

## Tenn. Code Ann. § 39-17-Part 15

# Prevention of Youth Access to Tobacco, Smoking Hemp, and Vapor Products Act

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## 39-17-1501. Short title.

This part shall be known and may be cited as the "Prevention of Youth Access to Tobacco, Smoking Hemp, and Vapor Products Act."

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## 39-17-1502. Purpose and intent.

**(a)** The purpose of this part is to reduce the access of persons under twenty-one (21) years of age to tobacco products by strengthening existing prohibitions against the sale and distribution of tobacco products and prohibiting the purchase or receipt of tobacco products by such persons, limiting the sale of tobacco products through vending machines, restricting the distribution of tobacco product samples, prohibiting the sale of cigarettes or smokeless tobacco products other than in unopened packages, and random, unannounced inspections of locations where tobacco products are sold or distributed, providing for the report required to be submitted to the United States department of health and human services pursuant to Section 1926 of the Public Health Service Act (42 U.S.C. § 300x-26), and ensuring uniform regulations with respect to tobacco products within this state.

**(b)** The purpose of this part is also to prohibit the sale or distribution of vapor products to, or purchase of vapor products on behalf of, persons under twenty-one (21) years of age.

**(c)** The purpose of this part is also to prohibit the sale or distribution of smoking hemp products to, or purchase of smoking hemp products on behalf of, persons under twenty-one (21) years of age.

**(d)** The purpose of this part is also to prohibit the sale or distribution of smokeless nicotine products to, or purchase of smokeless nicotine products on behalf of, persons under twenty-one (21) years of age.

**(e)** It is the intent of the general assembly that this part be equitably enforced so as to ensure the eligibility for and receipt of any federal funds or grants that this state now receives or may receive relating to this part.

## 39-17-1503. Part definitions.

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As used in this part, unless the context otherwise requires:

(1) "Age-restricted venue" means a legal establishment that affirmatively restricts access to its buildings or facilities at all times to persons who are twenty-one (21) years of age or older by requiring each person who attempts to gain entry to those buildings or facilities to submit for inspection an acceptable form of identification for the express purpose of determining if the person is twenty-one (21) years of age or older;

(2) "Beedies" or "bidis" means a product containing tobacco that is wrapped in temburni leaf (*dispyros melanoxyton*) or tendu leaf (*diospyros exculpra*), or any other product that is offered to, or purchased by, consumers as beedies or bidis. For purposes of this chapter, beedies or bidis shall be considered a tobacco product;

(3) "Cigar bar" means a legal establishment that:

- (A) Holds a valid license or permit for the on-premises consumption of alcoholic beverages;
- (B) Generates a portion of its total annual gross income from the on-site sale of cigars and the rental of humidors;
- (C) Does not knowingly sell products or services, or permit entrance to the premises, to a person who is less than twenty-one (21) years of age; and
- (D) Does not permit vaping or the smoking of products other than cigars on the premises;

(4) "Commissioner" means the commissioner of agriculture or the commissioner's duly authorized representative;

(5) "Department" means the department of agriculture;

(6) "Hemp" means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than three tenths of one percent (0.3 %) on a dry weight basis;

(7) "Person" means any individual, firm, fiduciary, partnership, corporation, trust, or association;

(8) "Proof of age" means a driver license or other generally accepted means of identification that describes the individual as twenty-one (21) years of age or older, contains a photograph or other likeness of the individual, and appears on its face to be valid. Except in the case of distribution by mail, the distributor shall obtain a statement from the addressee that the addressee is twenty-one (21) years of age or older;

(9) "Public place" means any public street, sidewalk or park, or any area open to the general public in any publicly owned or operated building;

(10) "Retail tobacco store" means a retail store that derives its largest category of sales from tobacco products and accessories;

(11) "Retail vapor product store" means a retail store that derives its largest category of sales from vapor products and accessories;

(12) "Sample" means a tobacco product distributed to members of the general public at no cost for the purpose of promoting the product;

(13) "Sampling" means the distribution of samples to members of the general public in a public place;

**(14)** "Smokeless nicotine product":

- (A)** Means nicotine that is in the form of a solid, gel, gum, or paste that is intended for human consumption or placement in the oral cavity for absorption into the human body by any means other than inhalation;
- (B)** Does not include tobacco or tobacco products; and
- (C)** Does not include nicotine replacement therapy products as defined and approved by the federal food and drug administration;

**(15)** "Smoking hemp" means hemp that is offered for sale to the public with the intention that it is consumed by smoking and that does not meet the definition of a vapor product;

**(16)** "Tobacco product" means any product that contains tobacco and is intended for human consumption, including, but not limited to, cigars, cigarettes and bidis; and

**(17)** "Vapor product":

- (A)** Means any noncombustible product containing nicotine or any other substance that employs a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce or emit a visible or non-visible vapor;
- (B)** Includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product, and any vapor cartridge, any substance used to refill a vapor cartridge, or other container of a solution containing nicotine or any other substance that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product; and
- (C)** Does not include any product regulated under Chapter V of the Food, Drug, and Cosmetic Act (21 U.S.C. § 351 et seq.).

