

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL DRS55011-MLf-65C

Short Title: Protect Youth From Harms of Vaping & Nicotine. (Public)

Sponsors: Senator Adcock (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED
AN ACT TO PROTECT THE YOUTH FROM THE HARMFUL EFFECTS OF VAPING AND
NICOTINE ADDICTION BY RAISING THE LEGAL SALES AGE OF TOBACCO
PRODUCTS TO AGE 21 AND TO REQUIRE A TOBACCO RETAIL SALES PERMIT.
The General Assembly of North Carolina enacts:

**PART I. REQUIRE PERMIT FOR SALE OF TOBACCO PRODUCTS AND RESTRICT
PURCHASE OF TOBACCO PRODUCTS**

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 18D.

"Tobacco Products Retail Sales.

"Article 1.

"Definitions and Authority.

"§ 18D-100. Definitions.

(a) Unless the context requires otherwise, the following definitions apply in this Chapter:

- (1) ALE Division. – As defined in G.S. 18B-101.
- (2) Alternative nicotine product. – Any noncombustible product that contains nicotine, whether natural or synthetic, but does not contain tobacco and is intended for human consumption whether chewed, absorbed, dissolved, ingested, or by other means. This term does not include a vapor product or any product regulated by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act.
- (3) Commission. – As defined in G.S. 18B-101.
- (4) Component. – A "component or part," as that term is defined in section 1140.3 of Title 21 of the Code of Federal Regulations, as amended from time to time. This term includes cigarette wrapping papers, which has the same meaning as the term "cigarette paper" in 26 U.S.C. § 5702(e).
- (5) Consumable product. – As defined in G.S. 105-113.4. For purposes of this Chapter, a consumable product does not contain any tobacco leaf.
- (6) Consumer. – As defined in G.S. 105-113.4.
- (7) Delivery sale. – As defined in G.S. 105-113.4.
- (8) Delivery seller. – As defined in G.S. 105-113.4.
- (9) Delivery seller permit. – A permit issued to a delivery seller pursuant to this Chapter.
- (10) Delivery service. – As defined in G.S. 105-113.4.



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- (11) Distribute. – Sell, furnish, give, or provide tobacco products, including tobacco product samples, to the ultimate consumer.
- (12) E-liquid. – As defined in G.S. 14-401.18A.
- (13) Packaging. – Has the same meaning as the term "package" in G.S. 105-113.4.
- (14) Permit. – A permit issued to a retail dealer pursuant to this Chapter, unless the context clearly requires otherwise.
- (15) Person. – An individual, firm, partnership, association, corporation, limited liability company, other organization or group, or other combination of individuals acting as a unit.
- (16) Premises. – A fixed permanent establishment, including all areas inside or outside the licensed establishment, where the permittee has control through a lease, deed, or other legal process.
- (17) Proof of age. – A drivers license, a special identification card issued under G.S. 20-37.7 or issued by the state agency of any other state authorized to issue similar official state special identification cards for that state, a military identification card, or a passport showing the purchaser's age to be at least the required age for purchase and bearing a physical description of the person named on the card reasonably describing the purchaser.
- (18) Remote sale. – As defined in G.S. 105-113.4.
- (19) Remote seller. – As defined in G.S. 105-113.4.
- (20) Remote seller permit. – A permit issued to a remote seller pursuant to this Chapter.
- (21) Retail dealer. – As defined in G.S. 105-113.4.
- (22) Retail seller. – A retail dealer who is not a delivery seller or remote seller.
- (23) Retail seller permit. – A permit issued to a retail seller pursuant to this Chapter.
- (24) Sale. – As defined in G.S. 105-113.4.
- (25) Sample. – A tobacco product distributed to members of the general public at no cost for the purpose of promoting the product.
- (26) Secretary. – The Secretary of the Department of Revenue.
- (27) Tobacco product. – Any product that contains tobacco or nicotine from any source and is intended for human consumption. This term includes an alternative nicotine product, vapor product, e-liquid, consumable product, component of a tobacco product, or component of an alternative nicotine product.
- (28) Tobacco retail sales law. – Any statute or statutes in this Chapter, Article 2A of Chapter 105 of the General Statutes, and the rules issued by the Commission under the authority of this Chapter or the Department of Revenue under the authority of Article 2A of Chapter 105 of the General Statutes.
- (29) Tobacco retail sales permit. – A retail seller permit, a delivery seller permit, or a remote seller permit issued to a retail dealer pursuant to this Chapter.
- (30) Vapor product. – Any noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to heat a consumable product or e-liquid contained in a vapor cartridge. This term includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, vape pen, and e-liquid. This term does not include any product regulated by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act.

(b) Except as otherwise defined in this Chapter, the definitions in G.S. 105-113.4 apply to this Chapter.

"§ 18D-101. Powers and duties of the Commission.

- (a) The Commission shall have the authority to do all of the following:

- (1) Administer the tobacco retail sales laws pursuant to this Chapter.
- (2) Provide for enforcement of the tobacco retail sales laws pursuant to this Chapter, in conjunction with the ALE Division.
- (3) Issue permits and impose sanctions against permittees in accordance with this Chapter.

(b) The Commission shall have all other powers which may be reasonably implied from the granting of the express powers listed in subsection (a) of this section, or which may be incidental to, or convenient for, performing the duties given to the Commission.

"§ 18D-102. Inspection of licensed premises.

(a) To procure evidence of violations of the tobacco retail sales law, alcohol law enforcement agents and employees of the Commission shall have authority to investigate the operation of each licensed premises for which a tobacco retail sales permit has been issued, to make inspections that include viewing the entire premises, and to examine the books and records of the permittee. The inspection authorized by this section may be made at any time it reasonably appears that someone is on the premises.

(b) Refusal by a permittee or by any employee of a permittee to allow officers or employees of the Commission to enter the premises to make an inspection authorized by subsection (a) of this section shall be cause for revocation, suspension, or other action against the permit or the permittee as provided in G.S. 18D-103. It shall be a Class 2 misdemeanor for any person to resist or obstruct an officer attempting to make a lawful inspection under this section.

"§ 18D-103. Administrative penalties.

(a) For any violation of the tobacco retail sales laws, the Commission may take any of the following actions against a permittee:

- (1) Suspend the permittee's permit for a specified period of time not longer than three years.
- (2) Revoke the permittee's permit.
- (3) Fine the permittee up to five hundred dollars (\$500.00) for the first violation, up to seven hundred fifty dollars (\$750.00) for the second violation within three years, and up to one thousand dollars (\$1,000) for the third violation within three years of the first violation.
- (4) Suspend the permittee's permit under subdivision (1) of this subsection and impose a fine under subdivision (3) of this subsection.

(b) In any case in which the Commission is entitled to suspend or revoke a permit, the Commission may accept from the permittee an offer in compromise to pay a penalty of not more than five thousand dollars (\$5,000). The Commission may either accept a compromise or revoke a permit, but not both. The Commission may accept a compromise and suspend the permit in the same case.

(c) The clear proceeds of fines and penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d) Suspension or revocation of a permit is grounds for suspension or revocation of any related State or local revenue license.

(e) Unless some other disposition is ordered by the Commission for a tobacco retail sales law violation, revocation or suspension of a permit under subsection (a) of this section does not include automatic revocation or suspension, respectively, of any ABC permit held by the same permittee for the same establishment.

"§ 18D-104. Rules.

The Commission shall have authority to adopt, amend, and repeal rules to carry out the provisions of this Chapter. Those rules shall become effective when adopted and filed pursuant to the provisions of Chapter 150B of the General Statutes.

