

SECOND REGULAR SESSION

[CORRECTED]

# HOUSE BILL NO. 3206

103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE ROBERTS.

6297H.011

JOSEPH ENGLER, Chief Clerk

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## AN ACT

To repeal sections 149.011, 149.035, 149.160, 149.190, 407.924, 407.925, 407.926, 407.927, 407.928, 407.929, 407.931, and 407.934, RSMo, and to enact in lieu thereof seventeen new sections relating to certain tobacco 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 149.011, 149.035, 149.160, 149.190, 407.924, 407.925, 407.926, 2 407.927, 407.928, 407.929, 407.931, and 407.934, RSMo, are repealed and seventeen new 3 sections enacted in lieu thereof, to be known as sections 149.011, 149.035, 149.036, 149.037, 4 149.038, 149.039, 149.160, 149.190, 407.924, 407.925, 407.926, 407.927, 407.928, 407.929, 5 407.930, 407.931, and 407.934, to read as follows:

149.011. As used in this chapter, unless the context requires otherwise, the following 2 terms mean:

3 (1) **"Alternative nicotine product", any noncombustible product containing**  
4 **nicotine or a nicotine analogue that is intended for human consumption, whether**  
5 **chewed, absorbed, dissolved, or ingested by any other means. "Alternative nicotine**  
6 **product" does not include any vapor product, tobacco product, or any product**  
7 **regulated as a drug or device by the United States Food and Drug Administration under**  
8 **Chapter V of the Food, Drug, and Cosmetic Act;**

9 (2) "Cigar", any roll for smoking, except cigarettes, made chiefly of tobacco or any  
10 substitute therefor;

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.

11           ~~[(2)]~~ **(3)** "Cigarette", an item manufactured of tobacco or any substitute therefor,  
12 wrapped in paper or any substitute therefor, weighing not to exceed three pounds per one  
13 thousand cigarettes and which is commonly classified, labeled or advertised as a cigarette;

14           ~~[(3)]~~ **(4)** "Common carrier", any person, association, company, or corporation  
15 engaged in the business of operating, for public use, an agency for the transportation of  
16 persons or property within the state;

17           **(5) "Department", the department of revenue;**

18           ~~[(4)]~~ **(6)** "Director", the director of Missouri department of revenue;

19           ~~[(5)]~~ **(7)** "First sale within the state", the first sale of a tobacco product, **alternative**  
20 **nicotine product, or vapor product** by a manufacturer, wholesaler, **distributor, retailer,** or  
21 other person to a **retailer or other** person who intends to sell such ~~[tobacco]~~ products at retail  
22 or to a person at retail within the state of Missouri;

23           ~~[(6)]~~ **(8)** "Manufacturer", any person engaged in the manufacture or production of  
24 cigarettes, **tobacco products, alternative nicotine products, or vapor products;**

25           ~~[(7)]~~ **(9)** "Manufacturer's invoice price", the original net invoice price for which a  
26 manufacturer sells a tobacco product, **alternative nicotine product, or vapor product** to a  
27 distributor, wholesaler, **retailer,** or first seller in the state as shown by the manufacturer's  
28 original invoice;

29           ~~[(8)]~~ **(10)** "Meter machine", a type of device manufactured for the use of printing or  
30 imprinting an inked impression indicating that the cigarette tax has been paid on an individual  
31 package of cigarettes;

32           **(11) "Nicotine analogue":**

33           **(a) a. A substance, the chemical structure of which is substantially similar to the**  
34 **chemical structure of nicotine; or**

35           **b. A substance that has, purports to have, or is represented to have an effect on**  
36 **the central nervous system that is similar to or greater than the nicotine's effect on the**  
37 **central nervous system;**

38           **(b) Factors relevant to determining whether a substance is a nicotine analogue**  
39 **include, but are not limited to, the marketing, advertising, and labeling of the substance**  
40 **and whether the substance has been manufactured, formulated, sold, distributed, or**  
41 **marketed with the intent to avoid the provisions of this subdivision and other applicable**  
42 **provisions of law;**

43           ~~[(9)]~~ **(12)** "Package of cigarettes", a container of any type composition in which is  
44 normally contained twenty individual cigarettes, except as in special instances when the  
45 number may be more or less than twenty;

46           ~~[(10)]~~ **(13)** "Person", any individual, corporation, firm, partnership, incorporated or  
47 unincorporated association, or any other legal or commercial entity;

48           ~~[(11)]~~ **(14)** "Retailer", any person who sells to a consumer or to any person for any  
49 purpose other than resale;

50           ~~[(12)]~~ **(15)** "Sale" in this instance is defined to be and declared to include sales,  
51 barter, exchanges and every other manner, method and form of transferring the ownership of  
52 personal property from one person to another. "Sale" also means the possession of cigarettes  
53 ~~[or]~~, tobacco products, **alternative nicotine products, or vapor products** by any person  
54 other than a manufacturer, wholesaler, **distributor**, or retailer and shall be prima facie  
55 evidence of possession for consumption;

