

1 State of Arkansas
2 92nd General Assembly
3 First Extraordinary Session, 2019
4

A Bill

DRAFT JMB/JMB
SENATE BILL

5 By: Senator J. Hendren
6

For An Act To Be Entitled

8 AN ACT TO CREATE THE SCHOOL SAFETY ACT; TO IMPOSE A
9 PRIVILEGE TAX ON E-CIGARETTES TO PROVIDE FUNDS TO
10 SCHOOLS FOR SAFETY AND MENTAL HEALTH COUNSELING; TO
11 PROHIBIT VAPING IN ALL PLACES IN WHICH SMOKING IS
12 ALREADY PROHIBITED UNDER ARKANSAS LAW; TO AMEND THE
13 DEFINITIONS OF "SMOKING" TO INCLUDE E-CIGARETTES; TO
14 RESTRICT ADVERTISING OF E-CIGARETTES TO MINORS; AND
15 FOR OTHER PURPOSES.
16
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Subtitle

18 TO CREATE THE SCHOOL SAFETY ACT; TO
19 IMPOSE A PRIVILEGE TAX ON E-CIGARETTES;
20 TO PROHIBIT VAPING IN ALL PLACES IN WHICH
21 SMOKING IS ALREADY PROHIBITED; AND TO
22 RESTRICT ADVERTISING OF E-CIGARETTES TO
23 MINORS.
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27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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29 SECTION 1. DO NOT CODIFY. Title.

30 This act shall be known and may be cited as the "School Safety Act".
31

32 SECTION 2. DO NOT CODIFY. Legislative intent.

33 It is the intent of the General Assembly to:

34 (1) Prohibit the use of vapor products, e-liquid products, or e-
35 cigarettes, also known as "vaping", in all places in which smoking is already
36 prohibited under Arkansas law;

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1 (2) Place restrictions on advertising of e-cigarettes, vapor
2 products, and e-liquids products near schools and restrict access to minors
3 by wholesalers, manufacturers, and retailers of e-cigarettes, vapor products,
4 and e-liquid products; and

5 (3) Impose a privilege a tax on e-cigarettes to provide funding
6 to schools for safety and mental health counseling.

7
8 SECTION 3. Arkansas Code Title 4 is amended to add an additional
9 chapter to read as follows:

10 Chapter 119 – Advertising of E-cigarettes to Minors

11
12 4-119-101. Legislative findings and intent.

13 (a) The General Assembly finds that:

14 (1) The use of e-cigarettes, also known as vaping, has become an
15 epidemic in the State of Arkansas, especially among the youth of Arkansas;

16 (2) The Department of Health announced in December 2018 that e-
17 cigarette use among students in Arkansas is expected to match a national rate
18 of just over twenty percent (20%) or more than one (1) in five (5) teens;

19 (3) United States health officials are presently investigating
20 possible cases of severe lung disease and deaths associated with vaping
21 across the states;

22 (4) Advertising, marketing, and promotion of e-cigarettes have
23 been especially directed to attract youth to use these products;

24 (5) Advertising of e-cigarettes increases consumption of these
25 products including use by young people;

26 (6) Similar to the restrictions on tobacco advertising,
27 comprehensive advertising restrictions would have a positive effect on
28 reducing the rates of young people using e-cigarettes;

29 (7) Restrictions on advertising and marketing of e-cigarettes
30 are necessary to prevent unrestricted advertising from undermining laws
31 prohibiting access to young people and minors;

32 (8) The United States Supreme Court has ruled that commercial
33 advertising may be regulated, provided the restrictions meet a four-pronged
34 test, including without limitation whether the advertising is deceptive and
35 misleading;

36 (9) It is in the public interest for the General Assembly to

1 enact restrictions on advertising and marketing of e-cigarettes to reduce the
2 illegal purchasing and possessing of these products by minors.

3 (b) It is the intent of the General Assembly to place a restriction on
4 advertising of e-cigarettes near schools and restrict access to minors by
5 wholesalers, manufacturers, and retailers of e-cigarettes.

6
7 4-119-102. Definitions.

8 As used in this chapter:

9 (1) "E-cigarette" means a vapor product or an e-liquid product,
10 as those terms are defined in § 26-57-203; and

11 (2) "Minor" means the same as defined in § 5-27-227.

12
13 4-119-103. Advertising near schools.

14 (a) A person, firm, corporation, partnership, or other organization
15 shall not advertise or cause to be advertised any e-cigarette on any outdoor
16 billboard located within one thousand feet (1,000') of any public or private
17 school or public playground.