"§ 18D-105. Applicability of Administrative Procedure Act.

(a) A permit is a "license" within the meaning of G.S. 150B-2 and, except for a confirmation pursuant to G.S. 18D-300(a)(7), a Commission action on issuance, suspension, or revocation of a permit, other than a temporary permit issued under G.S. 18D-304, is a "contested case" subject to the provisions of Chapter 150B of the General Statutes, except as provided in this section.

(b) Hearings on permits shall be held within 100 miles, as best can be determined by the Commission, of the county seat of the county in which the licensed business or proposed business is located. The hearing may be held, however, at any place upon agreement of the Commission and all other parties.

(c) In making a final decision in a contested case in which an issue is whether to deny an application for a tobacco retail sales permit because the applicant is unsuitable, the Commission may hear evidence of acts that occurred after the date the contested case hearing was held if the evidence is admissible under G.S. 150B-29(a). New evidence heard under this subsection is not grounds for reversal or remand under G.S. 150B-51(a).

"Article 2.

"Sales.

"§ 18D-200. Tobacco retail permit required.

(a) It is unlawful to sell a tobacco product to a consumer in this State without a permit issued by the Commission in accordance with this Chapter.

(b) Notwithstanding subsection (a) of this section, no permit issued pursuant to this Chapter shall be required by a delivery service making deliveries on behalf of another person holding a permit issued pursuant to this Chapter.

"§ 18D-201. Disposition of seized tobacco products.

(a) A law enforcement officer who seizes tobacco products as evidence of a tobacco retail sales law violation shall provide for the storage of those tobacco products until the commencement of the trial or administrative hearing relating to the violation, unless some other disposition is authorized under this section.

(b) After giving notice to each defendant, to any other known owner, and to the Commission, a judge may order any of the following dispositions of tobacco products seized as evidence of a tobacco retail sales law violation:

(1) The destruction of any tobacco products except that amount needed for evidence at trial.

(2) The sale of any tobacco products other than any tobacco products needed for evidence at trial, if the trial is likely to be delayed for more than 90 days, or if the quantity or nature of the tobacco products is such that storage is impractical or unduly expensive.

(3) The destruction of the tobacco products if storage or sale is not practical.

(4) Continued storage of the tobacco products.

(c) After the criminal charge is resolved, a judge may order any of the following dispositions of seized tobacco products:

(1) If the owner or possessor of the tobacco products is found guilty of a criminal charge relating to those tobacco products, the judge may order the sale or destruction of any tobacco products that were held until trial.

(2) If the owner or possessor of the tobacco products is found not guilty, or if charges are dismissed or otherwise resolved in favor of the owner or possessor, the judge shall order the tobacco products returned to that owner or possessor, except as provided in subdivision (3) of this subsection.

(3) If the owner or possessor of the tobacco products is found not guilty, or if charges are otherwise resolved in favor of the owner or possessor, but possession of the tobacco products by that owner or possessor would be unlawful, the judge shall order the tobacco products either sold or destroyed.

(4) If ownership of the tobacco products remains uncertain after trial or after the charges have been dismissed, the judge may order the tobacco products held for a specified time, until ownership of the tobacco products can be determined.

(d) If tobacco products used as evidence in a criminal proceeding are also needed as evidence at an administrative hearing, a judge shall not order any of the dispositions set out in subsection (c) of this section but shall order the tobacco products held for the administrative hearing and for a determination of final disposition by the Commission. The Commission may, before or after an administrative hearing, order any of the dispositions authorized under subsections (b) and (c) of this section. If no related criminal proceeding has commenced, the Commission shall not order destruction of tobacco products until notice has been given to the district attorney for the district where the tobacco products were seized or any violation of tobacco retail sales laws related to the seizure of the tobacco products is likely to be prosecuted.

(e) The sale of tobacco products shall be by public auction to a tobacco products manufacturer, a tobacco products wholesaler, or a tobacco retail sales permittee.

(f) An agency selling tobacco products seized under the provisions of this Chapter shall keep the proceeds in a separate account until some other disposition is ordered by a judge or the Commission. In a criminal proceeding, if the owner or possessor of the tobacco products is found guilty of a violation relating to seizure of the tobacco products, if the owner or possessor is found not guilty or the charge is dismissed or otherwise resolved in favor of the owner or possessor, but the possession of the tobacco products by that owner or possessor would be unlawful, or if the ownership of the tobacco products cannot be determined, the proceeds from the sale of those tobacco products shall be paid to the school fund of the county in which the tobacco products were seized. If the owner or possessor of tobacco products seized for violation of the tobacco retail sales laws is found not guilty of criminal charges relating to the seizure of those tobacco products or the charge is dismissed or otherwise resolved in favor of the owner or possessor, and if possession of the tobacco products by that owner or possessor was lawful when the tobacco products were seized, the proceeds from the sale of those tobacco products shall be paid to the owner or possessor. The agency making the sale may deduct and retain from the amount to be placed in the county school fund the costs of storing the seized tobacco products and of conducting the sale but may not deduct those costs from the amount to be turned over to an owner or possessor of the tobacco products.

(g) Any person who claims any of the following resulting from the seizure of tobacco products may bring an action in the superior court of the county in which the tobacco products were seized:

(1) To be the owner of tobacco products that are wrongfully held.

(2) To be the owner of tobacco products that are needed as evidence in another proceeding.

(3) To be entitled to proceeds from a sale of tobacco products.

(4) To be entitled to restitution for tobacco products wrongfully destroyed.

"§ 18D-202. Forfeiture.

(a) Tobacco products possessed or sold in violation of the tobacco retail sales laws shall be subject to forfeiture.

(b) Tobacco products which may be possessed lawfully shall not be subject to forfeiture when they were used unlawfully by someone other than the owner of the tobacco products and the owner did not consent to the unlawful use.

(c) If tobacco products subject to forfeiture have not already been seized as part of an arrest or search, a law enforcement officer may apply to a judge for an order authorizing seizure of that tobacco product. An order for seizure may be issued only after criminal process has been issued for tobacco retail sales law violation in connection with that tobacco product. The order

1 shall describe the tobacco product to be seized and shall state the facts establishing probable
2 cause to believe that the tobacco product is subject to forfeiture.

3 (d) A law enforcement officer seizing tobacco product subject to forfeiture shall provide
4 for its safe storage until trial.

5 (e) The presiding judge in a criminal proceeding for violation of tobacco retail sales laws
6 may take any of the following actions after resolution of a charge against the owner or possessor
7 of the tobacco product subject to forfeiture under this section:

8 (1) If the owner or possessor of the tobacco product is found guilty of a tobacco
9 retail sales offense, the judge may order the tobacco product forfeited.

10 (2) If the owner or possessor of the tobacco product is found not guilty, or if the
11 charge is dismissed or otherwise resolved in favor of the owner or possessor,
12 the judge shall order the tobacco product returned to the owner or possessor.

13 (3) If ownership of the tobacco product remains uncertain after trial, the judge
14 may order the tobacco product held for a specified time to determine
15 ownership. If the judge finds that ownership cannot be determined with
16 reasonable effort, the judge shall order the tobacco product forfeited.

17 (4) Regardless of the disposition of the charge, if the tobacco product is something
18 that may not be possessed lawfully, the judge shall order it forfeited.

19 (5) If the tobacco product is also needed as evidence at an administrative hearing,
20 the judge shall provide that the order does not go into effect until the
21 Commission determines that the tobacco product is no longer needed for the
22 administrative proceeding.

