

HOUSE COMMITTEE OF REFERENCE REPORT

March 16, 2022

Chair of Committee

Date

Committee on Health & Insurance.

After consideration on the merits, the Committee recommends the following:

HB22-1064 be amended as follows, and as so amended, be referred to the Committee on Finance with favorable recommendation:

1 Amend printed bill, page 7, line 12, strike "**add** (4.5)" and substitute
2 "**amend** (1); and **add** (1.3), (1.5), (4.5), (5.5), (9.5)".

3 Page 7, after line 15 insert:

4 "(1) ~~"Cigarette, tobacco product, or nicotine product" has the same meaning as provided in section 18-13-121 (5)~~ (a) "AGE-RESTRICTED PREMISES" MEANS A RETAIL LOCATION AT WHICH A CUSTOMER, IN ORDER TO ENTER THE RETAIL LOCATION, MUST PRESENT TO THE OWNER OR AN EMPLOYEE AT THE ENTRANCE TO THE PREMISES, A VALID GOVERNMENT-ISSUED PHOTOGRAPHIC IDENTIFICATION THAT DEMONSTRATES THAT THE CUSTOMER IS TWENTY-ONE YEARS OF AGE OR OLDER.

12 (b) "AGE-RESTRICTED PREMISES" INCLUDES A RETAIL LOCATION THAT MEETS THE REQUIREMENTS OF SUBSECTION (1)(a) OF THIS SECTION AND AT WHICH CUSTOMERS CONSUME CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS ON PREMISES, SUCH AS A HOOKAH LOUNGE OR CIGAR-TOBACCO BAR, AS DEFINED IN SECTION 25-14-203 (4).

17 (c) "AGE-RESTRICTED PREMISES" DOES NOT INCLUDE A RETAIL LIQUOR STORE AS DEFINED IN SECTION 44-3-103 (48).

19 (1.3) "CIGAR LOUNGE" MEANS AN ESTABLISHMENT THAT:

20 (a) IS EXEMPTED FROM INDOOR SMOKING RESTRICTIONS UNDER SECTION 25-14-205;

22 (b) IN THE CALENDAR YEAR ENDING DECEMBER 31, 2022, AND FOR EACH CALENDAR YEAR THEREAFTER, GENERATES NINETY PERCENT OR MORE OF ITS REVENUE FROM THE SALE FOR ON-SITE CONSUMPTION OF PREMIUM CIGARS;

26 (c) ON AND AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (1.3):
27 (I) HAS NOT CHANGED OWNERSHIP;

4 (d) DOES NOT PERMIT ON ITS PREMISES:
5 (I) AN INDIVIDUAL UNDER TWENTY-ONE YEARS OF AGE;
6 (II) THE CONSUMPTION OF FOOD OR ALCOHOL BEVERAGES; AND
7 (III) ANY PERFORMANCE OF LIVE ENTERTAINMENT, INCLUDING
8 PERFORMANCES BY SINGERS, MUSICIANS, DISC JOCKEYS, DANCERS, OR
9 COMEDIANS.

10 (1.5) "CIGARETTE, TOBACCO PRODUCT, OR NICOTINE PRODUCT"
11 HAS THE SAME MEANING AS PROVIDED IN SECTION 18-13-121 (5).".

12 Page 7, after line 23 insert:

13 "(5.5) "ID SCANNER" MEANS AN ELECTRONIC DEVICE USED TO
14 SCAN AND VERIFY IN REAL TIME THE AUTHENTICITY OF AN IDENTIFICATION
15 PURPORTED TO BE A VALID GOVERNMENT-ISSUED PHOTOGRAPHIC
16 IDENTIFICATION CARD.

17 (9.5) "PREMIUM CIGAR" MEANS A CIGAR THAT:

18 (a) IS HANDMADE;

19 (b) IS NOT MASS PRODUCED THROUGH USE OF MECHANIZATION;

20 (c) HAS A WRAPPER THAT IS MADE ENTIRELY FROM WHOLE
21 TOBACCO LEAF;

22 (d) HAS A FILLER COMPOSED OF AT LEAST FIFTY PERCENT NATURAL
23 LONG-LEAF FILLER TOBACCO;

24 (e) DOES NOT HAVE A FILTER, TIP, OR NONTOBACCO MOUTHPIECE;
25 (f) IS CAPPED BY HAND; AND
26 (g) HAS A WHOLESALE PRICE PER CIGAR OF NO LESS THAN:

27 (I) FOR THE CALENDAR YEAR ENDING DECEMBER 31,

28 TWELVE DOLLARS; AND

29 (II) FOR CALENDAR YEAR 2023, AND FOR EACH CALENDAR YEAR

30 THEREAFTER, TWELVE DOLLARS PLUS THE AMOUNT REFLECTING ANY
31 PERCENTAGE INCREASE IN THE UNITED STATES DEPARTMENT OF LABOR'S
32 BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR
33 DENVER-AURORA-LAKWOOD FOR ALL ITEMS AND ALL URBAN
34 CONSUMERS, OR ITS SUCCESSOR INDEX.".