18 (b) This section does not:

19 (1) Prohibit the display of a message or advertisement opposing
20 the use of e-cigarettes; or

21 (2) Permit an advertisement promoting the use of e-cigarettes by
22 including a message opposing the use of e-cigarettes within the
23 advertisement.

24
25 4-119-104. Minor access.

26 A wholesaler, manufacturer, or retailer of e-cigarettes shall not:

27 (1) Distribute e-cigarettes, including samples, to any minor; or

28 (2) Advertise to initiate, maintain, or increase the use of e-
29 cigarettes by minors.

30
31 4-119-105. Penalties.

32 (a) A violation of this chapter is a Class A misdemeanor.

33 (b) The Director of Arkansas Tobacco Control may revoke or suspend the
34 license issued of any wholesaler, manufacturer, or retailer who does not
35 comply with any provisions of this chapter or any rule of the director
36 prescribes under this chapter.

1
 2 SECTION 4. Arkansas Code § 6-60-803(7), concerning the definition of
 3 "smoking" within the Clean Air on Campus Act of 2009, is amended to read as
 4 follows:

5 (7) "Smoking" means inhaling, exhaling, burning, using, or
 6 carrying any:

7 (A) Lighted tobacco product, including ~~cigarettes, cigars,~~
 8 and a cigarette, a cigar, or pipe tobacco; and

9 (B) Other lighted combustible plant material; ~~and or~~

10 (C) E-cigarette as defined in § 4-119-102; and

11
 12 SECTION 5. Arkansas Code § 9-28-110 is amended to read as follows:
 13 9-28-110. Smoking in the presence of foster children.

14 (a) As used in this section, "smoke" means the act of inhaling,
 15 exhaling, burning, using, or carrying any:

16 (1) Lighted tobacco product, including a cigarette, a cigar, or
 17 pipe tobacco;

18 (2) Other lighted combustible plant material; or

19 (3) E-cigarette as defined in § 4-119-102.

20 (b) The Department of Human Services shall not place or permit a child
 21 to remain in a foster home, unless it is in the best interest of the child to
 22 be placed in or to remain in the foster home, if ~~the foster parent:~~

23 (1) ~~Or any other member~~ Members of the household ~~smokes~~ smoke;
 24 or

25 (2) ~~Allows an individual~~ Individuals are permitted to smoke in
 26 the presence of a foster child by a foster parent.

27
 28 SECTION 6. Arkansas Code § 12-6-401 is amended to read as follows:
 29 12-6-401. Smoking in patrol vehicles prohibited.

30 (a) As used in this section, "smoking" means inhaling, exhaling,
 31 burning, using, or carrying any:

32 (1) Lighted tobacco product, including a cigarette, a cigar, or
 33 pipe tobacco;

34 (2) Other lighted combustible plant material; or

35 (3) E-cigarette as defined in § 4-119-102.

36 (b) Each county sheriff's office and police department of a

1 municipality may designate a proportionate number of its patrol vehicles as
 2 “nonsmoking” vehicles and shall not allow smoking ~~of tobacco products~~ in
 3 those vehicles.

4
 5 SECTION 7. Arkansas Code § 20-27-706(a), concerning public smoking in
 6 medical facilities, is amended to read as follows:

7 (a) Smoking of tobacco, vapor products, e-liquid products, or e-
 8 cigarettes is prohibited in and on the grounds of all medical facilities.

9
 10 SECTION 8. Arkansas Code § 20-27-1803(17), concerning the definition
 11 of "smoking" in the Arkansas Clean Indoor Air Act of 2006, is amended to read
 12 as follows:

13 (17) “Smoking” means inhaling, exhaling, burning, using, or
 14 carrying any:

15 (A) Lighted tobacco product, including ~~cigarettes, cigars,~~
 16 ~~and a cigarette, a cigar, or pipe tobacco; and~~

17 (B) Other lighted combustible plant material; ~~and or~~

18 (C) E-cigarette; and

19
 20 SECTION 9. Arkansas Code § 20-27-1803, concerning the definitions
 21 within the Arkansas Clean Indoor Air Act of 2006, is amended to add an
 22 additional subdivision to read as follows:

23 (19) "E-cigarette" means a vapor product or an e-liquid product,
 24 as those terms are defined in § 26-57-203.

25
 26 SECTION 10. Arkansas Code § 20-27-1902, as amended by Acts 2019, No.
 27 315, is amended to read as follows:

28 20-27-1902. ~~Definition~~ Definitions.

29 As used in this subchapter,:

30 (1) ~~“motor~~ Motor vehicle” means any motor vehicle, except a
 31 school bus, a church bus, or other public conveyance, that is required by
 32 federal or state law, rule, or regulation to be equipped with a passenger
 33 restraint system; and

34 (2) “Smoking” means inhaling, exhaling, burning, using, or
 35 carrying any:

36 (A) Lighted tobacco product, including a cigarette, a

1 cigar, or pipe tobacco;

2 (B) Other lighted combustible plant material; or

3 (C) E-cigarette as defined in § 4-119-102.