23 (f) A judge ordering forfeiture of the tobacco product may order any one of the following
24 dispositions:

25 (1) Sale at public auction to a tobacco products manufacturer, a tobacco products
26 wholesaler, or a tobacco retail sales permittee.

27 (2) Destruction, if possession of the tobacco product would be unlawful or if sale
28 or other disposition is not practical.

29 (g) If the forfeited tobacco product is sold, the proceeds of that sale shall be paid to the
30 school fund of the county in which the tobacco product was seized, except as provided in
31 subsection (h) of this section. Before placing the proceeds in the school fund, the agency making
32 the sale may deduct and retain the costs of storing the tobacco product and conducting the sale.

33 (h) At any time before forfeiture is ordered, an owner of the seized tobacco product or a
34 holder of a security interest in the seized tobacco product, other than the defendant, may apply
35 to protect the person's interest in the tobacco product. The application may be made to any judge
36 who has jurisdiction to try the offense with which the tobacco product is associated. If the judge
37 finds that the tobacco product owner or holder of a security interest did not consent to the
38 unlawful use of the tobacco product, and that the tobacco product may be possessed lawfully by
39 the owner or holder, the judge may order any of the following:

40 (1) That the tobacco product be returned to the owner, if it is not needed as
41 evidence at trial.

42 (2) That the tobacco product be returned to the owner following trial or other
43 resolution of the case.

44 (3) That, if the tobacco product is sold following trial, a specified sum be paid
45 from the proceeds of that sale to the holder of the security interest.

46 (i) When tobacco product is seized for forfeiture but the owner is unknown, the district
47 attorney may seek forfeiture under this section by an action in rem against the tobacco product.
48 If the owner is known and has been charged with an offense but is unavailable for trial, the district
49 attorney may seek forfeiture either by an action in rem against the tobacco product or by motion
50 in the criminal action.

(j) Any owner of tobacco product seized for forfeiture may apply to a judge to have the tobacco product returned to him if no criminal charge has been made in connection with that tobacco product within a reasonable time after seizure. The judge may not order the return of the tobacco product if possession by the owner would be unlawful.

"Article 3.

"Issuance of Permits.

"§ 18D-300. Qualifications for a permit.

(a) To be eligible to receive and to hold a tobacco retail sales permit, a person must satisfy all of the following requirements:

(1) Be at least 21 years old.

(2) Be a resident of North Carolina, unless either of the following applies:

a. The person is an officer, director, or stockholder of a corporate applicant or permittee and is not a manager or otherwise responsible for the day-to-day operation of the business.

b. The person has executed a power of attorney designating a qualified resident of this State to serve as attorney-in-fact for the purposes of receiving service of process and managing the business for which permits are sought.

(3) Not have been convicted of a felony within three years and, if convicted of a felony before then, have had his or her citizenship restored.

(4) Not have been convicted of a tobacco product retail sales offense pursuant to this Chapter within two years.

(5) Not have been convicted of a misdemeanor controlled substance offense within two years.

(6) Not have had a tobacco retail sales permit revoked within three years, except where the revocation was based solely on a permittee's failure to pay the annual renewal fee required in G.S. 18D-302(d).

(7) Be current in filing all applicable tax returns to the State and in payment of all taxes, interest, and penalties that are collectible under G.S. 105-241.22.

To avoid undue hardship, however, the Commission may decline to take action under G.S. 18D-103 against a permittee who is in violation of subdivision (3), (4), or (5) of this subsection.

(b) A person has been "convicted" for the purposes of subsection (a) of this section when the person has been found guilty or has entered a plea of guilty or nolo contendere and judgment has been entered. A felony conviction in another jurisdiction disqualifies a person from being eligible to receive or hold a tobacco retail sales permit if the conduct would also constitute a felony in North Carolina. A conviction of a tobacco retail sales law or misdemeanor drug offense in another jurisdiction disqualifies a person from being eligible to receive or hold a tobacco retail sales permit if the conduct would constitute an offense in North Carolina, unless the Commission determines that under North Carolina procedure judgment would not have been entered under the same circumstances. Revocation of a permit in another jurisdiction disqualifies a person if the conduct would be grounds for revocation of a tobacco retail sales permit in North Carolina.

(c) For a permit to be issued to and held for a business, each of the following persons associated with that business must qualify under subsection (a) of this section:

(1) The owner of a sole proprietorship.

(2) Each member of a firm, association, or general partnership.

(3) Each general partner in a limited partnership.

(4) Each manager and any member with a twenty-five percent (25%) or greater interest in a limited liability company.

(5) Each officer, director, and owner of twenty-five percent (25%) or more of the stock of a corporation except that the requirement of subdivision (1) of

subsection (a) of this section does not apply to the officer, director, or stockholder unless he or she is a manager or is otherwise responsible for the day-to-day operation of the business.

(6) The manager of an establishment operated by a corporation.

(7) Any manager who has been empowered as attorney-in-fact for a nonresident individual or partnership.

(8) Any manager or person otherwise responsible for the day-to-day operation of the business, if none of the persons listed in subdivisions (1) through (7) of this subsection are a manager or person otherwise responsible for the day-to-day operation of the business.

(d) Upon request of the Commission, the Department of Revenue shall provide information to the Commission to confirm a person's compliance with subdivision (7) of subsection (a) of this section. If the Department of Revenue notifies the Commission that a person is not in compliance, then the Commission may not issue or renew the person's permit until the Commission receives notice from the Department of Revenue that the person is in compliance. The requirement to pay all taxes, interest, and penalties may be satisfied by an operative agreement under G.S. 105-237 covering any amounts that are collectible under G.S. 105-241.22. Chapter 150B of the General Statutes does not apply to a Commission action on issuance, suspension, or revocation of a tobacco retail sales permit under subdivision (7) of subsection (a) of this section.

"§ 18D-301. Issuance of permits.

(a) All tobacco retail sales permits shall be issued by the Commission.

(b) Before issuing a permit, the Commission shall be satisfied that the applicant is a suitable person to hold a tobacco retail sales permit and that the location is a suitable place to hold the permit for which the applicant has applied. Factors the Commission shall consider in determining whether the applicant and the business location are suitable are all of the following:

(1) The reputation, character, and criminal record of the applicant.

(2) Any other evidence that would tend to show whether the applicant would comply with the tobacco retail sales laws.

(3) Whether the operation of the retail seller permit applicant's business at that location would be detrimental to the neighborhood, including evidence admissible under G.S. 150B-29(a) of any of the following:

a. Past revocations, suspensions, and violations of ABC laws by prior permittees related to or associated with the applicant, or a business with which the applicant is associated, within the immediate preceding 12-month period at this location.

b. Evidence of illegal drug activity on or about the licensed premises.

c. Evidence of fighting, disorderly conduct, and other dangerous activities on or about the licensed premises.

(c) The Commission shall have the sole power, in its discretion, to determine the suitability and qualifications of an applicant for a permit. The Commission shall also have the authority to determine the suitability of the location to which the permit may be issued.

"§ 18D-302. Application for permit; fees.

(a) An application for a permit shall be on a form prescribed by the Commission and shall be notarized in accordance with Chapter 10B of the General Statutes. Each person required to qualify under G.S. 18D-300(c) shall sign and swear to the application and submit a full set of fingerprints with the application.