56           ~~[(13)]~~ **(16)** "Smokeless tobacco", chewing tobacco, including, but not limited to,  
57 twist, moist plug, loose leaf and firm plug, and all types of snuff, including, but not limited to,  
58 moist and dry;

59           ~~[(14)]~~ **(17)** "Stamped cigarettes", an individual package, containing twenty individual  
60 cigarettes, more or less, on which appears or is affixed or imprinted thereon a Missouri state  
61 cigarette tax stamp or Missouri state meter machine impression;

62           ~~[(15)]~~ **(18)** "Tax stamp", an item manufactured of a paper product or substitute thereof  
63 on which is printed, imprinted, or engraved lettering, numerals or symbols indicating that the  
64 cigarette tax has been paid on each individual package of cigarettes;

65           ~~[(16)]~~ **(19)** "Tobacco product", cigarettes, cigarette papers, clove cigarettes, cigars,  
66 smokeless tobacco, smoking tobacco, or other form of tobacco products or products made  
67 with tobacco substitute containing nicotine;

68           ~~[(17)]~~ **(20)** "Unstamped cigarettes", an individual package containing cigarettes on  
69 which does not appear a Missouri state cigarette tax stamp or Missouri state meter machine  
70 impression;

71           **(21)** "Vapor product", any noncombustible product containing nicotine or a  
72 nicotine analogue that employs a heating element, power source, electronic circuit, or  
73 other electronic, chemical, or mechanical means, regardless of shape or size, that can be  
74 used to produce vapor from nicotine in a solution or other form. "Vapor product"  
75 includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or  
76 similar product or device and any vapor cartridge or other container of nicotine in a  
77 solution or other form that is intended to be used with or in an electronic cigarette,  
78 electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.  
79 "Vapor product" also includes any device classified by the United States Food and Drug  
80 Administration as an electronic nicotine delivery system. "Vapor product" does not  
81 include any alternative nicotine product or tobacco product;

82           ~~[(18)]~~ **(22)** "Wholesaler", any person, firm or corporation organized and existing, or  
83 doing business, primarily to sell cigarettes, **alternative nicotine products, vapor products,**  
84 or tobacco products to, and render service to, retailers in the territory the person, firm or

85 corporation chooses to serve; that purchases cigarettes, **alternative nicotine products, vapor**  
86 **products**, or tobacco products directly from the manufacturer; that carries at all times at his  
87 or **her or** its principal place of business a representative stock of cigarettes, **alternative**  
88 **nicotine products, vapor products**, or tobacco products for sale; and that comes into the  
89 possession of cigarettes, **alternative nicotine products, vapor products**, or tobacco products  
90 for the purpose of selling them to **other wholesalers, distributors**, retailers, or to persons  
91 outside or within the state who might resell or retail the cigarettes, **alternative nicotine**  
92 **products, vapor products**, or tobacco products to consumers. This shall include any  
93 manufacturer, **distributor, importer**, jobber, broker, agent, or other person, whether or not  
94 enumerated in this chapter, who so sells or so distributes cigarettes, **alternative nicotine**  
95 **products, vapor products**, or tobacco products.

149.035. 1. Every wholesaler of cigarettes, **alternative nicotine products, vapor**  
2 **products**, or tobacco products in this state, as a condition of carrying on such business, shall  
3 annually, on or before February fifteenth of each year, secure from the director a written  
4 license, and shall pay therefor an annual fee of one hundred dollars for the twelve-month  
5 period beginning February fifteenth of each year. The license, application for which may be  
6 made on forms prescribed and furnished by the director, shall be kept on public display in the  
7 wholesaler's place of business at all times. The license shall not be assignable or transferable.  
8 The director shall refuse a license to any wholesaler of cigarettes, **alternative nicotine**  
9 **products, vapor products**, or tobacco products from another state if that wholesaler's state  
10 refuses to license wholesalers of cigarettes, **alternative nicotine products, vapor products**,  
11 or tobacco products from Missouri.

12 2. Every person making a first sale of tobacco products, **alternative nicotine**  
13 **products, or vapor products** in the state of Missouri who does not have a wholesaler license  
14 as required by this section shall make application for a tobacco products **wholesaler** license  
15 on forms prescribed by the director of revenue. Such person shall, as a condition of acquiring  
16 such license, file an instrument which may be a cash or surety bond, letter of credit, or other  
17 instrument approved by the director which shall be in the amount of three times the average  
18 tax liability, estimated in the case of a new applicant. At such time as the director of revenue  
19 shall deem the amount of a bond insufficient to cover the liability, he may require the bond to  
20 be adjusted to the level satisfactory to the director which shall cover the amount of such  
21 liability. Minimum bond shall be five hundred dollars. A tobacco products **wholesaler**  
22 license shall not be used as a substitute or in place of a cigarette wholesale license.

23 3. At such time as the director shall have reason to believe that any person has  
24 violated any provisions of this chapter or any rules and regulations issued pursuant to such  
25 provisions, the director shall refuse to issue or shall revoke or suspend any license issued

26 hereunder for such a period of time not to exceed one year. The person involved may seek  
27 review of the decision of the director of revenue by the administrative hearing commission.

