

SECOND REGULAR SESSION

# HOUSE BILL NO. 1345

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE CONWAY (104).

5355H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 407.924, 407.925, 407.926, 407.927, 407.928, 407.929, 407.931, 407.932, 407.933 and 407.934, RSMo, and to enact in lieu thereof ten new sections relating to tobacco-derived products, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 407.924, 407.925, 407.926, 407.927, 407.928, 407.929, 407.931, 407.932, 407.933 and 407.934, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 407.924, 407.925, 407.926, 407.927, 407.928, 407.929, 407.931, 407.932, 407.933 and 407.934, to read as follows:

407.924. 1. The division of liquor control within the department of public safety shall implement and enforce the provisions of sections 407.925 to 407.934.

2. [Beginning January 1, 2003,] The division of liquor control shall submit an annual report to the general assembly on the effectiveness of sections 407.925 to 407.934 in reducing tobacco, **tobacco-derived product and vapor product** possession by minors and the enforcement activities by the division for violations of sections 407.925 to 407.934.

407.925. As used in sections 407.925 to [407.932] **407.934**, the following terms mean:

(1) "Center of youth activities", any playground, school or other facility, when such facility is being used primarily by persons under the age of eighteen for recreational, educational or other purposes;

(2) "Distribute", a conveyance to the public by sale, barter, gift or sample;

(3) "Minor", a person under the age of eighteen;

(4) "Municipality", the city, village or town within which tobacco products, **tobacco-derived products or vapor products** are sold or distributed or, in the case of tobacco products,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

9 **tobacco-derived products or vapor products** that are not sold or distributed within a city,  
10 village or town, the county in which they are sold or distributed;

11 (5) "Person", an individual, partnership, copartnership, firm, company, public or private  
12 corporation, association, joint stock company, trust, estate, political subdivision or any agency,  
13 board, department or bureau of the state or federal government, or any other legal entity which  
14 is recognized by law as the subject of rights and duties;

15 (6) "Proof of age", a driver's license or other generally accepted means of identification  
16 that contains a picture of the individual and appears on its face to be valid;

17 (7) "Rolling papers", paper designed, manufactured, marketed, or sold for use primarily  
18 as a wrapping or enclosure for tobacco, which enables a person to roll loose tobacco into a  
19 smokable cigarette;

20 (8) "Sample", a tobacco product, **tobacco-derived product or vapor product**  
21 distributed to members of the general public at no cost or at nominal cost for product  
22 promotional purposes;

23 (9) "Sampling", the distribution to members of the general public of tobacco product,  
24 **tobacco-derived product or vapor product** samples;

25 (10) **"Tobacco-derived product", any non-combustible product derived from**  
26 **tobacco that is intended for human consumption, whether chewed, absorbed, dissolved or**  
27 **ingested by any other means, but does not include a vapor product or any product**  
28 **regulated by the United States Food and Drug Administration under Chapter V of the**  
29 **Food, Drug, and Cosmetic Act;**

30 (11) "Tobacco products", any substance containing tobacco leaf, including, but not  
31 limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco, **but does**  
32 **not include a tobacco-derived product or vapor product;**

33 (12) **"Vapor product", a non-combustible product containing nicotine that employs**  
34 **a mechanical heating element, battery, or electronic circuit, regardless of shape or size, that**  
35 **can be used to heat a liquid nicotine solution contained in a vapor cartridge; as well as any**  
36 **vapor cartridge or other container containing liquid nicotine solution that can be used with**  
37 **or in a vapor product and electronic cigarettes, electronic cigars, electronic cigarillos and**  
38 **electronic pipes. "Vapor product" does not include any product regulated by the United**  
39 **States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic**  
40 **Act;**

41 [(11)] (13) "Vending machine", any mechanical electric or electronic, self-service device  
42 which, upon insertion of money, tokens or any other form of payment, dispenses tobacco  
43 products, **tobacco-derived products or vapor products.**

407.926. 1. Any person or entity who sells tobacco products, **tobacco-derived products or vapor products** shall deny the sale of such tobacco products, **tobacco-derived products or vapor products** to any person who is less than eighteen years of age.

2. Any person or entity who sells or distributes tobacco products, **tobacco-derived products or vapor products** by mail or through the internet in this state in violation of subsection 1 of this section shall be assessed a fine of two hundred fifty dollars for the first violation and five hundred dollars for each subsequent violation.