## 39-17-1504. Sale or distribution to underage persons unlawful — Proof of age requirement.

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**(a)** It is unlawful for any person to sell or distribute any tobacco, smoking hemp, vapor product, or smokeless nicotine product to another person who has not attained twenty-one (21) years of age or to purchase a tobacco, smoking hemp, vapor product, or smokeless nicotine product on behalf of such person under twenty-one (21) years of age.

**(b)** It is unlawful for any person to persuade, entice, send or assist a person who has not attained twenty-one (21) years of age to purchase, acquire, receive or attempt to purchase, acquire or receive a tobacco, smoking hemp, vapor product, or smokeless nicotine product. This section and § 39-17-1505 do not preclude law enforcement efforts involving:

- (1)** The use of a minor if the minor's parent or legal guardian has consented to this action; or
- (2)** The use of an individual under twenty-one (21) years of age who is not a minor if the individual has consented to this action.

**(c)** No person shall distribute tobacco, smoking hemp, vapor product, or smokeless nicotine product samples in or on any public street, sidewalk, or park.

**(d)** A person engaged in the sale or distribution of tobacco, smoking hemp, vapor product, or smokeless nicotine product shall demand proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser or recipient may be under thirty (30) years of age. In the case of distribution by mail, the distributor of tobacco, smoking hemp, vapor product, or smokeless nicotine product shall obtain from the addressee an affirmative statement that the person is twenty-one (21) years of age or older, and shall inform the recipient that the person is strictly prohibited from distributing any tobacco, smoking hemp, vapor product, or smokeless nicotine product, as defined by this part, to any person under twenty-one (21) years of age.

## 39-17-1505. Prohibited purchases or possession by underage persons — Penalties.

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**(a)** It is unlawful for a person who has not attained twenty-one (21) years of age to possess either a tobacco, smoking hemp, vapor product, or smokeless nicotine product, to purchase or accept receipt of either product, or to present or offer to any person any purported proof of age that is false, fraudulent, or not actually that person's own for the purpose of purchasing or receiving any tobacco, smoking hemp, vapor product, or smokeless nicotine product.

**(b)** Any person who violates this section may be issued a citation by a law enforcement officer who has evidence of the violation. Regardless of whether a citation is issued, the product shall be seized as contraband by the law enforcement officer.

**(c)** A violation of this section is a civil offense, for which the general sessions or juvenile court may, in its discretion, impose a civil penalty of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00), which may be charged against a person who is at least eighteen (18) years of age but less than twenty-one (21) years of age, or, in the case of a minor, against a parent, guardian, or custodian. The general sessions or juvenile court may, in its discretion, also impose community service work not to exceed fifty (50) hours or successful completion of a prescribed court program for a second or subsequent violation within a one-year period.

**(d)** A person who has not attained twenty-one (21) years of age and who is cooperating with law enforcement officers in an operation designed to test the compliance of other persons with this part is not subject to sanctions under this section.

**(e)** As used in this section, "law enforcement officer" means an officer, employee or agent of government who is authorized by law to investigate the commission or suspected commission of violations of Tennessee law.

**(f)** It is not unlawful for a person under twenty-one (21) years of age to handle or transport:

- (1)** Tobacco, tobacco products, smoking hemp, vapor products, or smokeless nicotine products as a part of and in the course of the person's employment; provided, that the person is under the supervision of another employee who is at least twenty-one (21) years of age; or
- (2)** Tobacco, smoking hemp, vapor products, or smokeless nicotine products as part of an educational project that has been developed by the person for entry and display at an agricultural fair or other agricultural competition or event.

**(g)** Nothing in this section shall be construed to prohibit a person under twenty-one (21) years of age from handling or transporting tobacco or hemp as part of and in the course of the person's involvement in any aspect of the agricultural production or storage of tobacco or hemp, the sale of raw tobacco or hemp at market or the transportation of raw tobacco or hemp to a processing facility.

## 39-17-1506. Required postings.

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(a) Every person who sells tobacco, smoking hemp, vapor products, or smokeless nicotine products at retail shall post conspicuously and keep so posted at the place of business a sign, no smaller than ninety-three and one-half (93½) square inches, to ensure that it is likely to be read at each point of sale, stating the following:

STATE LAW STRICTLY PROHIBITS THE SALE OF TOBACCO PRODUCTS, VAPOR PRODUCTS, SMOKELESS NICOTINE PRODUCTS, OR SMOKING PARAPHERNALIA TO PERSONS UNDER THE AGE OF TWENTY-ONE (21) YEARS

PROOF OF AGE MAY BE REQUIRED

(b) Unless another notice is required by federal law, the notice required by this section and the notice required by § 39-15-411 shall be the only notice regarding tobacco, smoking hemp, vapor products, or smokeless nicotine products required to be posted or maintained in any store that sells tobacco, smoking hemp, vapor products, or smokeless nicotine products at retail.