**149.036. Every manufacturer of cigarettes, alternative nicotine products, vapor  
2 products, or tobacco products sold at retail or to a consumer in this state, whether  
3 directly or through an importer, wholesaler, distributor, retailer, or similar intermediary  
4 or intermediaries, shall annually, on or before February fifteenth of each year, secure  
5 from the director a written tobacco products manufacturer license and pay an annual  
6 fee of one thousand dollars for the twelve-month period beginning February fifteenth of  
7 each year. The license shall not be assignable or transferable. Manufacturers of vapor  
8 products shall be issued a license only if they also satisfy the requirements of sections  
9 149.037 to 149.038.**

**149.037. 1. Every vapor product manufacturer who sells or offers to sell vapor  
2 products to a consumer in this state, whether directly or through an importer,  
3 wholesaler, distributor, retailer, or similar intermediary or intermediaries, shall obtain a  
4 vapor product manufacturer license from the director. The license shall be valid for one  
5 year and shall be renewed annually.**

**2. Every application for a vapor product manufacturer license shall be made  
7 upon a form prescribed, prepared, and furnished by the director and shall be  
8 accompanied by a certification signed under penalty of perjury that includes the  
9 following:**

10 **(1) The name and address of the applicant or, if the applicant is a firm,  
11 partnership, limited liability company, or association, the name and address of each of  
12 its members or, if the applicant is a corporation, the name and address of each of its  
13 officers and the address of its principal place of business;**

14 **(2) The location of the principal place of the applicant seeking a license;**

15 **(3) Either:**

16 **(a) A copy of the Prevent All Cigarette Trafficking (PACT) Act Registration  
17 Form (ATF Form 5070.1) as submitted by the applicant to the Bureau of Alcohol,  
18 Tobacco, Firearms and Explosives of the United States Department of Justice and an  
19 attestation that the applicant is in compliance with, and will continue to comply with, all  
20 applicable requirements of 15 U.S.C. Sections 375 and 376; or**

21 **(b) A statement explaining why the PACT Act is not applicable to the applicant  
22 and its products;**

23 **(4) An attestation that the applicant will comply with all applicable laws of this  
24 state and of the applicant's principal place of business;**

25 **(5) A list of each type or model of vapor product of the manufacturer that is sold  
26 in this state, including for each product:**

27           **(a) The product name, product category, nicotine content (volume of nicotine by**  
28 **weight), and total volume; and**

29           **(b) A description, if a formal authorization, approval, or order from United**  
30 **States Food and Drug Administration under Section 387e(j) or 387j of the Food, Drug,**  
31 **and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended, has been sought and, if so,**  
32 **the status of any request for that authorization, approval, or order;**

33           **(6) An attestation that the applicant's products and all components or parts of**  
34 **such products sold in this state were imported into the United States in conformity with**  
35 **all United States Customs and Border Protection requirements, whether or not such**  
36 **importation was accomplished by the manufacturer or another entity. In addition, the**  
37 **manufacturer shall obtain and submit copies of all Customs and Border Protection**  
38 **entry forms submitted in the prior six months on which the products, or any**  
39 **components or parts of the products, were declared;**

40           **(7) For an applicant with a principal place of business outside the United States,**  
41 **a declaration, on a form prescribed by the department, from each of its importers into**  
42 **the United States of any of its brands to be sold in this state, that the importer accepts**  
43 **joint and several liability with the applicant for all liability imposed in accordance with**  
44 **this chapter, including any fees, costs, attorney's fees, and penalties imposed;**

45           **(8) A list of any warning letters issued by the United States Food and Drug**  
46 **Administration in the last five calendar years that identified any vapor products**  
47 **manufactured by the applicant as being adulterated or misbranded under federal law**  
48 **and a description of how and when each warning letter was resolved;**

49           **(9) Records reflecting the youth-access prevention policies the applicant has**  
50 **implemented with respect to distributors and retailers that sell its vapor products in the**  
51 **state; and**

52           **(10) Such other information as the director may require.**

53           **3. The applicant shall pay a nonrefundable fee of one hundred dollars for each**  
54 **type or model of vapor product that is included on the list of products in the certification**  
55 **form.**

56           **4. A vapor product manufacturer shall not cause to be sold at retail in this state**  
57 **or to a consumer in this state any type or model of vapor product not included in the**  
58 **product list provided with the certification without first:**

59           **(1) Filing an amended certification form in a form and manner prescribed by the**  
60 **department; and**

61           **(2) Paying the appropriate fee required under this section.**

62           **5. Each vapor product manufacturer who obtains a license under this chapter**  
63 **shall submit to the director:**

64           **(1) Within thirty days of any changes to its product list submitted with its**  
65 **certification, a notice of such changes; and**

66           **(2) Every six months, an attestation confirming that the information submitted**  
67 **in its license application remains accurate and all copies of Customs and Border Patrol**  
68 **Form 7501 submitted in the prior six months.**