(b) Before issuing a new permit, the Commission, with the assistance of the ALE Division, shall investigate the applicant and, for a retail seller permit, the premises for which the permit is requested. An applicant shall cooperate fully with the investigation. The State Bureau of Investigation may provide a criminal record check to the ALE Division for a person who has

1 applied for a permit through the Commission. The ALE Division shall provide to the State Bureau
2 of Investigation, along with the request, the fingerprints of the applicant, any additional
3 information required by the State Bureau of Investigation, and a form signed by the applicant
4 consenting to the check of the criminal record and to the use of the fingerprints and other
5 identifying information required by the State or national repositories. The applicant's fingerprints
6 shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history
7 record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the
8 Federal Bureau of Investigation for a national criminal history check. The ALE Division and the
9 Commission shall keep all information pursuant to this subsection privileged, in accordance with
10 applicable State law and federal guidelines, and the information shall be confidential and shall
11 not be a public record under Chapter 132 of the General Statutes. The State Bureau of
12 Investigation may charge each applicant a fee for conducting the checks of criminal history
13 records authorized by this subsection.

14 (c) Knowingly making a false statement in an application for a permit shall be grounds
15 for denying, suspending, revoking, or taking other action against the permit as provided in
16 G.S. 18D-103 and shall also be unlawful.

17 (d) An application for a permit shall be accompanied by payment of the following
18 application fee:

- 19 (1) Retail seller permit. – \$400.00.
- 20 (2) Delivery seller permit. – \$400.00.
- 21 (3) Remote seller permit. – \$400.00.

22 (e) The fee required by subsection (d) of this section shall not be refunded.

23 (f) All fees collected by the Commission under this Chapter shall be remitted to the State
24 Treasurer for the General Fund.

25 **"§ 18D-303. Duration of permit; renewal and transfer.**

26 (a) Once issued, permits shall be valid for up to one year, from May 1 to April 30.

27 (b) Application for renewal of a permit shall be on a form provided by the Commission.
28 An application for renewal shall be accompanied by a renewal fee. The renewal fee shall be the
29 same amount as the application fee set in G.S. 18D-302. A renewal fee shall not be refundable.

30 (c) Notwithstanding subsection (a) of this section, the Commission shall not revoke a
31 permit for failure to pay a renewal application fee until June 1 of each year. No later than five
32 business days after April 30 of each year, the Commission shall notify permittees who have not
33 paid any required renewal application fees as of April 30. The Commission shall charge a late
34 fee of twenty-five percent (25%) of the renewal application fee for a permit for which the renewal
35 application fee is submitted after April 30.

36 (d) Change in Ownership. –

37 (1) Except as provided in subdivisions (2) and (2a) of this subsection, all permits
38 for an establishment shall automatically expire and shall be surrendered to the
39 Commission in any of the following circumstances:

- 40 a. Ownership of the establishment changes.
- 41 b. There is a change in the membership of the firm, association, or
42 partnership owning the establishment, involving the acquisition of a
43 twenty-five percent (25%) or greater share in the firm, association, or
44 partnership by someone who did not previously own a twenty-five
45 percent (25%) or greater share.
- 46 c. Twenty-five percent (25%) or more of the stock of the corporate
47 permittee owning the establishment is acquired by someone who did
48 not previously own twenty-five percent (25%) or more of the stock.

49 (2) Notwithstanding subsection (e) of this section, any person who through
50 contract, lease, management agreement, or change of ownership or transfer of
51 business as provided in subdivision (1) of this subsection becomes lawfully

entitled to use and control of the premises of an establishment that holds permits immediately prior to such change of ownership may continue to operate the establishment, as successor to the prior permittee, to the same extent as the predecessor permittee until the person receives a temporary or new permit, subject to the following limitations:

- a. The person shall provide written or electronic notice to the Commission of the name of the non-permitted person, the name and address of the permitted establishment, and the date of the change in ownership. The person may not operate the establishment as provided in this subdivision until the person has provided notice to the Commission. The Commission shall not require any additional documentation besides the written or electronic notice to satisfy this requirement. The prior permittee shall not be liable for any acts or omissions of the non-permitted person operating the establishment. Any violations of the tobacco retail sales law committed by the person or any actions taken by the Commission to revoke or suspend the permit based on the acts or omissions of the person operating the establishment shall not preclude the prior permittee from receiving a tobacco retail sales permit for a different establishment.
- b. The person shall submit a new permit application to the Commission within 60 days after the change of ownership. If the person does not apply for a new permit within 60 days, all permits for the establishment shall automatically expire and shall be surrendered to the Commission.
- c. The 60-day period to file a new permit application shall only be allowed once per 24 months for each establishment that holds a tobacco retail sales permit, unless the establishment requests and the Commission grants a waiver of the 24-month requirement. The Commission shall grant a waiver of the 24-month requirement if it determines that the public health, safety, and welfare would not be harmed by granting the waiver.
- d. This subdivision shall apply only to establishments that hold tobacco retail sales permits that are in good standing and that have not been found responsible by the Commission or a court of competent jurisdiction of a gambling, assault, disorderly conduct, prostitution, or controlled substances violation within 12 months prior to the date the non-permitted person becomes entitled to use and control of the establishment.
- e. The person shall be authorized to operate the establishment as successor to the prior permittee to the same extent as the predecessor permittee until the Commission either issues or denies the permit application submitted pursuant to sub-subdivision b. of this subdivision.

(2a) The transfer by a person of any ownership interest to a revocable or irrevocable trust established by the person shall not constitute a change in ownership for purposes of subdivision (1) of this subsection if the person transferring the ownership interest to the trust continues to operate the establishment. If the person who transferred the ownership interest ceases to operate the establishment following the transfer of the ownership interest to the trust, this shall constitute a change in ownership for purposes of subdivision (1) of this subsection. The trustee shall notify the Commission

1 within 30 days if the person who transferred the ownership interest ceases to
2 operate the establishment.

3 (e) A corporation holding a permit for an establishment for which the manager is required
4 to qualify as an applicant under G.S. 18D-300(c) shall, within 30 days after employing a new
5 manager, submit to the Commission an application for substitution of a manager. The application
6 shall be signed by the new manager, shall be on a form provided by the Commission, and shall
7 be accompanied by a fee of ten dollars (\$10.00). The fee shall not be refundable.

8 (f) A permit issued pursuant to this Chapter may not be transferred from one person to
9 another or from one location to another.

10 (g) The Commission may issue duplicate permits for an establishment when the existing
11 valid permits have been lost or damaged. The request for duplicate permits shall be on a form
12 provided by the Commission, certified by the permittee and the ALE Division, and accompanied
13 by a fee of ten dollars (\$10.00).

14 (h) The Commission may issue new permits to a permittee upon application and payment
15 of a fee of ten dollars (\$10.00) for each location when the permittee's name or name of the
16 business is changed.

17 **"§ 18D-304. Miscellaneous provisions concerning permits.**

18 (a) The following apply to permits issued pursuant to this Chapter:

19 (1) A retail seller permit shall authorize the sale of tobacco products only in the
20 physical presence of the consumer on the fixed premises of the establishment
21 located in the State and named in the permit. A retail seller permit shall be
22 issued to the owner of the business conducted on the premises or to the
23 management company employed to independently manage and operate the
24 business. The Commission may determine if a management agreement
25 delegates sufficient managerial control and independence to a manager or
26 management company to require a retail seller permit to be issued to the
27 manager.