35 Page 8, line 2, strike "products -" and substitute "products or synthetic
36 nicotine products - permit for age-restricted premises - rules -
37 definition -".

38 Page 8, line 3, after "(1)" insert "(a)".

1 Page 8, line 4, strike "OR MARKET" and substitute "MARKET, SHIP, OR
2 DELIVER".

3 Page 8, line 5, strike "PRODUCT." and substitute "PRODUCT; EXCEPT THAT
4 A RETAILER MAY SELL, OFFER FOR SALE, ADVERTISE FOR SALE, DISPLAY,
5 OR MARKET IN THE STATE ANY FLAVORED PIPE TOBACCO PRODUCT.".

6 Page 8, after line 5 insert:

7 "(b) A RETAILER AUTHORIZED TO DELIVER CIGARETTES, TOBACCO
8 PRODUCTS, OR NICOTINE PRODUCTS PURSUANT TO SECTION 44-7-104.7
9 (3)(b) OR (3)(c) SHALL NOT DELIVER FLAVORED CIGARETTES, TOBACCO
10 PRODUCTS, OR NICOTINE PRODUCTS.".

11 Page 8, strike line 25 and substitute:

12 "(3) A RETAILER SHALL NOT SELL, OFFER FOR SALE, ADVERTISE
13 FOR SALE, DISPLAY, OR MARKET IN THIS STATE ANY SYNTHETIC NICOTINE
14 PRODUCT.

15 (4) THIS SECTION IS ENFORCEABLE ONLY AGAINST A RETAILER
16 AND".

17 Page 9, strike line 1 and substitute "NICOTINE PRODUCT OR SYNTHETIC
18 NICOTINE PRODUCT.".

19 Page 9, after line 1 insert:

20 "(5) THIS SECTION DOES NOT APPLY TO A PREMIUM CIGAR SOLD AT
21 A CIGAR LOUNGE FOR ON-SITE CONSUMPTION.

22 (6) (a) (I) A RETAILER SHALL NOT SELL OR PERMIT THE SALE OF
23 FLAVORED CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS IN
24 THE STATE WITHOUT FIRST OBTAINING FROM THE DIVISION A PERMIT TO
25 SELL FLAVORED CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE
26 PRODUCTS AT AN AGE-RESTRICTED PREMISES.

27 (II) ONLY A RETAILER WITH A VALID STATE LICENSE MAY APPLY
28 FOR A PERMIT PURSUANT TO THIS SUBSECTION (6), AND ONLY WITH
29 RESPECT TO A RETAIL LOCATION THAT, AS OF THE EFFECTIVE DATE OF THIS
30 SUBSECTION (6), IS AN AGE-RESTRICTED PREMISES. TO APPLY FOR AN
31 INITIAL PERMIT, A RETAILER SHALL PAY A FEE IN AN AMOUNT OF THREE
32 THOUSAND DOLLARS OR AN AMOUNT DETERMINED BY THE EXECUTIVE
33 DIRECTOR BY RULE PURSUANT TO SUBSECTION (6)(c)(II) OF THIS SECTION.

34 (III) A PERMIT IS VALID FOR ONE YEAR AND MAY BE RENEWED IN
35 THE FORM AND MANNER DETERMINED BY THE DIVISION AND BY PAYMENT

1 OF A RENEWAL FEE SET BY RULE PURSUANT TO SUBSECTION (6)(c)(II) OF
2 THIS SECTION. IF A PERMIT HOLDER'S STATE LICENSE IS SUSPENDED OR
3 REVOKED, THE PERMIT HOLDER'S PERMIT IS LIKEWISE SUSPENDED OR
4 REVOKED.

5 (IV) AN OWNER OF MULTIPLE RETAIL LOCATIONS THAT ARE
6 AGE-RESTRICTED PREMISES MUST APPLY FOR A SEPARATE PERMIT FOR
7 EACH RETAIL LOCATION.

