

**As Introduced**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**H. B. No. 347**

**Representative Patton**

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**A BILL**

To amend section 2927.02 of the Revised Code to  
place restrictions on retailers of vapor  
products.

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

**Section 1.** That section 2927.02 of the Revised Code be  
amended to read as follows:

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

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(1) "Age verification" means a service provided by an  
independent third party (other than a manufacturer, producer,  
distributor, wholesaler, or retailer of cigarettes, other  
tobacco products, alternative nicotine products, or papers used  
to roll cigarettes) that compares information available from a  
commercially available database, or aggregate of databases, that  
regularly are used by government and businesses for the purpose  
of age and identity verification to personal information  
provided during an internet sale or other remote method of sale  
to establish that the purchaser is twenty-one years of age or  
older.

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(2) (a) "Alternative nicotine product" means, subject to

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division (A) (2) (b) of this section, an electronic smoking 20  
device, vapor product, or any other product or device that 21  
consists of or contains nicotine that can be ingested into the 22  
body by any means, including, but not limited to, chewing, 23  
smoking, absorbing, dissolving, or inhaling. 24

(b) "Alternative nicotine product" does not include any of 25  
the following: 26

(i) Any cigarette or other tobacco product; 27

(ii) Any product that is a "drug" as that term is defined 28  
in 21 U.S.C. 321(g) (1); 29

(iii) Any product that is a "device" as that term is 30  
defined in 21 U.S.C. 321(h); 31

(iv) Any product that is a "combination product" as 32  
described in 21 U.S.C. 353(g). 33

(3) "Cigarette" includes clove cigarettes and hand-rolled 34  
cigarettes. 35

(4) "Distribute" means to furnish, give, or provide 36  
cigarettes, other tobacco products, alternative nicotine 37  
products, or papers used to roll cigarettes to the ultimate 38  
consumer of the cigarettes, other tobacco products, alternative 39  
nicotine products, or papers used to roll cigarettes. 40

(5) "Electronic smoking device" means any device that can 41  
be used to deliver aerosolized or vaporized nicotine or any 42  
other substance to the person inhaling from the device including 43  
an electronic cigarette, electronic cigar, electronic hookah, 44  
vaping pen, or electronic pipe. "Electronic smoking device" 45  
includes any component, part, or accessory of such a device, 46  
whether or not sold separately, and includes any substance 47

intended to be aerosolized or vaporized during the use of the 48  
device. "Electronic smoking device" does not include any product 49  
that is a drug, device, or combination product, as those terms 50  
are defined or described in 21 U.S.C. 321 and 353(g). 51

(6) "Proof of age" means a driver's license, a commercial 52  
driver's license, a military identification card, a passport, or 53  
an identification card issued under sections 4507.50 to 4507.52 54  
of the Revised Code that shows that a person is eighteen years 55  
of age or older. 56

(7) "Tobacco product" means any product that is made or 57  
derived from tobacco or that contains any form of nicotine, if 58  
it is intended for human consumption or is likely to be 59  
consumed, whether smoked, heated, chewed, absorbed, dissolved, 60  
inhaled, or ingested by any other means, including, but not 61  
limited to, a cigarette, an electronic smoking device, a cigar, 62  
pipe tobacco, chewing tobacco, snuff, or snus. "Tobacco product" 63  
also means any component or accessory used in the consumption of 64  
a tobacco product, such as filters, rolling papers, pipes, blunt 65  
or hemp wraps, and liquids used in electronic smoking devices, 66  
whether or not they contain nicotine. "Tobacco product" does not 67  
include any product that is a drug, device, or combination 68  
product, as those terms are defined or described in 21 U.S.C. 69  
321 and 353(g). 70

