

Regular Session, 2014

HOUSE BILL NO. 208

BY REPRESENTATIVE HOFFMANN

CRIME: Provides relative to alternative nicotine products

1 AN ACT

2 To amend and reenact R.S. 14:91.6(A) and 91.8(A), (B), (C), (D), (E), (F)(1) and
3 (2)(introductory paragraph) and (c), and (H) and R.S. 26:909(A)(3), 910(introductory
4 paragraph) and (2), 910.1(A), and 911(A)(introductory paragraph) and (1), (2), and
5 (3), and to enact R.S. 14:91.6(B)(6) and (7) and 91.8(G)(6) and (7) and R.S.
6 26:901(28) and (29), relative to alternative nicotine products; to prohibit the sale,
7 purchase, or possession of alternative nicotine products by minors; to prohibit the
8 placement of alternative nicotine products in vending machines in certain
9 circumstances; to provide for definitions; to provide for the applicability of criminal
10 penalties; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 14:91.6(A) and 91.8(A), (B), (C), (D), (E), (F)(1) and
13 (2)(introductory paragraph) and (c), and (H) are hereby amended and reenacted and R.S.
14 14:91.6(B)(6) and (7) and 91.8(G)(6) and (7) are hereby enacted to read as follows:

15 §91.6. Unlawful distribution of sample tobacco products or alternative nicotine
16 products to persons under age eighteen; penalty

17 A. No person shall distribute or cause to be distributed to persons under
18 eighteen years of age a promotional sample of any tobacco product or any alternative
19 nicotine product.

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

21 * * *

1 (6) "Alternative nicotine product" means a product, including an electronic
2 cigarette, that consists of or contains nicotine that can be ingested into the body by
3 chewing, absorbing, dissolving, or inhaling, or by any other means. "Alternative
4 nicotine product" shall not include any of the following:

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

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

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

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

12 "Electronic cigarette" shall not include any of the following:

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

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

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

16 * * *

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

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

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

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

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

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

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

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

23 * * *

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

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

28 * * *

1 (6) "Alternative nicotine product" means a product, including an electronic
2 cigarette, that consists of or contains nicotine that can be ingested into the body by
3 chewing, absorbing, dissolving, or inhaling, or by any other means. "Alternative
4 nicotine product" shall not include any of the following:

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

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

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

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

12 "Electronic cigarette" shall not include any of the following:

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

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

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

16 H.(1) A person who violates the provisions of this Section by selling or
17 buying tobacco products or alternative nicotine products shall be fined not more than
18 fifty dollars for the first violation. The penalties for subsequent violations shall be
19 a fine of not more than one hundred dollars for the second violation, a fine of not
20 more than two hundred fifty dollars for the third violation, and a fine of not more
21 than four hundred dollars for any subsequent violation ~~thereafter~~.

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

25 * * *

26 Section 2. R.S. 26:909(A)(3), 910(introductory paragraph) and (2), 910.1(A) and
27 911(A)(introductory paragraph) and (1), (2), and (3) are hereby amended and reenacted and
28 R.S. 26:901(28) and (29) are hereby enacted to read as follows:

1 CHAPTER 7. TOBACCO PRODUCTS

2 §901. Definitions

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

5 * * *

6 (28) "Alternative nicotine product" means a product, including an electronic
7 cigarette, that consists of or contains nicotine that can be ingested into the body by
8 chewing, absorbing, dissolving, or inhaling, or by any other means. "Alternative
9 nicotine product" shall not include any of the following:

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

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

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

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

17 "Electronic cigarette" shall not include any of the following:

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

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

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

21 * * *

22 §909. General requirements of eligibility

23 A. The commissioner may suspend a permit previously issued or may refuse
24 to grant a permit if, after a hearing and by a preponderance of the evidence, it is
25 proven that the permittee, or an employee or agent thereof, or applicant either:

26 * * *

27 (3) Has violated the terms and provisions of the "Prevention of Youth Access
28 to Tobacco or Alternative Nicotine Products Law" under R.S. 14:91.8.

29 * * *

1 §910. Vending machines

2 In order to prevent persons under eighteen years of age from purchasing or
3 receiving tobacco products or alternative nicotine products from vending machines,
4 the sale or delivery of tobacco products or alternative nicotine products through a
5 vending machine is prohibited unless either:

6 * * *

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

13 §910.1. Self-service displays

14 A. In order to prevent persons under eighteen years of age from purchasing
15 or receiving tobacco products; or alternative nicotine products from self-service
16 displays, the sale or delivery of tobacco products or alternative nicotine products
17 through a self-service display is prohibited unless the machine is a vending machine
18 that complies with the terms and provisions of R.S. 26:910.

19 * * *

20 §911. Acts prohibited

21 A. No person, agent, associate, employee, representative, or servant of any
22 person shall permit any of the following acts to be done on or about any premises
23 which sells or offers for sale tobacco products or alternative nicotine products:

24 (1) Sell or serve tobacco products or alternative nicotine products over-the-
25 counter in a retail establishment to any person under the age of eighteen unless such
26 person submits a driver's license, selective service card, or other lawful identification
27 which on its face establishes the age of the person as eighteen years or older and
28 there is no reason to doubt the authenticity or correctness of the identification.

1 (2) Violate the terms and provisions of R.S. 14:91.6 relative to the unlawful
2 distribution of tobacco products or alternative nicotine products.

3 (3) Violate the terms and provisions of the "Prevention of Youth Access to
4 Tobacco or Alternative Nicotine Products Law" under R.S. 14:91.8.

5 * * *

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

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Hoffmann

HB No. 208

Abstract: Adds alternative nicotine products to prohibitions regarding the possession, sales, and purchasing of tobacco products involving minors.

Present law provides for the unlawful possession, sales, purchase, and distribution of tobacco products to minors.

Proposed law adds alternative nicotine products to the present law prohibitions.

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

Proposed law defines "electronic cigarette" to mean a product or device that produces a vapor that delivers nicotine or other substances to the person inhaling from the device to simulate smoking and is likely to be offered to or purchased by consumers as an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe.

Present law provides in order to prevent persons under 18 years of age from purchasing or receiving tobacco products from vending machines or self-service displays, the sale or delivery of tobacco products through a vending machine or self-service display is prohibited.

Proposed law adds alternative nicotine products to the present law prohibitions.

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

(Amends R.S. 14:91.6(A) and 91.8(A), (B), (C), (D), (E), (F)(1) and (2)(intro. para.) and (c), and (H) and R.S. 26:909(A)(3), 910(intro. para.) and (2), 910.1(A), and 911(A)(intro. para.) and (1), (2), and (3); Adds R.S. 14:91.6(B)(6) and (7) and 91.8(G)(6) and (7) and R.S. 26:901(28) and (29))