4
5 SECTION 11. Arkansas Code § 20-78-217, as amended by Acts 2019, No.
6 315, is amended to read as follows:

7 20-78-217. Smoking prohibited – Legislative intent.

8 (a) Whereas, health authorities have established that smoking is not
9 conducive to good health and that children exposed to smoking face a
10 potential health hazard, therefore, it is the intent of the ~~Seventy-Fifth~~
11 General Assembly to ban smoking in the physical confines of the day care
12 centers licensed by the Division of Child Care and Early Childhood Education
13 of the Department of Human Services.

14 (b) The division ~~is directed to~~ shall promulgate sufficient rules to
15 ensure that state licensing requirements for day care center operations
16 contain a stipulation ~~which~~ that bans smoking as defined by the Arkansas
17 Clean Indoor Air Act of 2006, § 20-27-1801 et seq., within the physical
18 confines of each day care center.

19
20 SECTION 12. Arkansas Code § 22-3-220 is amended to read as follows:
21 22-3-220. Smoking in State Capitol Building prohibited.

22 (a) As used in this section, "smoking" means the act of inhaling,
23 exhaling, burning, using, or carrying any:

24 (1) Lighted tobacco product, including a cigarette, a cigar, or
25 pipe tobacco;

26 (2) Other lighted combustible plant material; or

27 (3) E-cigarette as defined in § 4-119-102.

28 (b) Any person smoking ~~any cigarette, cigar, pipe, or other tobacco~~
29 product in the State Capitol Building ~~shall be~~ is guilty of a violation
30 punishable by a fine of twenty-five dollars (\$25.00).

31
32 SECTION 13. Arkansas Code Title 26, Chapter 57, is amended to add an
33 additional subchapter to read as follows:

34 Subchapter 16 – E-Cigarette Privilege Tax

35
36 26-57-1601. Definition.

1 As used in this subchapter, "e-cigarette" means a vapor product or an
2 e-liquid product, as those terms are defined in § 26-57-203.

3
4 26-57-1602. Privilege tax.

5 There is levied a privilege tax on e-cigarettes sold in this state that
6 is equal to the total tax levied on tobacco products, as defined in § 26-57-
7 203, other than cigarettes.

8
9 26-57-1603. Imposition, reporting, remittance, and administration of
10 privilege tax.

11 Except as otherwise provided in this subchapter, the privilege tax
12 levied under § 26-57-1602 shall be imposed, reported, remitted, and
13 administered in the same manner and at the same time as taxes on tobacco
14 products under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et
15 seq.

16
17 26-57-1604. Invoices.

18 The privilege tax levied under § 26-57-1602 shall be separately stated
19 and identified on each invoice or statement as the "E-cigarette Privilege
20 Tax".

21
22 26-57-1605. Distribution of revenues.

23 The revenues collected under this subchapter shall be credited to the
24 Public School Fund to be used by the Department of Education to fund school
25 facility safety improvements, security equipment, security personnel, and
26 mental health counselors for students with an addiction or other mental
27 health issue.

28
29 26-57-1606. Applicability.

30 The privilege tax levied under § 26-57-1602 applies to e-cigarettes
31 sold on or after the effective date of this subchapter.

32
33 26-57-1607. Rules.

34 (a) The Secretary of the Department of Finance and Administration,
35 shall adopt rules necessary to implement and allow for the enforcement of
36 this subchapter.

1 (b) The Secretary of the Department of Education shall adopt rules
2 necessary to administer the school safety funding provided under § 26-57-
3 1605.

4
5 SECTION 14. DO NOT CODIFY. Rules.

6 (a) When adopting the initial rules required under this act, the final
7 rules shall be filed with the Secretary of State for adoption under § 25-15-
8 204(f):

9 (1) On or before January 1, 2020; or

10 (2) If approval under § 10-3-309 has not occurred by January 1,
11 2020, as soon as practicable after approval under § 10-3-309.

12 (b) The Secretary of the Department of Finance and Administration, the
13 Secretary of the Department of Education, and Director of Arkansas Tobacco
14 Control shall file the proposed rules with the Legislative Council under §
15 10-3-309(c) sufficiently in advance of January 1, 2020, so that the
16 Legislative Council may consider the rules for approval before January 1,
17 2020.

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19 SECTION 15. EFFECTIVE DATE. Section 13 of this act is effective on
20 the first day of the second calendar month following the effective date of
21 this act.

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