69           **6. Submission of a false certification shall constitute an unfair trade practice**  
70 **under the provisions of sections 375.930 to 375.948. Nothing in this section shall be**  
71 **construed to create or imply a private cause of action for a violation of sections 376.2050**  
72 **to 376.2053. The director may notify appropriate federal and state agencies regarding**  
73 **false information submitted on a certification form.**

74           **7. Fees collected under the provisions of this section shall be used by the director**  
75 **for the administration and enforcement of this chapter.**

76           **8. A person who obtains a license under this chapter has established minimum**  
77 **contacts with the state and consents to the exercise of personal jurisdiction over the**  
78 **person in the courts of this state in any matter or issue arising under this chapter or**  
79 **related to the sale of vapor products.**

80           **9. The director shall maintain and make publicly available on the director's**  
81 **official website a list of all vapor products included in the product lists submitted by**  
82 **licensed vapor product manufacturers with their certification forms. The director also**  
83 **shall maintain a list of all licensed entities, including information regarding violations**  
84 **and licenses that have been revoked or suspended.**

85           **10. Beginning September 1, 2026, vapor products not included in the list shall**  
86 **not be sold for retail sale or to a consumer in this state, either directly or through an**  
87 **importer, distributor, wholesaler, retailer, or similar intermediary or intermediaries.**

**149.038. 1. Any nonresident manufacturer of vapor products that has not**  
2 **registered to do business in the state as a foreign corporation or business entity shall, as**  
3 **a condition precedent to receiving a license, appoint and continually engage without**  
4 **interruption the services of an agent in this state to act as agent for the service of process**  
5 **on whom all process, and any action or proceeding against it concerning or arising out**  
6 **of the enforcement of this chapter, may be served in any manner authorized by law.**  
7 **Such service shall constitute legal and valid service of process on the manufacturer. The**  
8 **manufacturer shall provide the name, address, telephone number, and proof of the**  
9 **appointment and availability of such agent to the department.**

10           **2. The manufacturer shall provide notice to the department thirty calendar days**  
11 **prior to termination of the authority of an agent and shall further provide proof to the**  
12 **satisfaction of the department of the appointment of a new agent no less than five**  
13 **calendar days prior to the termination of an existing agent appointment. In the event an**

14 agent terminates an agency appointment, the manufacturer shall notify the department  
15 of the termination within five calendar days and shall include proof to the satisfaction of  
16 the department of the appointment of a new agent.

17 3. Any nonresident or foreign manufacturer of vapor products that has not  
18 registered to do business in the state as a foreign corporation or business entity shall, as  
19 a condition precedent to receiving a license, submit to the director a surety bond or  
20 other cash security payable to the state in the amount of twenty-five thousand dollars.  
21 The bond shall be posted by a corporate surety located within the United States.

22 4. The bond described under subsection 3 of this section shall be conditioned on  
23 the performance by the manufacturer of all requirements and obligations imposed by  
24 this chapter. A surety on a manufacturer's bond shall be liable up to the amount of the  
25 bond, and the state may execute on such surety bond for the payment of fines and  
26 penalties imposed on the manufacturer under this section and for the costs of seizure  
27 and destruction of products sold in violation of this chapter. If the state executes on the  
28 surety bond, it may require the manufacturer to provide an additional bond as a  
29 condition precedent for retaining the vapor product manufacturer license.

30 5. A surety on a bond furnished by a manufacturer as provided in this section  
31 shall be released and discharged from liability to the state accruing on the bond after  
32 expiration of sixty days from the date upon which such surety lodges with the director a  
33 written request to be released and discharged. This provision shall not operate to  
34 relieve, release, or discharge the surety from liability already accrued or which shall  
35 accrue before the expiration of the sixty-day period. The director shall, upon receiving  
36 any such request, notify the manufacturer who furnished the bond. Unless the  
37 manufacturer, on or before the expiration of the sixty-day period, files with the director  
38 a new bond, with the surety approved by and acceptable to the director, the director  
39 shall revoke the manufacturer's vapor product manufacturer license.

149.039. 1. Wholesalers and retailers shall purchase cigarettes, alternative  
2 nicotine products, vapor products, and tobacco products only from a manufacturer or  
3 wholesaler who has obtained a valid tobacco product manufacturer or wholesaler  
4 license from the director.

5 2. Retailers shall purchase cigarettes, alternative nicotine products, vapor  
6 products, or tobacco products only from a wholesaler or manufacturer who has  
7 obtained a license from the director. Manufacturers and wholesalers shall sell  
8 cigarettes, alternative nicotine products, vapor products, and tobacco products only to a  
9 wholesaler or retailer who has obtained the applicable valid license or licenses from the  
10 director under the provisions of this chapter and chapter 407.