407.927. The owner of an establishment at which tobacco products, **tobacco-derived products, vapor products** or rolling papers are sold at retail or through vending machines shall cause to be prominently displayed in a conspicuous place at every display from which tobacco products **or vapor products** are sold and on every vending machine where tobacco products, **tobacco-derived products or vapor products** are purchased a sign that shall:

(1) Contain in red lettering at least one-half inch high on a white background the following: "It is a violation of state law for cigarettes [or] , other tobacco products, **tobacco-derived products or vapor products** to be sold or otherwise provided to any person under the age of eighteen or for such person to purchase, attempt to purchase or possess cigarettes [or] , other tobacco products, **tobacco-derived products or vapor products**."; and

(2) Include a depiction of a pack of cigarettes at least two inches high defaced by a red diagonal diameter of a surrounding red circle, and the words "Under 18".

407.928. No person or entity shall sell individual packs of cigarettes [or] , smokeless tobacco products, **tobacco-derived products or vapor products** unless such packs satisfy one of the following conditions prior to the time of sale:

(1) It is sold through a vending machine; or

(2) It is displayed behind the check-out counter or it is within the unobstructed line of sight of the sales clerk or store attendant from the checkout counter.

407.929. 1. A person or entity selling tobacco products, **tobacco-derived products or vapor products** or rolling papers or distributing tobacco product samples, **tobacco-derived product samples or vapor product samples** shall require proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that such prospective purchaser or recipient may be under the age of eighteen.

2. The operator's or chauffeur's license issued pursuant to the provisions of section 302.177, or the operator's or chauffeur's license issued pursuant to the laws of any state or possession of the United States to residents of those states or possessions, or an identification card as provided for in section 302.181, or the identification card issued by any uniformed service of the United States, or a valid passport shall be presented by the holder thereof upon request of any agent of the division of liquor control or any owner or employee of an

12 establishment that sells tobacco, **tobacco-derived products or vapor products**, for the purpose  
13 of aiding the registrant, agent or employee to determine whether or not the person is at least  
14 eighteen years of age when such person desires to purchase or possess tobacco products,  
15 **tobacco-derived products or vapor products** procured from a registrant. Upon such  
16 presentation, the owner or employee of the establishment shall compare the photograph and  
17 physical characteristics noted on the license, identification card or passport with the physical  
18 characteristics of the person presenting the license, identification card or passport.

19 3. Any person who shall, without authorization from the department of revenue,  
20 reproduce, alter, modify or misrepresent any chauffeur's license, motor vehicle operator's license  
21 or identification card shall be deemed guilty of a misdemeanor and upon conviction shall be  
22 subject to a fine of not more than one thousand dollars, and confinement for not more than one  
23 year, or by both such fine and imprisonment.

24 4. Reasonable reliance on proof of age or on the appearance of the purchaser or recipient  
25 shall be a defense to any action for a violation of subsections 1, 2 and 3 of section 407.931. No  
26 person shall be liable for more than one violation of subsections 2 and 3 of section 407.931 on  
27 any single day.

407.931. 1. It shall be unlawful for any person to sell, provide or distribute tobacco  
2 products, **tobacco-derived products or vapor products** to persons under eighteen years of age.

3 2. [By January 1, 2002,] All vending machines that dispense tobacco products, **tobacco-**  
4 **derived products or vapor products** shall be located within the unobstructed line of sight and  
5 under the direct supervision of an adult responsible for preventing persons less than eighteen  
6 years of age from purchasing any tobacco product from such machine or shall be equipped with  
7 a lock-out device to prevent the machines from being operated until the person responsible for  
8 monitoring sales from the machines disables the lock. Such locking device shall be of a design  
9 that prevents it from being left in an unlocked condition and which will allow only a single sale  
10 when activated. A locking device shall not be required on machines that are located in areas  
11 where persons less than eighteen years of age are not permitted or prohibited by law. An owner  
12 of an establishment whose vending machine is not in compliance with the provisions of this  
13 subsection shall be subject to the penalties contained in subsection 5 of this section. A  
14 determination of noncompliance may be made by a local law enforcement agency or the division  
15 of liquor control. Nothing in this section shall apply to a vending machine if located in a factory,  
16 private club or other location not generally accessible to the general public.

17 3. No person or entity shall sell, provide or distribute any tobacco product, **tobacco-**  
18 **derived product or vapor product** or rolling papers to any minor, or sell any individual  
19 cigarettes to any person in this state. This subsection shall not apply to the distribution by family  
20 members on property that is not open to the public.

21           4. Any person including, but not limited to, a sales clerk, owner or operator who violates  
22 subsection 1, 2 or 3 of this section or section 407.927 shall be penalized as follows:

23           (1) For the first offense, twenty-five dollars;

24           (2) For the second offense, one hundred dollars;

25           (3) For a third and subsequent offense, two hundred fifty dollars.