28 (2) A delivery seller permit shall authorize a delivery sale only, originating either
29 inside or outside of the State. A delivery seller permit shall be issued to the
30 owner of the business or to the management company employed to
31 independently manage and operate the business. The Commission may
32 determine if a management agreement delegates sufficient managerial control
33 and independence to a manager or management company to require a delivery
34 seller permit to be issued to the manager.

35 (3) A remote seller permit shall authorize a remote sale only, originating either
36 inside or outside of the State. A remote seller permit shall be issued to the
37 owner of the business or to the management company employed to
38 independently manage and operate the business. The Commission may
39 determine if a management agreement delegates sufficient managerial control
40 and independence to a manager or management company to require a remote
41 seller permit to be issued to the manager.

42 (b) Each retail seller permit that is held by an establishment shall be posted in a prominent
43 place on the premises. Each delivery seller or remote seller shall post its delivery seller or remote
44 seller permit number on any advertisement, the internet, or other online service or application a
45 customer may use to submit an order and on all invoices or receipts for tobacco products
46 delivered by mail or a delivery service.

47 (c) No tobacco retail sales permit shall be issued to a business on the campus or property
48 of a public school, college, or university.

49 (d) A permit shall automatically expire and shall be surrendered to the Commission if the
50 person to whom it is issued does not commence the activity authorized by the permit within six

months of the date the permit is effective. Before the expiration of the six-month period, the Commission may waive this provision in individual cases for good cause.

(e) Upon issuing a permit, the Commission shall send notice of the issuance, with the name and address of the permittee and the establishment, to all of the following:

(1) The Department of Revenue.

(2) The Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Use Services.

(3) The ALE Division.

"§ 18D-305. Temporary permits.

When an application has been received in proper form, with the required application fee, the Commission may issue a temporary permit for any of the activities for which permits are authorized under this Chapter. A temporary permit may be revoked summarily by the Commission without complying with the provisions of Chapter 150B of the General Statutes. Revocation of a temporary permit or withdrawal by the Commission of a pending application by a permittee possessing a temporary permit shall be effective upon service of the notice of revocation or withdrawal upon the permittee at either the permittee's residence or the address given for the business in the permit application or upon the expiration of five business days after the notice of the revocation or withdrawal has been mailed to the permittee at either the permittee's residence or the address given for the business in the permit application. No further notice shall be required.

"§ 18D-306. Allow electronic submission of payments and forms.

(a) The Commission shall make all forms required by the Commission to apply for and receive a permit available on the Commission's website, and the Commission shall, to the extent practicable, allow for the electronic submission of these forms. Any form required by the Commission to apply for and receive a permit that requires a signature may be submitted with an electronic signature in accordance with Article 40 of Chapter 66 of the General Statutes and notarized in accordance with Chapter 10B of the General Statutes.

(b) The Commission shall accept electronic payments for any fee required under this Chapter to receive a permit. For purposes of this subsection, the term "electronic payment" means payment by charge card, credit card, debit card, or by electronic funds transfer as defined in G.S. 105-228.90.

(c) The Commission may charge a fee to be used to cover costs incurred by the Commission in processing forms electronically and accepting payments electronically. The fee authorized under this subsection may not exceed five dollars (\$5.00).

"§ 18D-307. Tobacco sales permits and ABC permits.

(a) Applications for permits under this Chapter may be filed simultaneously or in conjunction with applications for ABC permits under Chapter 18B of the General Statutes and may be combined by the Commission in a single application.

(b) The Commission may use, rely upon, or incorporate by reference any information an applicant for a permit under this Chapter has submitted in conjunction with an ABC permit issued pursuant to Chapter 18B of the General Statutes.

"Article 4.

"Retail Activities.

"§ 18D-400. Responsibilities of permittee.

(a) For purposes of this Chapter, a retail seller permittee shall be responsible for the entire premises for which the permit is issued. The permittee shall keep the premises clean, well-lighted, and orderly.

(b) For purposes of this Chapter, a permittee shall be responsible for the actions of all employees of the business for which the permit is issued.

(c) A permittee shall not knowingly employ in the sale or distribution of tobacco products any person who has been a past permit holder under this Chapter whose permit had been revoked

within the last 18 months and who had been the permit holder at the location where the person would be employed.

(d) An employee or agent of a retail seller shall demand proof of age from a prospective purchaser of tobacco products before the tobacco product is released to the purchaser, if the person has reasonable grounds to believe that the prospective purchaser is under 30 years of age.

(e) A delivery seller and remote seller shall do both of the following:

(1) Perform an age verification through an independent, third-party age verification service that compares information available from public records to the personal information entered by the individual during the ordering process to establish that the individual ordering the tobacco products is 21 years of age or older.

(2) Use a method of mailing, shipping, or delivery that requires the signature of a person at least 21 years of age before the tobacco product is released to the purchaser.

(f) Retail sellers of tobacco products shall train their employees or agents in the requirements of this Chapter, to include all of the following:

(1) Which products the retail dealer sells meet the definition of a tobacco product.

(2) The age requirements for purchasing tobacco products.

(3) Acceptable forms of identification.

(4) Methods to detect fake, altered, and imposter forms of identification.

(5) Penalties for sales to underage persons.

(6) Methods of identifying potentially underage persons and to prevent underage sales.

(g) Retail dealers shall prominently display to the ultimate consumer the following statement: "N.C. LAW STRICTLY PROHIBITS THE PURCHASE OF TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, VAPOR PRODUCTS, AND THEIR COMPONENTS BY PERSONS UNDER THE AGE OF 21. PROOF OF AGE REQUIRED." as follows:

(1) Retail sellers shall prominently display this required statement near the point of sale on a sign with letters at least 5/8 of an inch high.

(2) Delivery sellers and remote sellers shall prominently display this required statement on any advertisement, the internet, or other online service or application a customer may use to submit an order and on all invoices or receipts for tobacco products delivered by mail or a delivery service.

"§ 18D-401. Conduct on licensed premises.

(a) It shall be unlawful for a permittee or the permittee's agent or employee to knowingly allow any of the following kinds of conduct to occur on the licensed premises:

(1) Any violation of this Chapter.

(2) Any fighting or other disorderly conduct that can be prevented without undue danger to the permittee, the permittee's employees, or patrons.

(3) Any violation of the controlled substances, gambling, or prostitution statutes, or any other unlawful acts.

(b) It shall be unlawful for a permittee to fail to superintend in person or through a manager the business for which a permit is issued.

"§ 18D-402. Miscellaneous tobacco product sales provisions.

(a) A permittee shall not sell tobacco products through displays accessible to the public without the assistance of a permittee's employee or agent other than in an establishment open only to persons 21 years of age and older.

(b) It shall be unlawful for any person to do any of the following:

(1) Produce or possess any false or facsimile permit, or for a permittee to display any false or facsimile permit on the person's licensed premises.

- (2) Refuse to surrender any permit to the Commission upon lawful demand of the Commission or its agents.
- (3) Offer tobacco products for sale in a vending machine.
- (4) Distribute tobacco products not approved or authorized by the federal Food and Drug Administration.
- (5) Sell tobacco products other than in the manufacturer's or importer's original, sealed, and unopened packaging that complies with all federal labeling requirements.
- (6) Distribute or cause to be distributed samples of tobacco products.

"Article 5.

"Tobacco Product Sales to Underage Persons.

"§ 18D-500. Sales to persons under the age of 21.