11           **3. Before selling cigarettes, alternative nicotine products, vapor products, or**  
12 **tobacco products to a wholesaler or retailer, a manufacturer or wholesaler shall confirm**  
13 **the purchaser has obtained the applicable valid license or licenses from the director**  
14 **under the provisions of this chapter and chapter 407. Before purchasing cigarettes,**  
15 **alternative nicotine products, vapor products, or tobacco products from a manufacturer**  
16 **or wholesaler, a licensee shall confirm the seller has obtained the applicable valid license**  
17 **or licenses from the director.**

18           **4. Notwithstanding any other provision of law, cigarettes, alternative nicotine**  
19 **products, vapor products, or tobacco products sold by a person or entity that lacks the**  
20 **required license are contraband. The director may seize and destroy or dispose of such**  
21 **products. The cost of such seizure and destruction or disposal shall be borne by the**  
22 **person from whom the products are confiscated.**

149.160. 1. A tax is levied upon the first sale of tobacco products, other than  
2 cigarettes, within the state. The tax on tobacco products shall be at the rate of ten percent of  
3 the manufacturer's invoice price before discounts and deals, and shall be paid by the person  
4 making the first sale within the state. Licensed persons making first sales within the state  
5 shall be allowed approved credit for returned merchandise provided the tax was paid on the  
6 returned merchandise and the purchaser was given a refund or credit. Such licensed person  
7 shall take such approved credit on the return for the month in which the purchaser was given  
8 the refund or credit. **For all tax years beginning on or after January 1, 2027, for the**  
9 **purposes of the application of the tax imposed under this section, the term "tobacco**  
10 **products" shall include alternative nicotine products and vapor products.**

11           2. The tax shall not apply to tobacco products when the first sale within the state has  
12 occurred on such tobacco products prior to October 1, 1993.

13           3. Amounts generated by the tax levied in this section shall be deposited in the health  
14 initiatives fund created by section 191.831.

15           4. When the general assembly appropriates an amount equal to twenty-five percent of  
16 the net federal reimbursement allowance to the health initiatives fund, this section shall  
17 expire. As used in this section, "net federal reimbursement allowance" shall mean that  
18 amount of the federal reimbursement allowance in excess of the amount of state matching  
19 funds necessary for the state to make payments required by subsection 1 of section 208.471  
20 or, if the payments exceed the amount so required, the actual payments made for the purposes  
21 specified in subsection 1 of section 208.471.

149.190. 1. If the director is not satisfied that the report filed or the amount of tax  
2 paid is accurate, he may, after investigating and upon finding such inaccuracy, make an  
3 assessment of tax due based upon such investigation. The director shall give written notice

4 by registered or certified mail to the person of the assessment, addressed to the person at his  
5 last known address.

6         2. If a person fails to file any return required by section 149.170, the director shall  
7 make an estimate, based upon information available to him, for the period for which the  
8 person failed to file the return and, upon the basis of the estimate, shall assess the tax due  
9 from such person. The director shall give to the person written notice of the assessment by  
10 registered or certified mail to the person's last known address.

11         3. Any person responsible for the tax imposed in section 149.160 who fails to pay  
12 such tax within the time and manner required by law, shall pay, as part of the tax imposed, a  
13 penalty equal to twenty-five percent of the tax liability, and the tax shall bear interest at the  
14 rate established in section 32.065.

15         4. Any person not possessing a valid tobacco products **manufacturer or wholesaler**  
16 **license, a valid tobacco retail license as required under section 407.934 if applicable, or**  
17 **any other license required by the department, and who is** selling tobacco products,  
18 **alternative nicotine products, or vapor products** at retail within the state, ~~when~~ **or any**  
19 **person who possesses such valid license or licenses and is selling such products at retail**  
20 **within the state but** such ~~tobacco~~ products have not been purchased from a licensed  
21 wholesaler **or manufacturer**, shall be subject to all applicable provisions of subsections 1 to  
22 3 of this section. Such person shall also be assessed an additional penalty equal to one  
23 hundred percent of the tax owed.

24         5. Any person ~~other than a licensed wholesaler,~~ making sales of tobacco products to  
25 unlicensed retailers **or wholesalers** in the state shall be subject to all applicable provisions of  
26 subsections 1 to 3 of this section. Such person shall also be assessed an additional penalty  
27 equal to one hundred percent of the tax owed.

407.924. 1. The division of ~~liquor~~ **alcohol and tobacco** control within the  
2 department of public safety shall implement and enforce the provisions of sections ~~[407.925]~~  
3 **407.924** to 407.934.

4         2. Beginning January 1, 2003, the division of ~~liquor~~ **alcohol and tobacco** control  
5 shall submit an annual report to the general assembly on the effectiveness of sections  
6 ~~[407.925]~~ **407.924** to 407.934 in reducing tobacco **product, alternative nicotine product,**  
7 **and vapor product** possession **or use** by minors and the enforcement activities by the  
8 division for violations of sections ~~[407.925]~~ **407.924** to 407.934.

