

Regular Session, 2014

SENATE BILL NO. 12

BY SENATOR GALLOT

ENVIRONMENTAL HEALTH. Provides for alternative nicotine products. (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 alternative nicotine  
4 products; to provide for the definition of alternative nicotine product; to provide for  
5 the definition of e-cigarette; to provide for an effective date; and to provide for  
6 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)"Alternative nicotine product" means a product, including an**  
16 **electronic cigarette, that consists of or contains nicotine that can be ingested**  
17 **into the body by chewing, absorbing, dissolving, or inhaling, or by any other**

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means. "Alternative nicotine product" does not include:

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

(b) A device pursuant to 21 U.S.C. 321(h).

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

(7) "Electronic cigarette" means a product or device that produces a vapor 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, or electronic pipe. "Electronic cigarette" does not include:

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

(b) A device pursuant to 21 U.S.C. 321(h).

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

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

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

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

C. It is unlawful for any manufacturer, distributor, retailer, or other person knowingly to sell or distribute any tobacco product or any alternative nicotine product to a person under the age of eighteen. However, it shall not be unlawful for

1 a person under the age of eighteen to accept receipt of a tobacco product **or an**  
2 **alternative nicotine product** from an employer when required in the performance  
3 of such person's duties. At the point of purchase, a sign in type not less than 30-point  
4 type shall be displayed that reads "LOUISIANA LAW PROHIBITS THE SALE OF  
5 TOBACCO **OR ALTERNATIVE NICOTINE PRODUCT** TO PERSONS  
6 UNDER AGE 18".

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

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

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

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

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

22 (b) In private residences.

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

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

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

29 (2) "Cigar" means any roll of tobacco for smoking, irrespective of size or

1 shape, and irrespective of the tobacco being flavored, adulterated, or mixed with any  
2 other ingredients, where such roll has a wrapper made chiefly of tobacco.

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

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

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

13 **(6) "Alternative nicotine product" means a product, including an**  
14 **electronic cigarette, that consists of or contains nicotine that can be ingested**  
15 **into the body by chewing, absorbing, dissolving, or inhaling, or by any other**  
16 **means. "Alternative nicotine product" does not include:**

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

18 **(b) A device pursuant to 21 U.S.C. 321(h).**

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

20 **(7) "Electronic cigarette" means a product or device that produces a**  
21 **vapor that delivers nicotine or other substances to the person inhaling from the**  
22 **device to simulate smoking and is likely to be offered to or purchased by**  
23 **consumers as an electronic cigarette, electronic cigar, electronic cigarillo, or**  
24 **electronic pipe. "Electronic cigarette" does not include:**

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

26 **(b) A device pursuant to 21 U.S.C. 321(h).**

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

28 H.(1) A person who violates the provisions of this Section by selling or  
29 buying tobacco products **or alternative nicotine products** shall be fined not more

1 than fifty dollars for the first violation. The penalties for subsequent violations shall  
2 be a fine of not more than one hundred dollars for the second violation, a fine of not  
3 more than two hundred fifty dollars for the third violation, and a fine of not more  
4 than four hundred dollars for any violation thereafter.

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

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

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

21 Section 2. R.S. 26:910 and 910.1(A) are hereby amended and reenacted, and R.S.  
22 26:901(28) and (29) are hereby enacted to read as follows:

23 §901. Definitions

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

26 \* \* \*

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

1 **means. "Alternative nicotine product" does not include:**

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

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

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

5 **(29) "Electronic cigarette" means a product or device that produces a**  
6 **vapor that delivers nicotine or other substances to the person inhaling from the**  
7 **device to simulate smoking and is likely to be offered to or purchased by**  
8 **consumers as an electronic cigarette, electronic cigar, electronic cigarillo, or**  
9 **electronic pipe. "Electronic cigarette" does not include:**

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

11 **(b) A device pursuant to 21 U.S.C. 321(h).**

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

13 \* \* \*

14 §910. Vending machines

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

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

21 (2) The machine is located in facilities where the dealer ensures that no  
22 person younger than eighteen years of age is present or permitted to enter at any time  
23 and the machine is located within the unobstructed line of sight of a dealer or a  
24 dealer's agent or employee who is responsible for preventing persons younger than  
25 eighteen years of age from purchasing tobacco products **or alternative nicotine**  
26 **products** through that machine.

27 §910.1. Self-service displays

28 A. In order to prevent persons under eighteen years of age from purchasing  
29 or receiving tobacco products **or alternative nicotine products** from self-service

1 displays, the sale or delivery of tobacco products through a self-service display is  
 2 prohibited unless the machine is a vending machine that complies with the terms and  
 3 provisions of R.S. 26:910.

4 \* \* \*

5 Section 3. This Act shall become effective upon signature by the governor or, if not  
 6 signed by the governor, upon expiration of the time for bills to become law without signature  
 7 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 8 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 9 effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Christopher D. Adams.

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#### DIGEST

Gallot (SB 12)

Present law provides for the unlawful distribution of sample tobacco products. Proposed law adds alternative nicotine products to the present law.

Proposed law defines alternative nicotine product to mean a product, including an electronic cigarette, that consists of or contains nicotine that can be ingested into the body by chewing, absorbing, dissolving, or inhaling, or by any other means. Alternative nicotine product does 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).

Proposed law defines electronic cigarette to mean a product or device that produces a vapor 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, or electronic pipe. Electronic cigarette does 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 provides for the unlawful sale, purchase, or possession of tobacco. Proposed law adds alternative nicotine products to the present law.

Present law provides 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 eighteen 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 adds alternative nicotine products to the present law.

Present law provides 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 adds alternative nicotine products to the 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))