If any person shall sell, aid, assist, or abet any other person in selling tobacco products to any person under the age of 21 years, or if any person shall purchase tobacco products on behalf of a person under the age of 21 years, the person shall be guilty of a Class 2 misdemeanor; provided, however, that it shall not be unlawful to sell tobacco products to an employee or agent of a tobacco retail sales permittee under the age of 21 years when possession of the tobacco product is required pursuant to a tobacco retail sales permit in the performance of that person's duties of employment or contract.

"§ 18D-501. Purchase by persons under the age of 21.

(a) Except as provided in subsection (b) of this section, if any person under the age of 21 years purchases or accepts receipt, or attempts to purchase or accept receipt, of tobacco products, the person shall commit an infraction and may be required by the court to complete a tobacco education program. The Department of Health and Human Services shall maintain a list of available programs on its website for use by the courts for this purpose. The listed programs must be at least 60 minutes in length, free of charge, and educate youth on the health effects of tobacco products and tobacco cessation in a manner conforming to medical evidence. The person shall not be required to pay any fine or court costs.

(b) If a person under the age of 21 presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product, the person shall be guilty of a Class 2 misdemeanor.

(c) It shall not be unlawful for an employee or agent of a tobacco retail sales permittee under the age of 21 years to accept receipt of, sell, transport, possess, or dispense tobacco products when required pursuant to a tobacco retail sales permit in the performance of that person's duties of employment or contract, if the employment of the person for that purpose is lawful under applicable youth employment statutes and Commission rules.

"§ 18D-502. Aiding or abetting a person under the age of 21 to purchase or receive tobacco products.

(a) If any person less than 21 years of age shall send a person less than 21 years of age to purchase, acquire, receive, or attempt to purchase, acquire, or receive tobacco products or if any person less than 21 years of age shall aid or abet a person who is less than 21 years of age in purchasing, acquiring, or receiving or attempting to purchase, acquire, or receive tobacco products, the person shall commit an infraction and may be required by the court to complete a tobacco education program. The Department of Health and Human Services shall maintain a list of available programs on its website for use by the courts for this purpose. The listed programs must be at least 60 minutes in length, free of charge, and educate youth on the health effects of tobacco products and tobacco cessation in a manner conforming to medical evidence. The person shall not be required to pay any fine or court costs.

(b) If any person 21 years of age or older shall send a person less than 21 years of age to purchase, acquire, receive, or attempt to purchase, acquire, or receive tobacco products, or if any person 21 years of age or older shall aid or abet a person who is less than 21 years of age in

1 purchasing, acquiring, or receiving or attempting to purchase, acquire, or receive tobacco
2 products, the person shall be guilty of a Class 2 misdemeanor.

3 **"§ 18D-503. Exceptions to violations of G.S. 18D-501 and G.S. 18D-502.**

4 Notwithstanding G.S. 18D-501 and G.S. 18D-502, a person under the age of 21 may lawfully
5 be enlisted by any of the following:

- 6 (1) Law enforcement, including the Division of Alcohol Law Enforcement, to test
7 compliance if the testing is under the direct supervision of that law
8 enforcement department and written parental consent is provided.
- 9 (2) The Department of Health and Human Services, pursuant to a written plan
10 prepared by the Secretary of Health and Human Services, to use persons under
11 21 years of age in annual, random, unannounced inspections, provided that
12 prior written parental consent is given for the involvement of these persons
13 and that the inspections are conducted for the sole purpose of preparing a
14 scientifically and methodologically valid statistical study of the extent of
15 success the State has achieved in reducing the availability of tobacco products
16 to persons under the age of 21, and preparing any report to the extent required
17 by section 1926 of the federal Public Health Service Act (42 U.S.C. §
18 300x-26).
- 19 (3) A research program affiliated with an accredited community college, college,
20 or university located in this State to test compliance as part of a scientific
21 research study to further efforts in underage tobacco use prevention, provided
22 that prior written parental consent is given for persons under 18 years of age.
23 The scientific research study must be approved by an institutional review
24 board with jurisdiction to review the study and must comply with 45 C.F.R. §
25 46. The ALE Division and the Department of Health and Human Services
26 shall be provided a copy of the study protocol 30 calendar days before it is
27 presented to the institutional review board and given an opportunity to provide
28 comments regarding the proposed research protocol to the research
29 investigators. The research investigators shall provide any comments received
30 from the ALE Division and the Department of Health and Human Services to
31 the institutional review board for review prior to the rendering of a decision
32 on the scientific research study application. A person shall not be guilty of a
33 violation of this Article when the act in question arises as part of a test of
34 compliance in a scientific research study pursuant to this subdivision. A
35 permittee shall not be in violation of this Article or subject to any
36 administrative penalty when the act in question arises as part of a test of
37 compliance in a scientific research study pursuant to this subdivision.

38 **"§ 18D-504. Defense to underage sale.**

39 It shall be a defense to a violation of G.S. 18D-500 if the seller does any of the following:

- 40 (1) Shows that the purchaser produced a drivers license, a special identification
41 card issued under G.S. 20-37.7 or issued by the state agency of any other state
42 authorized to issue similar official state special identification cards for that
43 state, a military identification card, or a passport, showing the person's age to
44 be at least the required age for purchase and bearing a physical description of
45 the person named on the card reasonably describing the purchaser.
- 46 (2) Produces evidence of other facts that reasonably indicated at the time of sale
47 that the purchaser was at least the required age.
- 48 (3) Shows that at the time of purchase, the purchaser utilized a biometric
49 identification system that demonstrated (i) the purchaser's age to be at least
50 the required age for the purchase and (ii) the purchaser had previously
51 registered with the seller or seller's agent a drivers license, a special

identification card issued under G.S. 20-37.7 or issued by the state agency of any other state authorized to issue similar official state special identification cards for that state, a military identification card, or a passport showing the purchaser's date of birth and bearing a physical description of the person named on the document.

"§ 18D-505. Deferred prosecution or conditional discharge.

Notwithstanding G.S. 15A-1341(a1) or G.S. 15A-1341(a4), any person charged with a misdemeanor under this Article shall be qualified for deferred prosecution or a conditional discharge pursuant to Article 82 of Chapter 15A of the General Statutes provided the defendant has not previously been placed on probation for a violation of this Article and so states under oath.

"Article 6.

"Miscellaneous.

"§ 18D-600. Restitution.

When a person is convicted of a violation of the tobacco retail sales laws, the court may order the person to make restitution to any law enforcement agency for reasonable expenditures made in purchasing tobacco products from the person or the person's agent as part of an investigation leading to the person's conviction.

"§ 18D-601. Criminal penalty.

Unless a different punishment is otherwise expressly stated, any person who violates any provisions of this Chapter shall be guilty of a Class 1 misdemeanor. In addition, the court may impose the provisions of G.S. 18D-201, 18D-202, and 18D-600.

"Article 7.

"Certification and Directory of Vapor Products and Consumable Products.

"§ 18D-700. Certification and Directory of Vapor Products and Consumable Products.

(a) As required by Part 3 of Article 4 of Chapter 143B of the General Statutes, the Secretary shall certify vapor products and consumable products eligible for retail sale in this State and shall list them on a directory.