8 (V) A PERMIT IS NONTRANSFERABLE. IF A PERMIT HOLDER CEASES
9 TO BE A RETAILER AT A RETAIL LOCATION BY REASON OF
10 DISCONTINUANCE, SALE, OR TRANSFER OF THE PERMIT HOLDER'S BUSINESS,
11 THE PERMIT HOLDER SHALL NOTIFY THE DIVISION IN WRITING ON OR
12 BEFORE THE DATE ON WHICH THE DISCONTINUANCE, SALE, OR TRANSFER
13 TAKES EFFECT.

14 (b) (I) THE DIVISION SHALL APPROVE OR DENY AN APPLICATION
15 FOR A PERMIT WITHIN SIXTY DAYS AFTER RECEIVING THE APPLICATION
16 AND PERMIT FEE. IF THE DIVISION DENIES AN APPLICATION, IT SHALL
17 INFORM THE APPLICANT OF THE REASONS FOR THE DENIAL, AND THE
18 APPLICANT, WITHIN FOURTEEN DAYS AFTER RECEIVING THE WRITTEN
19 DENIAL, MAY REQUEST THAT A HEARING BE HELD ON THE MATTER IN
20 ACCORDANCE WITH SECTION 44-7-105.

21 (II) UPON OBTAINING A PERMIT FROM THE DIVISION PURSUANT TO
22 THIS SUBSECTION (6), THE RETAILER SHALL CONSPICUOUSLY DISPLAY THE
23 PERMIT AT THE RETAIL LOCATION.

24 (III) THE DIVISION MAY COORDINATE THE RENEWAL DATE FOR A
25 PERMIT WITH THE RENEWAL DATE FOR THE PERMIT HOLDER'S STATE
26 LICENSE FOR THE RETAIL LOCATION.

27 (c) THE EXECUTIVE DIRECTOR SHALL ADOPT RULES ESTABLISHING
28 THE FOLLOWING WITH REGARD TO PERMITS ISSUED PURSUANT TO THIS
29 SUBSECTION (6):

30 (I) NOTWITHSTANDING SECTION 44-7-104 (3)(b)(I), A
31 REQUIREMENT THAT THE DIVISION PERFORM, CAUSE TO BE PERFORMED, OR
32 COORDINATE WITH A LOCAL AUTHORITY IN THE PERFORMANCE OF AT
33 LEAST SIX COMPLIANCE CHECKS PER YEAR OF AN AGE-RESTRICTED
34 PREMISES FOR WHICH THE RETAILER HAS OBTAINED A PERMIT PURSUANT
35 TO THIS SUBSECTION (6). THE COMPLIANCE CHECKS MUST INCLUDE:

36 (A) VERIFICATION THAT IDENTIFICATION IS CHECKED AT THE
37 ENTRANCE TO THE AGE-RESTRICTED PREMISES; AND

38 (B) VERIFICATION THAT, IN CHECKING IDENTIFICATION, THE
39 RETAILER USES AN ID SCANNER THAT COMPLIES WITH RULES ADOPTED
40 PURSUANT TO SUBSECTION (6)(c)(III) OF THIS SECTION.

41 (II) A PERMIT RENEWAL FEE IN AN AMOUNT EQUAL TO THE DIRECT
42 AND INDIRECT COSTS THAT THE DIVISION INCURS IN ENFORCING PERMITS,
43 INCLUDING THE DIRECT AND INDIRECT COSTS INCURRED IN PERFORMING

1 COMPLIANCE CHECKS. THE EXECUTIVE DIRECTOR MAY, BY RULE, ADJUST
2 THE INITIAL PERMIT FEE SET IN SUBSECTION (6)(a)(II) OF THIS SECTION IF
3 THE ADJUSTED FEE EQUALS THE DIRECT AND INDIRECT COSTS THAT THE
4 DIVISION INCURS IN ENFORCING PERMITS.

5 (III) SPECIFICATION REQUIREMENTS FOR ID SCANNERS USED AT
6 AGE-RESTRICTED PREMISES OR A LIST OF APPROVED ID SCANNER MODELS,
7 BASED ON THE NEED FOR RETAILERS TO USE THE MOST ACCURATE ID
8 SCANNERS AVAILABLE AT AGE-RESTRICTED PREMISES; AND

9 (IV) THE MAXIMUM NUMBER OF ANNUAL PERMITS THAT THE
10 DIVISION MAY ISSUE BASED ON THE NUMBER OF RETAIL LOCATIONS THAT,
11 AS OF THE EFFECTIVE DATE OF THIS SUBSECTION (6), ARE:

12 (A) AGE-RESTRICTED PREMISES; AND

13 (B) OPERATED UNDER A VALID LICENSE ISSUED PURSUANT TO
14 SECTION 44-7-104.5.