(8) "Vapor product" means a product, other than a 71  
cigarette or other tobacco product as defined in Chapter 5743. 72  
of the Revised Code, that contains or is made or derived from 73  
nicotine and that is intended and marketed for human 74  
consumption, including by smoking, inhaling, snorting, or 75  
sniffing. "Vapor product" includes any component, part, or 76  
additive that is intended for use in an electronic smoking 77

device, a mechanical heating element, battery, or electronic 78  
circuit and is used to deliver the product. "Vapor product" does 79  
not include any product that is a drug, device, or combination 80  
product, as those terms are defined or described in 21 U.S.C. 81  
321 and 353(g). "Vapor product" includes any product containing 82  
nicotine, regardless of concentration. 83

(9) "Vending machine" has the same meaning as "coin 84  
machine" in section 2913.01 of the Revised Code. 85

(B) No manufacturer, producer, distributor, wholesaler, or 86  
retailer of cigarettes, other tobacco products, alternative 87  
nicotine products, or papers used to roll cigarettes, no agent, 88  
employee, or representative of a manufacturer, producer, 89  
distributor, wholesaler, or retailer of cigarettes, other 90  
tobacco products, alternative nicotine products, or papers used 91  
to roll cigarettes, and no other person shall do any of the 92  
following: 93

(1) Give, sell, or otherwise distribute cigarettes, other 94  
tobacco products, alternative nicotine products, or papers used 95  
to roll cigarettes to any person under twenty-one years of age; 96

(2) Give away, sell, or distribute cigarettes, other 97  
tobacco products, alternative nicotine products, or papers used 98  
to roll cigarettes in any place that does not have posted in a 99  
conspicuous place a legibly printed sign in letters at least 100  
one-half inch high stating that giving, selling, or otherwise 101  
distributing cigarettes, other tobacco products, alternative 102  
nicotine products, or papers used to roll cigarettes to a person 103  
under twenty-one years of age is prohibited by law; 104

(3) Knowingly furnish any false information regarding the 105  
name, age, or other identification of any person under twenty- 106

one years of age with purpose to obtain cigarettes, other 107  
tobacco products, alternative nicotine products, or papers used 108  
to roll cigarettes for that person; 109

(4) Manufacture, sell, or distribute in this state any 110  
pack or other container of cigarettes containing fewer than 111  
twenty cigarettes or any package of roll-your-own tobacco 112  
containing less than six-tenths of one ounce of tobacco; 113

(5) Sell cigarettes or alternative nicotine products in a 114  
smaller quantity than that placed in the pack or other container 115  
by the manufacturer; 116

(6) Give, sell, or otherwise distribute alternative 117  
nicotine products, papers used to roll cigarettes, or tobacco 118  
products other than cigarettes over the internet or through 119  
another remote method without age verification. 120

(C) No person shall sell or offer to sell cigarettes, 121  
other tobacco products, or alternative nicotine products by or 122  
from a vending machine, except in the following locations: 123

(1) An area within a factory, business, office, or other 124  
place not open to the general public; 125

(2) An area to which persons under twenty-one years of age 126  
are not generally permitted access; 127

(3) Any other place not identified in division (C) (1) or 128  
(2) of this section, upon all of the following conditions: 129

(a) The vending machine is located within the immediate 130  
vicinity, plain view, and control of the person who owns or 131  
operates the place, or an employee of that person, so that all 132  
cigarettes, other tobacco product, and alternative nicotine 133  
product purchases from the vending machine will be readily 134

observed by the person who owns or operates the place or an 135  
employee of that person. For the purpose of this section, a 136  
vending machine located in any unmonitored area, including an 137  
unmonitored coatroom, restroom, hallway, or outer waiting area, 138  
shall not be considered located within the immediate vicinity, 139  
plain view, and control of the person who owns or operates the 140  
place, or an employee of that person. 141

(b) The vending machine is inaccessible to the public when 142  
the place is closed. 143

(c) A clearly visible notice is posted in the area where 144  
the vending machine is located that states the following in 145  
letters that are legibly printed and at least one-half inch 146  
high: 147

"It is illegal for any person under the age of 21 to 148  
purchase tobacco or alternative nicotine products." 149