(b) The following penalties shall apply to violations of the certification requirements for consumable products and vapor products required by Part 3 of Article 4 of Chapter 143B of the General Statutes:

- (1) Retailer, distributor, or wholesaler fines. – A retailer, distributor, or wholesaler who offers for sale a consumable product or vapor product intended for ultimate retail sale in this State that is not included in the directory is subject to a warning with a mandatory reinspection of the retailer within 30 days of the violation of Part 3 of Article 4 of Chapter 143B of the General Statutes. The following apply:
 - a. For a second violation of this type within a 12-month period, the fine shall be at least five hundred dollars (\$500.00) but not more than seven hundred fifty dollars (\$750.00) and, if licensed, the licensee's license shall be suspended for 30 days.
 - b. For a third or subsequent violation of this type within a 12-month period, the fine shall be at least one thousand dollars (\$1,000) but not more than one thousand five hundred dollars (\$1,500) and, if licensed, the licensee's license shall be revoked.
 - c. Upon a second or subsequent violation of this type, consumable products or vapor products that are not on the directory as required by G.S. 143B-245.12, and are possessed by a retailer, distributor, or wholesaler, shall be subject to seizure, forfeiture, and destruction. The cost of such seizure, forfeiture, and destruction shall be borne by the person from whom the products are confiscated, except that no

products may be seized from a consumer who has made a bona fide purchase of such product. The Secretary may store and dispose of the seized products as appropriate, in accordance with federal, State, and local laws pertaining to storage and disposal of such products.

(2) Manufacturer penalties. – A manufacturer whose consumable products or vapor products are not listed in the directory as required by G.S. 143B-245.12, and who causes the products that are not listed to be sold for retail sale in North Carolina, whether directly or through an importer, distributor, wholesaler, retailer, or similar intermediary or intermediaries, is subject to a civil penalty of ten thousand dollars (\$10,000) for each individual product offered for sale in violation of Part 3 of Article 4 of Chapter 143B of the General Statutes until the offending product is removed from the market or until the offending product is properly listed on the directory. In addition, any manufacturer that falsely represents any information required by a certification form shall be guilty of a misdemeanor for each false representation.

(c) In an action to enforce this section, the State shall be entitled to recover costs, including the costs of investigation, expert witness fees, and reasonable attorneys' fees.

(d) A repeated violation of the requirements of Part 3 of Article 4 of Chapter 143B of the General Statutes shall constitute a deceptive trade practice under Chapter 75 of the General Statutes."

PART II. CONFORMING CHANGES

SECTION 2.(a) G.S. 14-313 is repealed.

SECTION 2.(b) G.S. 7B-2508.1(2) reads as rewritten:

"(2) Criminal gang activity. – The commission of, attempted commission of, or solicitation, coercion, or intimidation of another person to commit (i) any offense under Article 5 of Chapter 90 of the General Statutes or (ii) any offense under Chapter 14 of the General Statutes except Article 9, 22A, 40, 46, or 59 thereof, and further excepting G.S. 14-82, 14-145, 14-183, 14-184, 14-186, 14-190.9, 14-247, ~~14-248, or 14-313 or 14-248~~ thereof, and either of the following conditions is met:

- a. The offense is committed with the intent to benefit, promote, or further the interests of a criminal gang or for the purposes of increasing a person's own standing or position within a criminal gang.
- b. The participants in the offense are identified as criminal gang members acting individually or collectively to further any criminal purpose of a criminal gang."

SECTION 2.(c) G.S. 14-50.16A(2) reads as rewritten:

"(2) Criminal gang activity. – The commission of, attempted commission of, or solicitation, coercion, or intimidation of another person to commit (i) any offense under Article 5 of Chapter 90 of the General Statutes or (ii) any offense under Chapter 14 of the General Statutes except Article 9, 22A, 40, 46, or 59 thereof, and further excepting G.S. 14-82, 14-145, 14-183, 14-184, 14-186, 14-190.9, 14-247, ~~14-248, or 14-313 or 14-248~~ thereof, and either of the following conditions is met:

- a. The offense is committed with the intent to benefit, promote, or further the interests of a criminal gang or for the purposes of increasing a person's own standing or position within a criminal gang.

- b. The participants in the offense are identified as criminal gang members acting individually or collectively to further any criminal purpose of a criminal gang."

SECTION 2.(d) G.S. 15A-145 reads as rewritten:

"§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.

(a) Whenever any person who has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, (i) pleads guilty to or is guilty of a misdemeanor other than a traffic violation, and the offense was committed before the person attained the age of 18 years, or (ii) pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), or the offense of the sale of a tobacco product to a person under the age of 21 years pursuant to G.S. 18D-500, and the offense was committed before the person attained the age of 21 years, ~~he the person~~ may file a petition in the court of the county where ~~he the person~~ was convicted for expunction of the misdemeanor from ~~his the person's~~ criminal record. The petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

- (1) An affidavit by the petitioner that ~~he the petitioner~~ has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.
- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which ~~he the petitioner~~ lives and that ~~his the petitioner's~~ character and reputation are good.
- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) Repealed by Session Laws 2010-174, s. 2, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
- (4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the State Bureau of Investigation using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be filed with the clerk of superior court. The clerk of superior court shall forward the application to the State Bureau of Investigation and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.
- (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against ~~him the petitioner~~ are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that ~~he the judge~~ deems desirable.

...

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and (i) petitioner was not 18 years old at the time of the offense in question, or (ii) petitioner was not 21 years old at the time of the offense of possession of alcohol pursuant to G.S. 18B-302(b)(1), or the offense of the sale of a tobacco product to a person under the age of 21 years pursuant to G.S. 18D-500, it shall order that ~~such person~~ the petitioner be restored, in the contemplation of the law, to the status ~~he~~ the petitioner occupied before such arrest or indictment or information.

(b1) No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of ~~his~~ the person's failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of ~~him~~ the person for any purpose. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

...."

SECTION 2.(e) G.S. 15A-150(a)(6) reads as rewritten:

"(6) Persons granted a dismissal upon completion of a conditional discharge under G.S. 14-50.29, 14-204, 14-277.8, ~~14-313(f),~~ 15A-1341(a4), 18D-505, 90-96, or 90-113.14."

SECTION 2.(f) G.S. 18B-203(a) reads as rewritten:

"§ 18B-203. Powers and duties of the Commission.

(a) Powers. – The Commission shall have authority ~~to~~ to do all of the following:

(1) Administer the ABC ~~laws;~~ laws.

(2) Provide for enforcement of the ABC laws, in conjunction with the ALE ~~Division;~~ Division.

(2a) Provide for the enforcement of the tobacco retail sales laws as set forth in Chapter 18D of the General Statutes, in conjunction with the ALE Division.

(3) Set the prices of alcoholic beverages sold in local ABC stores as provided in Article ~~8;~~ 8.

(4) Require reports and audits from local boards as provided in ~~G.S. 18B-205;~~ G.S. 18B-205.

(5) Determine what brands of alcoholic beverages may be sold in this ~~State;~~ State.

(6) Contract for State ABC warehousing, as provided in ~~G.S. 18B-204;~~ G.S. 18B-204.

(7) Dispose of damaged alcoholic beverages, as provided in ~~G.S. 18B-806;~~ G.S. 18B-806.

(8) Remove for cause any member or employee of a local ~~board;~~ board.

(9) Supervise or disapprove purchasing by any local board and inspect all records of purchases by local ~~boards;~~ boards.

(10) Approve or disapprove rules adopted by any local ~~board;~~ board.

(11) Approve or disapprove the opening and location of ABC stores, as provided in Article ~~8;~~ 8.

(12) Issue ABC permits, and impose sanctions against ~~permittees;~~ permittees.

(12a) Issue tobacco retail sales permits and impose sanctions against permittees as set forth in Chapter 18D of the General Statutes.

(13) Provide for the testing of alcoholic beverages, as provided in ~~G.S. 18B-206;~~ G.S. 18B-206.