15 (d) A PERMIT ISSUED UNDER THIS SUBSECTION (6) IS SUBJECT TO
16 THE SAME SUSPENSION AND REVOCATION PROVISIONS SET FORTH IN
17 SECTION 44-7-105 (1)(b).

18 (e) (I) THE DIVISION SHALL REQUIRE AS A CONDITION OF A PERMIT
19 ISSUED PURSUANT TO THIS SUBSECTION (6) THAT THE RETAILER AFFIX A
20 UNIQUE IDENTIFYING NUMBER TO, OR HAVE A UNIQUE IDENTIFYING
21 NUMBER AFFIXED TO, THE PACKAGING OF THE FOLLOWING PRODUCTS:

22 (A) EACH INDIVIDUAL ELECTRONIC SMOKING DEVICE THAT IS
23 OFFERED FOR SALE AT THE RETAIL LOCATION FOR WHICH THE PERMIT IS
24 ISSUED AND THAT IS A FLAVORED CIGARETTE, TOBACCO PRODUCT, OR
25 NICOTINE PRODUCT; AND

26 (B) EACH INDIVIDUAL CARTRIDGE OR OTHER CONTAINER OF LIQUID
27 THAT IS INTENDED TO BE VAPORIZED WHEN USED WITH AN ELECTRONIC
28 SMOKING DEVICE, SUCH AS A VAPE PEN; THAT IS OFFERED FOR SALE AT THE
29 RETAIL LOCATION FOR WHICH THE PERMIT IS ISSUED; AND THAT IS A
30 FLAVORED CIGARETTE, TOBACCO PRODUCT, OR NICOTINE PRODUCT.

31 (II) THE DIVISION SHALL DEVELOP OR CAUSE TO BE DEVELOPED A
32 SYSTEM THROUGH WHICH A UNIQUE IDENTIFYING NUMBER AFFIXED TO THE
33 PACKAGING OF A PRODUCT LISTED IN SUBSECTION (6)(e)(I)(A) OR
34 (6)(e)(I)(B) OF THIS SECTION MAY BE TRACKED IN ORDER TO DETERMINE
35 THE RETAIL LOCATION AT WHICH THE PRODUCT WAS SOLD, FURNISHED, OR
36 OTHERWISE OBTAINED. THE SYSTEM MUST ALSO INCORPORATE DATA
37 INCLUDED IN RETAILERS' MONTHLY REPORTS SUBMITTED TO THE DIVISION
38 PURSUANT TO SUBSECTION (6)(e)(IV)(C) OF THIS SECTION REGARDING THE
39 FLAVORED CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS
40 SOLD AND WHEN AND TO WHOM THEY WERE SOLD. THE DIVISION SHALL
41 ENSURE THAT LOCAL LICENSING AUTHORITIES MAY ACCESS THE SYSTEM,
42 OR BE ABLE TO REQUEST FROM THE DIVISION DATA LOGGED INTO THE
43 SYSTEM, TO ENFORCE AGAINST THE UNLAWFUL SALE OR FURNISHING OF

1 FLAVORED CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS TO
2 MINORS.

3 (III) IF SCHOOL PERSONNEL OR A PARENT FINDS A MINOR IN
4 POSSESSION OF A FLAVORED CIGARETTE, TOBACCO PRODUCT, OR NICOTINE
5 PRODUCT WITH A UNIQUE IDENTIFYING NUMBER AFFIXED TO THE
6 PACKAGING OF THE PRODUCT AND REPORTS IT TO THE DIVISION OR A
7 LOCAL LICENSING AUTHORITY, THE DIVISION OR LOCAL LICENSING
8 AUTHORITY MAY USE THE UNIQUE IDENTIFYING NUMBER AND THE RESULTS
9 OF A SEARCH CONDUCTED ON THE UNIQUE IDENTIFYING NUMBER IN AN
10 INVESTIGATION TO DETERMINE:

11 (A) AT WHICH RETAIL LOCATION THE FLAVORED CIGARETTE,
12 TOBACCO PRODUCT, OR NICOTINE PRODUCT WAS SOLD;

13 (B) WHO FURNISHED THE FLAVORED CIGARETTE, TOBACCO
14 PRODUCT, OR NICOTINE PRODUCT TO THE MINOR;