407.925. As used in sections ~~[407.925]~~ **407.924** to 407.934, the following terms  
2 mean:

3         (1) "Alternative nicotine product", any noncombustible product containing nicotine  
4 **or a nicotine analogue** that is intended for human consumption, whether chewed, absorbed,  
5 dissolved, or ingested by any other means. Alternative nicotine product does not include any

6 vapor product, tobacco product, or any product regulated as a drug or device by the United  
7 States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act;

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

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

12 (4) **"Division", the division of alcohol and tobacco control;**

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

14 ~~[(5)]~~ (6) "Municipality", the city, village or town within which tobacco products,  
15 alternative nicotine products or vapor products are sold or distributed or, in the case of  
16 tobacco products, alternative nicotine products or vapor products that are not sold or  
17 distributed within a city, village or town, the county in which they are sold or distributed;

18 (7) **"Nicotine analogue":**

19 (a) a. **A substance, the chemical structure of which is substantially similar to the**  
20 **chemical structure of nicotine; or**

21 b. **A substance that has, purports to have, or is represented to have an effect on**  
22 **the central nervous system that is similar to or greater than the nicotine's effect on the**  
23 **central nervous system;**

24 (b) **Factors relevant to determining whether a substance is a nicotine analogue**  
25 **include, but are not limited to, the marketing, advertising, and labeling of the substance**  
26 **and whether the substance has been manufactured, formulated, sold, distributed, or**  
27 **marketed with the intent to avoid the provisions of this subdivision and other applicable**  
28 **provisions of law;**

29 ~~[(6)]~~ (8) "Person", an individual, partnership, copartnership, firm, company, public or  
30 private corporation, association, joint stock company, trust, estate, political subdivision or any  
31 agency, board, department or bureau of the state or federal government, or any other legal  
32 entity which is recognized by law as the subject of rights and duties;

33 ~~[(7)]~~ (9) "Proof of age", a driver's license or other generally accepted means of  
34 identification that contains a picture of the individual and appears on its face to be valid;

35 ~~[(8)]~~ (10) "Rolling papers", paper designed, manufactured, marketed, or sold for use  
36 primarily as a wrapping or enclosure for tobacco, which enables a person to roll loose tobacco  
37 into a smokable cigarette;

38 ~~[(9)]~~ (11) "Sample", a tobacco product, alternative nicotine product, or vapor product  
39 distributed to members of the general public at no cost or at nominal cost for product  
40 promotional purposes;

41 ~~[(10)]~~ (12) "Sampling", the distribution to members of the general public of tobacco  
42 product, alternative nicotine product or vapor product samples;

43           ~~[(11)]~~ **(13)** "Tobacco products", any substance ~~[containing tobacco leaf,]~~ **made or**  
44 **derived from tobacco or nicotine that is intended for human consumption** including, but  
45 not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco but  
46 does not include alternative nicotine products, or vapor products;

47           ~~[(12)]~~ **(14)** "Vapor product", any noncombustible product containing nicotine that  
48 employs a heating element, power source, electronic circuit, or other electronic, chemical, or  
49 mechanical means, regardless of shape or size, that can be used to produce vapor from  
50 nicotine **or a nicotine analogue** in a solution or other form. Vapor product includes any  
51 electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or  
52 device and any vapor cartridge or other container of nicotine in a solution or other form that is  
53 intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo,  
54 electronic pipe, or similar product or device. **"Vapor product" also includes any device**  
55 **classified by the United States Food and Drug Administration as an electronic nicotine**  
56 **delivery system.** Vapor product does not include any alternative nicotine product or tobacco  
57 product;

58           ~~[(13)]~~ **(15)** "Vending machine", any mechanical electric or electronic, self-service  
59 device which, upon insertion of money, tokens or any other form of payment, dispenses  
60 tobacco products, alternative nicotine products, or vapor products.

407.926. 1. Any person or entity who sells tobacco products, alternative nicotine  
2 products, or vapor products shall deny the sale of such ~~[tobacco]~~ products to any person who  
3 is less than eighteen years of age.

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

8           3. Alternative nicotine products and vapor products shall only be sold to persons  
9 eighteen years of age or older, shall be subject to local and state sales tax **and licensing**  
10 **requirements, [but shall not be otherwise] and shall be taxed [or] and** regulated as tobacco  
11 products.

12           4. (1) Any nicotine liquid container that is sold at retail in this state shall satisfy the  
13 child-resistant effectiveness standards set forth in 16 CFR 1700.15(b) as in effect on August  
14 28, 2015, when tested in accordance with the method described in 16 CFR 1700.20 as in  
15 effect on August 28, 2015.

16           (2) For the purposes of this subsection, "nicotine liquid container" shall mean a bottle  
17 or other container of liquid or other substance containing nicotine if the liquid or substance is  
18 sold, marketed, or intended for use in a vapor product. A "nicotine liquid container" shall not  
19 include a liquid or other substance containing nicotine **or nicotine analogue** in a cartridge

20 that is sold, marketed, or intended for use in a vapor product, provided that such cartridge is  
21 prefilled and sealed by the manufacturer and not intended to be opened by the consumer.

22 (3) Any person who engages in retail sales of liquid nicotine containers in this state in  
23 violation of this subsection shall be assessed a fine of two hundred fifty dollars for the first  
24 violation and five hundred dollars for each subsequent violation.

