

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  
17

## 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.  
24  
25  
26

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
28

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.

18  
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.