15 (C) WHETHER THE PERSON WHO FURNISHED THE FLAVORED
16 CIGARETTE, TOBACCO PRODUCT, OR NICOTINE PRODUCT TO THE MINOR, IF
17 THE PERSON WAS A RETAILER OR EMPLOYEE OF A RETAILER, WAS
18 PRESENTED WITH AND REASONABLY RELIED UPON A GOVERNMENT-ISSUED
19 PHOTOGRAPHIC IDENTIFICATION INDICATING THAT THE MINOR WAS AN
20 ADULT AT THE TIME OF PURCHASE; AND

21 (D) WHETHER AND TO WHAT EXTENT THE PERSON SHOULD BE
22 PENALIZED UNDER SECTION 18-13-121 (1) AND, IF THE PERSON IS A
23 RETAILER, PURSUANT TO SECTION 44-7-106.

24 (IV) AS ADDITIONAL CONDITIONS OF A PERMIT ISSUED TO A
25 RETAILER PURSUANT TO THIS SUBSECTION (6), A RETAILER SHALL AGREE,
26 IN THE FORM AND MANNER DETERMINED BY THE DIVISION, TO:

27 (A) MAINTAIN RECORDS OF UNIQUE IDENTIFYING NUMBERS IN A
28 MANNER THAT ALLOWS A DETERMINATION OF WHEN A FLAVORED
29 CIGARETTE, TOBACCO PRODUCT, OR NICOTINE PRODUCT WITH A UNIQUE
30 IDENTIFYING NUMBER AFFIXED TO ITS PACKAGING WAS SOLD AND WHEN
31 AND TO WHOM IT WAS SOLD;

32 (B) COOPERATE WITH ANY INVESTIGATION INVOLVING A UNIQUE
33 IDENTIFYING NUMBER, INCLUDING ALLOWING ACCESS TO THE RETAILER'S
34 RECORDS DESCRIBED IN SUBSECTION (6)(e)(IV)(A) OF THIS SECTION; AND

35 (C) PROVIDE THE DIVISION WITH MONTHLY REPORTS, IN THE FORM
36 AND MANNER DETERMINED BY THE DIVISION, INDICATING THE FLAVORED
37 CIGARETTES, TOBACCO PRODUCTS, AND NICOTINE PRODUCTS SOLD AND
38 WHEN AND TO WHOM THE PRODUCTS WERE SOLD.

39 (V) THE EXECUTIVE DIRECTOR SHALL ADOPT RULES REGARDING
40 THE IMPLEMENTATION OF THIS SUBSECTION (6)(e), INCLUDING RULES
41 REGARDING THE FOLLOWING:

42 (A) THE MECHANISM BY WHICH UNIQUE IDENTIFYING NUMBERS
43 WILL BE ASSIGNED FOR THE FLAVORED CIGARETTES, TOBACCO PRODUCTS,

1 AND NICOTINE PRODUCTS LISTED IN SUBSECTIONS (6)(e)(I)(A) AND
2 (6)(e)(I)(B) OF THIS SECTION;

3 (B) THE SYSTEM CREATED IN ACCORDANCE WITH SUBSECTION
4 (6)(e)(II) OF THIS SECTION; AND

5 (C) ANY OTHER RULES NECESSARY TO IMPLEMENT THIS
6 SUBSECTION (6)(e).

7 (VI) AS USED IN THIS SUBSECTION (6)(e), "UNIQUE IDENTIFYING
8 NUMBER" MEANS A UNIQUE SERIES OF NUMERALS, LETTERS, OR BOTH
9 NUMERALS AND LETTERS.".

10 Page 9, strike line 7 and substitute "(5); and **add** (6) as follows:".

11 Page 9, line 9, strike "**definition.**" and substitute "**definitions.**".

12 Page 10, after line 12 insert:

13 (6) AS USED IN THIS SECTION, "SYNTHETIC NICOTINE" MEANS
14 NICOTINE DERIVED FROM A SOURCE OTHER THAN TOBACCO.".

15 Page 12, strike lines 22 through 24 and substitute:

16 **"SECTION 8. Effective date - applicability.** (1) Except as
17 provided in subsection (2) of this section, this act takes effect July 1,
18 2022, and applies to conduct occurring on or after the effective date of
19 this act.

20 (2) Sections 3 and 4 of this act take effect January 1, 2024, and
21 apply to conduct occurring on or after the effective date of sections 3 and
22 4 of this act.".

23 Page 1, line 106, after "NICOTINE," insert "**PROHIBITING THE**
24 **DISTRIBUTION OF SYNTHETIC NICOTINE PRODUCTS,**".

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