25 (4) The department of health and senior services may adopt rules necessary to carry  
26 out the provisions of this subsection. Any rule or portion of a rule, as that term is defined in  
27 section 536.010, that is created under the authority delegated in this section shall become  
28 effective only if it complies with and is subject to all of the provisions of chapter 536 and, if  
29 applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the  
30 powers vested with the general assembly under chapter 536 to review, to delay the effective  
31 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant  
32 of rulemaking authority and any rule proposed or adopted after August 28, 2015, shall be  
33 invalid and void.

34 (5) The provisions of this subsection and any rules adopted hereunder shall be null,  
35 void, and of no force and effect upon the effective date of the final regulations issued by the  
36 federal Food and Drug Administration or from any other federal agency if such regulations  
37 mandate child-resistant effectiveness standards for nicotine liquid containers.

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

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

11 (2) Include a depiction of a pack of cigarettes at least two inches high defaced by a  
12 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, **tobacco**  
2 **products, alternative nicotine products, vapor products,** or smokeless tobacco products  
3 unless such packs **or products** satisfy one of the following conditions prior to the time of  
4 sale:

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

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

407.929. 1. A person or entity selling tobacco products, alternative nicotine products, or vapor products or rolling papers or distributing tobacco product, alternative nicotine product, 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 establishment that sells tobacco **products**, alternative nicotine products, or vapor products, for the purpose of aiding the registrant, agent, or employee to determine whether or not the person is at least eighteen years of age when such person desires to purchase or possess tobacco products, alternative nicotine products, or vapor products procured from a registrant. Upon such presentation, the owner or employee of the establishment shall compare the photograph and physical characteristics noted on the license, identification card or passport with the physical characteristics of the person presenting the license, identification card, or passport.

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

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

**407.930. 1. For the purposes of this section, "tobacco substitute" means any alternative nicotine products or vapor products that have not been approved by the United States Food and Drug Administration for tobacco cessation or other medical purposes.**

**2. No person shall market, advertise, sell, or cause to be sold a tobacco substitute if the product's container, packaging, or advertising:**

**(1) Depicts a cartoon-like fictional character that mimics a character primarily aimed at entertaining minors;**

9           **(2) Imitates or mimics trademarks or trade dress of products that are or have**  
10 **been primarily marketed to minors;**

11           **(3) Includes a symbol that is primarily used to market products to minors;**

12           **(4) Includes an image of a celebrity; or**

13           **(5) Is designed to disguise the fact that it is a tobacco substitute.**

14           **3. No person shall market, advertise, sell, or cause to be sold a tobacco substitute**  
15 **that has entertainment features, such as the ability to play games, play music or other**  
16 **audio, display photos or video, or any similar electronic entertainment features.**

17           **4. No person shall market, advertise, sell, or cause to be sold a tobacco substitute**  
18 **that contains, is mixed with, or is marketed as containing or being mixed with any**  
19 **cannabinoids, alcohol, kratom, kava, mushrooms containing psilocybin or psilocin,**  
20 **tianeptine, or any derivatives of those substances.**

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

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

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

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

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

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

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

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

32 (1) For the first violation per location within two years, a reprimand shall be issued by  
33 the division [~~of liquor control~~];

34 (2) For the second violation per location within two years, the division [~~of liquor~~  
35 ~~control~~] shall issue a citation prohibiting the outlet from selling tobacco products, alternative  
36 nicotine products, or vapor products for a twenty-four-hour period;

37 (3) For the third violation per location within two years, the division [~~of liquor~~  
38 ~~control~~] shall issue a citation prohibiting the outlet from selling tobacco products, alternative  
39 nicotine products, or vapor products for a forty-eight-hour period;

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

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

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

51 (2) A signed statement by the employee stating that the employee has been trained  
52 and understands the state laws and federal regulations regarding the sale of tobacco products,  
53 alternative nicotine products, or vapor products to minors; and

54 (3) Such in-house or other tobacco compliance training meets the minimum training  
55 criteria, which shall not exceed a total of ninety minutes in length, established by the division  
56 [~~of liquor control~~].

57 7. The exemption in subsection 6 of this section shall not apply to any person who is  
58 considered the general owner or operator of the outlet where tobacco products, alternative  
59 nicotine products, or vapor products are available for sale if:

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

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

64 8. If a sale is made by an employee of the owner of an establishment in violation of  
65 sections ~~[407.925]~~ **407.924** to 407.934, the employee shall be guilty of an offense established  
66 in subsections 1, 2 and 3 of this section. If a vending machine is in violation of section  
67 407.927, the owner of the establishment shall be guilty of an offense established in  
68 subsections 3 and 4 of this section. If a sample is distributed by an employee of a company  
69 conducting the sampling, such employee shall be guilty of an offense established in  
70 subsections 3 and 4 of this section.