26           5. Any owner of the establishment where tobacco products, **tobacco-derived products**  
27 **or vapor products** are available for sale who violates subsection 3 of this section, in addition  
28 to the penalties established in subsection 4 of this section, shall be penalized in the following  
29 manner:

30           (1) For the first violation per location within two years, a reprimand shall be issued by  
31 the division of liquor control;

32           (2) For the second violation per location within two years, the division of liquor control  
33 shall issue a citation prohibiting the outlet from selling tobacco products, **tobacco-derived**  
34 **products or vapor products** for a twenty-four-hour period;

35           (3) For the third violation per location within two years, the division of liquor control  
36 shall issue a citation prohibiting the outlet from selling tobacco products, **tobacco-derived**  
37 **products or vapor products** for a forty-eight-hour period;

38           (4) For the fourth and any subsequent violations per location within two years, the  
39 division of liquor control shall issue a citation prohibiting the outlet from selling tobacco  
40 products, **tobacco-derived products or vapor products** for a five-day period.

41           6. Any owner of the establishment where tobacco products, **tobacco-derived products**  
42 **or vapor products** are available for sale who violates subsection 3 of this section shall not be  
43 penalized pursuant to this section if such person documents the following:

44           (1) An in-house or other tobacco compliance employee training program was in place  
45 to provide the employee with information on the state and federal regulations regarding tobacco  
46 sales to minors. Such training program must be attended by all employees who sell tobacco  
47 products to the general public;

48           (2) A signed statement by the employee stating that the employee has been trained and  
49 understands the state laws and federal regulations regarding the sale of tobacco, **tobacco-derived**  
50 **products or vapor products** to minors; and

51           (3) Such in-house or other tobacco compliance training meets the minimum training  
52 criteria, which shall not exceed a total of ninety minutes in length, established by the division  
53 of liquor control.

54           7. The exemption in subsection 6 of this section shall not apply to any person who is  
55 considered the general owner or operator of the outlet where tobacco products, **tobacco-derived**  
56 **products or vapor products** are available for sale if:

57 (1) Four or more violations per location of subsection 3 of this section occur within a  
58 one-year period; or

59 (2) Such person knowingly violates or knowingly allows his or her employees to violate  
60 subsection 3 of this section.

61 8. If a sale is made by an employee of the owner of an establishment in violation of  
62 sections 407.925 to 407.934, the employee shall be guilty of an offense established in  
63 subsections 1, 2 and 3 of this section. If a vending machine is in violation of section 407.927,  
64 the owner of the establishment shall be guilty of an offense established in subsections 3 and 4  
65 of this section. If a sample is distributed by an employee of a company conducting the sampling,  
66 such employee shall be guilty of an offense established in subsections 3 and 4 of this section.

67 9. A person cited for selling, providing or distributing any tobacco product, **tobacco-**  
68 **derived products or vapor products** to any individual less than eighteen years of age in  
69 violation of subsection 1, 2 or 3 of this section shall conclusively be presumed to have  
70 reasonably relied on proof of age of the purchaser or recipient, and such person shall not be  
71 found guilty of such violation if such person raises and proves as an affirmative defense that such  
72 individual presented a driver's license or other government-issued photo identification purporting  
73 to establish that such individual was eighteen years of age or older.

74 10. Any person adversely affected by this section may file an appeal with the  
75 administrative hearing commission which shall be adjudicated pursuant to the procedures  
76 established in chapter 621.

407.932. Nothing in sections 407.925 to [407.932] **407.934** shall prohibit local political  
2 subdivisions from enacting more stringent ordinances or rules.

407.933. 1. No person less than eighteen years of age shall purchase, attempt to  
2 purchase or possess cigarettes [or] , other tobacco products, **tobacco-derived products or vapor**  
3 **products** unless such person is an employee of a seller of cigarettes [or] , tobacco products **or**  
4 **vapor products** and is in such possession to effect a sale in the course of employment, or an  
5 employee of the division of liquor control for enforcement purposes pursuant to subsection 5 of  
6 section 407.934.

7 2. Any person less than eighteen years of age shall not misrepresent his or her age to  
8 purchase cigarettes [or] , tobacco products, **tobacco-derived products or vapor products**.

9 3. Any person who violates the provisions of this section shall be penalized as follows:

10 (1) For the first violation, the person is guilty of an infraction and shall have any  
11 cigarettes [or] , tobacco products, **tobacco-derived products or vapor products** confiscated;

12 (2) For a second violation and any subsequent violations, the person is guilty of an  
13 infraction, shall have any cigarettes [or] , tobacco products, **tobacco-derived products or vapor**

14 **products** confiscated and shall complete a tobacco education or smoking cessation program, if  
15 available.

