follows:

29 §901. Definitions

1 As used in this Chapter, the following terms have the meaning ascribed to
2 them in this Section, unless the context clearly indicates otherwise:

3 * * *

4 **(28)(a) "Alternative nicotine product" means a product, including an**
5 **electronic cigarette or vaporizer, that consists of or contains nicotine that can**
6 **be ingested into the body by chewing, absorbing, dissolving, or inhaling, or by**
7 **any other means.**

8 **(b) "Alternative nicotine product" does not include:**

9 **(i) A product that is a drug pursuant to 21 U.S.C. 321(g)(1).**

10 **(ii) A device pursuant to 21 U.S.C. 321(h).**

11 **(iii) A combination product described in 21 U.S.C. 353(g).**

12 **(29)(a) "Electronic cigarette" and "vaporizer" mean a product or device**
13 **that produces a vapor, regardless of the means or method by which the vapor**
14 **is produced, that delivers nicotine or other substances to the person inhaling**
15 **from the device to simulate smoking and is likely to be offered to or purchased**
16 **by consumers as an electronic cigarette, electronic cigar, electronic cigarillo, or**
17 **electronic pipe.**

18 **(b) "Electronic cigarette" and "vaporizer" do not include:**

19 **(i) A product that is a drug pursuant to 21 U.S.C. 321(g)(1).**

20 **(ii) A device pursuant to 21 U.S.C. 321(h).**

21 **(iii) A combination product described in 21 U.S.C. 353(g).**

22 * * *

23 §910. Vending machines

24 In order to prevent persons under eighteen years of age from purchasing or
25 receiving tobacco products **or alternative nicotine products** from vending
26 machines, the sale or delivery of tobacco products **or alternative nicotine products**
27 through a vending machine is prohibited unless either:

28 (1) The machine is located in an establishment to which persons under the
29 age of eighteen are denied access.

- (3) A combination product described in 21 U.S.C. 353(g).

Proposed law defines "electronic cigarette" and "vaporizer" as a product or device that produces a vapor, regardless of the means or method by which the vapor is produced, that delivers nicotine or other substances to the person inhaling from the device to simulate smoking and is likely to be offered to or purchased by consumers as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar device. Proposed law further provides that "electronic cigarette" and "vaporizer" do not include:

- (1) A product that is a drug pursuant to 21 U.S.C. 321(g)(1).
- (2) A device pursuant to 21 U.S.C. 321(h).
- (3) A combination product described in 21 U.S.C. 353(g).

Present law prohibits the sale of tobacco to or the purchase or possession of tobacco by persons under the age of 18 years.

Proposed law retains present law and adds alternative nicotine products to the present law prohibition.

Present law provides that, in order to prevent persons under 18 years of age from purchasing or receiving tobacco products from vending machines, the sale or delivery of tobacco products through a vending machine is prohibited unless either:

- (1) The machine is located in an establishment to which persons under the age of 18 are denied access.
- (2) The machine is located in facilities where the dealer ensures that no person younger than 18 years of age is present or permitted to enter at any time, and the machine is located within the unobstructed line of sight of a dealer or a dealer's agent or employee who is responsible for preventing persons younger than 18 years of age from purchasing tobacco products through that machine.

Proposed law retains present law and adds alternative nicotine products to present law.

Present law provides that, in order to prevent persons under 18 years of age from purchasing or receiving tobacco products from self-service displays, the sale or delivery of tobacco products through a self-service display is prohibited unless the machine is a vending machine that complies with the terms and provisions of present law.

Proposed law retains present law and adds alternative nicotine products to present law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 14:91.8 and R.S. 26:910 and 910.1(A); adds R.S. 14:91.6(B)(6) and (7) and R.S. 26:901(28) and (29))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Adds vaporizers to the alternative nicotine products covered by proposed law.