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

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

407.934. 1. No person shall sell, **provide, or distribute** cigarettes, tobacco products,  
2 alternative nicotine products, or vapor products unless the person has a retail sales tax license  
3 **and a tobacco retail license.**

4 2. **(1)** The department of revenue shall permit persons to designate through the  
5 internet or by including a place on all sales tax license applications for the applicant to  
6 designate himself or herself as a seller of **cigarettes**, tobacco products, alternative nicotine  
7 products, or vapor products and to provide a list of all locations where the applicant sells such  
8 products.

9 **(2)** All persons selling, providing, or distributing tobacco products, alternative  
10 nicotine products, or vapor products shall also apply to the department of revenue for a  
11 tobacco retail license. The department of revenue also shall make available through the  
12 internet the application for the tobacco retail license. A separate license is required for  
13 each retail location where the applicant sells such products. A license shall be valid for  
14 twelve months and shall be renewed annually. The fee for a license is two hundred  
15 dollars per year.

16 **(3)** Retailers that sell tobacco products, alternative nicotine products, or vapor  
17 products shall be subject to an initial inspection within ninety days of receiving a  
18 tobacco retail license. Thereafter, retailers shall be subject to, at minimum, two

19 **unannounced inspections. The division shall seize any products not in compliance with**  
20 **this chapter or chapter 149, and the retailer shall be subject to a follow-up inspection**  
21 **within thirty days following a violation.**

22 **(4) The department of revenue may deny an application and refuse to issue or**  
23 **renew a license, or may suspend or revoke a license issued to any person if it determines**  
24 **that the licensee or the principals or managers at the licensable location of the applicant**  
25 **or licensee have been found guilty of any fraud or misrepresentation in any connection;**  
26 **convicted of robbery, extortion, burglary, larceny, embezzlement, fraudulent**  
27 **conversion, gambling, perjury, bribery, treason, tax evasion, or racketeering; or**  
28 **convicted of a felony within the last five years. The department of revenue may deny an**  
29 **application and refuse to issue or renew a license if there is a reasonable basis to**  
30 **determine the application is filed by a person as subterfuge for a different party of**  
31 **interest whose license has previously been denied, canceled, or revoked for cause or a**  
32 **violation under this chapter, chapter 149, or other applicable provision of law.**

33 **(5) The department of revenue and the division of alcohol and tobacco control**  
34 **may promulgate all necessary rules and regulations for the administration of this**  
35 **subsection.**

36 3. On or before July first of each year, the department of revenue shall make available  
37 to the division [~~of liquor control~~] and the department of mental health a complete list of every  
38 establishment which sells cigarettes, other tobacco products, alternative nicotine products, or  
39 vapor products in this state.

40 4. The division [~~of liquor control~~] shall have the authority to inspect stores and  
41 tobacco outlets for compliance with all laws related to access of tobacco products, alternative  
42 nicotine products, or vapor products to minors. The division may employ a person seventeen  
43 years of age, with parental consent, to attempt to purchase tobacco for the purpose of  
44 inspection or enforcement of tobacco laws.

45 5. The supervisor of the division [~~of liquor control~~] shall not use minors to enforce the  
46 provisions of this chapter unless the supervisor promulgates rules that establish standards for  
47 the use of minors. The supervisor shall establish mandatory guidelines for the use of minors  
48 in investigations by a state, county, municipal or other local law enforcement authority which  
49 shall be followed by such authority and which shall, at a minimum, provide for the following:

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

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

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

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

59 (5) Any attempt by such minor to purchase tobacco products, alternative nicotine  
60 products, or vapor products shall be videotaped or audiotaped with equipment sufficient to  
61 record all statements made by the minor and the seller of the ~~[tobacco]~~ product;

62 (6) The minor shall carry his or her own identification showing the minor's correct  
63 date of birth and shall, upon request, produce such identification to the seller of the tobacco  
64 product, alternative nicotine product, or vapor product;

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

67 (8) The minor shall not lie to the seller of the tobacco product, alternative nicotine  
68 product, or vapor product to induce a sale of ~~[tobacco]~~ **such** products;

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

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

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

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

80 (b) A Polaroid photograph of the minor;

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

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

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

87 6. If the state, county, municipal or other local law enforcement authority uses minors  
88 in investigations or in enforcing or determining violations of this chapter or any local  
89 ordinance and does not comply with the mandatory guidelines established by the supervisor  
90 of ~~[liquor]~~ **alcohol and tobacco** control in subsection 5 of this section, the supervisor of

91 ~~liquor~~ **alcohol and tobacco** control shall not take any disciplinary action against the  
92 establishment or seller pursuant to this chapter based on an alleged violation discovered when  
93 using a minor and shall not cooperate in any way with the state, county, municipal or other  
94 local law enforcement authority in prosecuting any alleged violation discovered when using a  
95 minor.

96 **7. Any commissioned law enforcement officer in the state may inspect the**  
97 **tobacco products, alternative nicotine products, or vapor products offered for sale by a**  
98 **retailer and shall seize any products not in compliance with the terms of this chapter or**  
99 **chapter 149. The cost of such seizure and destruction or disposal shall be borne by the**  
100 **person from whom the products are confiscated.**

✓