407.934. 1. No person shall sell cigarettes [or] , tobacco products, **tobacco-derived  
2 products or vapor products** unless the person has a retail sales tax license.

3 2. Beginning January 1, 2002, the department of revenue shall permit persons to  
4 designate through the internet or by including a place on all sales tax license applications for the  
5 applicant to designate himself or herself as a seller of tobacco products, **tobacco-derived  
6 products or vapor products** and to provide a list of all locations where the applicant sells such  
7 products.

8 3. On or before July first of each year, the department of revenue shall make available  
9 to the division of liquor control and the department of mental health a complete list of every  
10 establishment which sells cigarettes [and] , other tobacco products, **tobacco-derived products  
11 or vapor products** in this state.

12 4. The division of liquor control shall have the authority to inspect stores and tobacco  
13 outlets for compliance with all laws related to access of tobacco products, **tobacco-derived  
14 products or vapor products** to minors. The division may employ a person seventeen years of  
15 age, with parental consent, to attempt to purchase tobacco for the purpose of inspection or  
16 enforcement of tobacco laws.

17 5. The supervisor of the division of liquor control shall not use minors to enforce the  
18 provisions of this chapter unless the supervisor promulgates rules that establish standards for the  
19 use of minors. The supervisor shall establish mandatory guidelines for the use of minors in  
20 investigations by a state, county, municipal or other local law enforcement authority which shall  
21 be followed by such authority and which shall, at a minimum, provide for the following:

22 (1) The minor shall be seventeen years of age;

23 (2) The minor shall have a youthful appearance, and the minor, if a male, shall not have  
24 facial hair or a receding hairline and if a female, shall not wear excessive makeup or excessive  
25 jewelry;

26 (3) The state, county, municipal or other local law enforcement agency shall obtain the  
27 consent of the minor's parent or legal guardian before the use of such minor on a form approved  
28 by the supervisor;

29 (4) The state, county, municipal or other local law enforcement agency shall make a  
30 photocopy of the minor's valid identification showing the minor's correct date of birth;

31 (5) Any attempt by such minor to purchase tobacco products, **tobacco-derived products  
32 or vapor products** shall be videotaped or audiotaped with equipment sufficient to record all  
33 statements made by the minor and the seller of the tobacco product, **tobacco-derived product  
34 or vapor product**;

35 (6) The minor shall carry his or her own identification showing the minor's correct date  
36 of birth and shall, upon request, produce such identification to the seller of the tobacco product,  
37 **tobacco-derived product or vapor product;**

38 (7) The minor shall answer truthfully any questions about his or her age and shall not  
39 remain silent when asked questions regarding his or her age;

40 (8) The minor shall not lie to the seller of the tobacco product, **tobacco-derived**  
41 **products or vapor products** to induce a sale of tobacco products, **tobacco-derived products**  
42 **or vapor products;**

43 (9) The minor shall not be employed by the state, county, municipal or other local law  
44 enforcement agency on an incentive or quota basis;

45 (10) The state, county, municipal or other local law enforcement agency shall, within  
46 forty-eight hours, contact or take all reasonable steps to contact the owner or manager of the  
47 establishment if a violation occurs;

48 (11) The state, county, municipal or other local law enforcement agency shall maintain  
49 records of each visit to an establishment where a minor is used by the state, county, municipal  
50 or other local law enforcement agency for a period of at least one year following the incident,  
51 regardless of whether a violation occurs at each visit, and such records shall, at a minimum,  
52 include the following information:

53 (a) The signed consent form of the minor's parent or legal guardian;

54 (b) A Polaroid photograph of the minor;

55 (c) A photocopy of the minor's valid identification, showing the minor's correct date of  
56 birth;

57 (d) An information sheet completed by the minor on a form approved by the supervisor;  
58 and

59 (e) The name of each establishment visited by the minor, and the date and time of each  
60 visit.

61 6. If the state, county, municipal or other local law enforcement authority uses minors  
62 in investigations or in enforcing or determining violations of this chapter or any local ordinance  
63 and does not comply with the mandatory guidelines established by the supervisor of liquor  
64 control in subsection 5 of this section, the supervisor of liquor control shall not take any  
65 disciplinary action against the establishment or seller pursuant to this chapter based on an alleged  
66 violation discovered when using a minor and shall not cooperate in any way with the state,  
67 county, municipal or other local law enforcement authority in prosecuting any alleged violation  
68 discovered when using a minor.

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