(D) The following are affirmative defenses to a charge 150  
under division (B) (1) of this section: 151

(1) The person under twenty-one years of age was 152  
accompanied by a parent, spouse who is twenty-one years of age 153  
or older, or legal guardian of the person under twenty-one years 154  
of age. 155

(2) The person who gave, sold, or distributed cigarettes, 156  
other tobacco products, alternative nicotine products, or papers 157  
used to roll cigarettes to a person under twenty-one years of 158  
age under division (B) (1) of this section is a parent, spouse 159  
who is twenty-one years of age or older, or legal guardian of 160  
the person under twenty-one years of age. 161

(E) It is not a violation of division (B) (1) or (2) of 162  
this section for a person to give or otherwise distribute to a 163

person under twenty-one years of age cigarettes, other tobacco 164  
products, alternative nicotine products, or papers used to roll 165  
cigarettes while the person under twenty-one years of age is 166  
participating in a research protocol if all of the following 167  
apply: 168

(1) The parent, guardian, or legal custodian of the person 169  
under twenty-one years of age has consented in writing to the 170  
person under twenty-one years of age participating in the 171  
research protocol. 172

(2) An institutional human subjects protection review 173  
board, or an equivalent entity, has approved the research 174  
protocol. 175

(3) The person under twenty-one years of age is 176  
participating in the research protocol at the facility or 177  
location specified in the research protocol. 178

(F) (1) As used in this division, "retail establishment 179  
that primarily sells vapor products" means a retail 180  
establishment in which at least ninety per cent of the revenue 181  
derives from vapor products. 182

(2) No operator of a retail establishment that primarily 183  
sells vapor products shall recklessly permit a person under the 184  
age of twenty-one to enter the establishment. 185

(3) No operator of a retail establishment that sells vapor 186  
products shall recklessly sell a vapor product in open display 187  
and accessible to the public without the intervention of a store 188  
employee. 189

(G) (1) Whoever violates division (B) (1), (2), (4), (5), or 190  
(6) or (C) of this section is guilty of illegal distribution of 191  
cigarettes, other tobacco products, or alternative nicotine 192

products. Except as otherwise provided in this division, illegal 193  
distribution of cigarettes, other tobacco products, or 194  
alternative nicotine products is a misdemeanor of the fourth 195  
degree. If the offender previously has been convicted of a 196  
violation of division (B) (1), (2), (4), (5), or (6) or (C) of 197  
this section, illegal distribution of cigarettes, other tobacco 198  
products, or alternative nicotine products is a misdemeanor of 199  
the third degree. 200

(2) Whoever violates division (B) (3) of this section is 201  
guilty of permitting a person under twenty-one years of age to 202  
use cigarettes, other tobacco products, or alternative nicotine 203  
products. Except as otherwise provided in this division, 204  
permitting a person under twenty-one years of age to use 205  
cigarettes, other tobacco products, or alternative nicotine 206  
products is a misdemeanor of the fourth degree. If the offender 207  
previously has been convicted of a violation of division (B) (3) 208  
of this section, permitting a person under twenty-one years of 209  
age to use cigarettes, other tobacco products, or alternative 210  
nicotine products is a misdemeanor of the third degree. 211

~~(G) (3) Whoever violates division (F) (2) or (3) of this~~ 212  
~~section is guilty of a misdemeanor of the second degree.~~ 213

(H) Any cigarettes, other tobacco products, alternative 214  
nicotine products, or papers used to roll cigarettes that are 215  
given, sold, or otherwise distributed to a person under twenty- 216  
one years of age in violation of this section and that are used, 217  
possessed, purchased, or received by a person under twenty-one 218  
years of age in violation of section 2151.87 of the Revised Code 219  
are subject to seizure and forfeiture as contraband under 220  
Chapter 2981. of the Revised Code. 221

**Section 2.** That existing section 2927.02 of the Revised 222

Code is hereby repealed.

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