(14) Fix the amount of bailment charges and bailment surcharges to be assessed on liquor shipped from a Commission ~~warehouse;~~ warehouse.

(15) Collect bailment charges and bailment surcharges from local ~~boards;~~boards.
(16) Notwithstanding any law to the contrary, enter into contracts for design and construction of a warehouse or warehouses and supervise work and materials used in the construction, as provided in ~~G.S. 18B-204;~~G.S. 18B-204.

...
(18) Provide for the distribution and posting of warning signs to local ABC boards regarding the dangers of alcohol consumption during pregnancy as required under ~~G.S. 18B-808;~~G.S. 18B-808.

...."

SECTION 2.(g) G.S. 18B-500 reads as rewritten:

"§ 18B-500. Alcohol law-enforcement agents.

...
(b) Subject Matter Jurisdiction. – After taking the oath prescribed for a peace officer, an alcohol law-enforcement agent shall have authority to arrest and take other investigatory and enforcement actions for any criminal offense:

...
(2) Encountered or otherwise discovered while investigating or enforcing matters for the North Carolina Alcoholic Beverage Control Commission or the North Carolina Education Lottery Commission or encountered or otherwise discovered while investigating or enforcing the provisions of this Chapter, Chapter 18C of the General Statutes, ~~G.S. 14-313,~~Chapter 18D of the General Statutes, or Parts 1 and 2 of Article 37 of Chapter 14 of the General Statutes.

(3) Encountered or otherwise discovered while carrying out any duty or function assigned to the Division by law.

(4) Occurring in an agent's presence.

(5) When assisting another law enforcement agency.

...
(b2) Primary Responsibilities. – The primary responsibilities of an alcohol law-enforcement agent are the enforcement of this Chapter, Chapter 18C of the General Statutes, ~~G.S. 14-313,~~Chapter 18D of the General Statutes, and Parts 1 and 2 of Article 37 of Chapter 14 of the General Statutes.

...."

SECTION 2.(h) Article 9 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"§ 18B-908. ABC permits and tobacco retail sales permits.

(a) Applications for permits under this Chapter may be filed simultaneously or in conjunction with applications for tobacco retail sales permits under Chapter 18D of the General Statutes and may be combined by the Commission in a single application.

(b) The Commission may use, rely upon, or incorporate by reference any information an applicant for a permit under this Chapter has submitted in conjunction with a tobacco retail sales permit issued pursuant to Chapter 18D of the General Statutes."

SECTION 2.(i) G.S. 75D-3(c)(1)b. reads as rewritten:

"b. Chapter 14 of the General Statutes of North Carolina except Articles 9, 22A, 38, 40, 43, 46, 47, 59 thereof; and further excepting G.S. Sections 14-78.1, 14-82, 14-86, 14-145, 14-146, 14-147, 14-177, 14-178, 14-179, 14-183, 14-184, 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-202, 14-247, ~~14-248, 14-313 and 14-248~~ thereof."

SECTION 2.(j) G.S. 105-113.4F(b)(2) reads as rewritten:

"(2) Comply with the age verification requirements in ~~G.S. 14-313(b2).~~G.S. 18D-400(e)."

1 **SECTION 2.(k)** G.S. 143B-245.10 reads as rewritten:
2 "Part 3. Certification and Directory of Vapor Products and Consumable Products.

3 **"§ 143B-245.10. Definitions.**

4 The following definitions apply throughout this Part:

- 5 (1) Alternative nicotine product. – As defined in
6 ~~G.S. 14-313(a)(1).~~G.S. 18D-100.
7 (2) Consumable product. – As defined in ~~G.S. 14-313(a)(1a).~~G.S. 18D-100.
8 (3) Distribute. – As defined in ~~G.S. 14-313(a)(1b).~~G.S. 18D-100.
9 (4) FDA. – ~~As defined in G.S. 14-313(a)(1c).~~The United States Food and Drug
10 Administration.
11 (5) Secretary. – The Secretary of the Department of Revenue.
12 (6) Timely Filed Premarket Tobacco Product Application. – ~~As defined in~~
13 ~~G.S. 14-313(a)(3c).~~An application pursuant to 21 U.S.C. § 387j for a vapor
14 product or consumable product containing nicotine derived from tobacco
15 marketed in the United States as of August 8, 2016, that was submitted to the
16 United States Food and Drug Administration on or before September 9, 2020,
17 and accepted for filing.
18 (7) Tobacco product. – As defined in ~~G.S. 14-313(a)(4).~~G.S. 18D-100.
19 (8) Vapor product. – As defined in ~~G.S. 14-313(a)(5).~~G.S. 18D-100."

20 **SECTION 2.(l)** G.S. 143B-245.11(a)(2) reads as rewritten:

- 21 "(2) The manufacturer submitted a Timely Filed Premarket Tobacco Product
22 Application as defined in ~~G.S. 14-313(a)(3c).~~G.S. 143B-245.10 for the vapor
23 product or consumable product; and the application either remains under
24 review by the FDA or has received a denial order that has been and remains
25 stayed by the FDA or court order, rescinded by the FDA, or vacated by a
26 court."

27 **SECTION 2.(m)** G.S. 143B-245.14(a)(1) reads as rewritten:

- 28 "(1) A manufacturer not registered to do business in the State shall, as a condition
29 precedent to having its name or its products listed and retained in the directory,
30 appoint and continually engage without interruption a registered agent in this
31 State for service of process on whom all process and any action or proceeding
32 arising out of the enforcement of this Part or ~~G.S. 14-313(g) and (h)~~
33 G.S. 18D-700(a) and (b) may be served. The manufacturer shall provide to the
34 Secretary the name, address, and telephone number of its agent for service of
35 process and shall provide any other information relating to its agent as may be
36 requested by the Secretary."

37 **SECTION 2.(n)** G.S. 143B-245.16 reads as rewritten:

38 **"§ 143B-245.16. Rules; use of fees; report.**

39 ...
40 (b) Use of Fees and Penalties. – The fees received under this Part and the penalties
41 collected under ~~G.S. 14-313(h).~~G.S. 18D-700(b) by the Department of Revenue shall be used by
42 the Department of Revenue exclusively for processing the certifications, operating and
43 maintaining the directory, and enforcement of this Part.

44 (c) Report. – Beginning on January 31, 2026, and annually thereafter, the Secretary shall
45 provide a report to the legislature regarding the status of the directory, manufacturers and
46 products included in the directory, revenue and expenditures related to administration of this
47 ~~section, Part,~~ and enforcement activities undertaken pursuant to this ~~section, Part,~~ including the
48 number of stores that have been inspected and the results from such inspections."

49
50 **PART III. MISCELLANEOUS**

1 **SECTION 3.(a)** Prosecutions for offenses committed before the effective date of
2 this act are not abated or affected by this act, and the statutes that would be applicable but for
3 this act remain applicable to those prosecutions.

4 **SECTION 3.(b)** Effective March 1, 2026, the ABC Commission may issue tobacco
5 retail sales permits as authorized by Section 1 of this act effective for the period of May 1, 2026,
6 through April 30, 2027.

7 **SECTION 3.(c)** G.S. 18D-100, 18D-101, 18D-104, 18D-300 through 18D-302, and
8 18D-304 through 18D-307, as enacted by Section 1 of this act, are effective when this act
9 becomes law and apply to permits effective on or after May 1, 2026. The remainder of Sections
10 1 through 3 of this act becomes effective May 1, 2026, and applies to offenses committed on or
11 after that date. The remainder of this act is effective when it becomes law.