## 39-17-1507. Vending machine sales.

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(a) It is unlawful for any person to sell tobacco, smoking hemp, vapor products, or smokeless nicotine products through a vending machine unless the vending machine is located in any of the following locations:

- (1) In areas of factories, businesses, offices, or other places that are not open to the public;
- (2) In places that are open to the public but to which persons under twenty-one (21) years of age are denied access;
- (3) In places where alcoholic beverages are sold for consumption on the premises, but only if the vending machine is under the continuous supervision of the owner or lessee of the premises or an employee of the owner or lessee of the premises, and is inaccessible to the public when the establishment is closed; and
- (4) In other places, but only if the machine is under the continuous supervision of the owner or lessee of the premises or an employee of the owner or lessee of the premises, or the machine can be operated only by the use of a token purchased from the owner or lessee of the premises or an employee of the owner or lessee of the premises prior to each purchase, and is inaccessible to the public when the establishment is closed.

(b) In any place where supervision of a vending machine, or operation by token is required by this section, the person responsible for that supervision or the sale of the token shall demand proof of age from a prospective purchaser if an ordinary person would conclude on the basis of appearance that the prospective purchaser may be under thirty (30) years of age.

## 39-17-1508. Required packaging.

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It is unlawful for any person to sell cigarettes or smokeless tobacco products except in the original, sealed package in which they were placed by the manufacturer that bears the health warning required by federal law.

## 39-17-1509. Enforcement — Inspections — Reporting — Civil penalties.

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**(a)** The department shall enforce this part in a manner that may reasonably be expected to reduce the extent to which tobacco, smoking hemp, vapor products, or smokeless nicotine products are sold or distributed to persons under twenty-one (21) years of age, and shall conduct random, unannounced inspections at locations where tobacco, smoking hemp, vapor products, or smokeless nicotine products are sold or distributed to ensure compliance with this part.

**(b)** A person who violates § 39-17-1504, § 39-17-1506, § 39-17-1507 or § 39-17-1508 shall receive only a warning letter for the person's first violation and shall not receive a civil penalty for the person's first violation. A person who violates § 39-17-1504, § 39-17-1506, § 39-17-1507 or § 39-17-1508 is subject to a civil penalty of not more than five hundred dollars (\$500) for the person's second violation, not more than one thousand dollars (\$1,000) for the person's third violation and not more than one thousand five hundred dollars (\$1,500) for the person's fourth or subsequent violation. For purposes of determining whether a violation is the person's first, second, third, fourth or subsequent violation, the commissioner shall count only those violations that occurred within the previous five (5) years. A civil penalty shall be assessed in the following manner:

**(1)** The commissioner shall issue the assessment of civil penalty against any person responsible for the violation;

**(2)** Any person against whom an assessment has been issued may secure a review of the assessment by filing with the commissioner a written petition setting forth the person's reasons for objection to the assessment and asking for a hearing before the commissioner;

**(3)** Any hearing before the commissioner shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. An appeal from the final order of the commissioner may be taken by the person to whom the assessment was issued, and the appeal proceedings shall be conducted in accordance with the judicial review provisions of the Uniform Administrative Procedures Act, codified in §§ 4-5-322 and 4-5-323; and

**(4)** If a petition for review is not filed within thirty (30) days after the date the person received the assessment, the person shall be deemed to have consented to the assessment, and it shall become final. Whenever an assessment has become final, the commissioner may apply to the chancery court of Davidson County for a judgment in the amount of the assessment and seek execution on the judgment. The chancery court of Davidson County shall treat a person's failure to file a petition for review of an assessment as a confession of judgment in the amount of the assessment.

**(c)** A person who demanded, was shown, and reasonably relied upon proof of age is not liable for a civil penalty for a violation of § 39-17-1504 or § 39-17-1507. In the case of distribution of any tobacco, smoking hemp, vapor product, or smokeless nicotine product by mail, a person who obtained a statement from the addressee that the addressee is at least twenty-one (21) years of age is not liable for a civil penalty so long as that distributor of the tobacco, smoking hemp, vapor product, or smokeless nicotine product informed the addressee that § 39-17-1504 prohibits the distribution of tobacco, smoking hemp, vapor products, and smokeless nicotine products to a person under twenty-one (21) years of age.

**(d)** When assessing a civil penalty, the commissioner is authorized to assess the penalty against any person or persons determined by the commissioner to be responsible, in whole or in part, for contributing to or causing the violation to occur, including, but not limited to, the owner, manager or employee of a store at which any tobacco, smoking hemp, vapor product, or smokeless nicotine product is sold at retail, the owner, manager or employee of an establishment in which a vending machine selling tobacco, smoking hemp, vapor products, or smokeless nicotine products is located, and a company or any of its employees engaged in the business of sampling.

**(e)**

**(1)** The owner or manager of a store that sells tobacco, smoking hemp, vapor products, or smokeless nicotine products at retail shall provide training to the store's employees concerning the provisions of this part. As a part of this training, each employee shall, prior to selling tobacco, smoking hemp, vapor products, or smokeless nicotine products at retail, sign a statement containing substantially the following words:

I understand that state law prohibits the sale of tobacco, smoking hemp, vapor products, or smokeless nicotine products to persons under twenty-one (21) years of age and that state law requires me to obtain proof of age from a prospective purchaser of tobacco, smoking hemp, vapor products, or smokeless nicotine products who, based on appearance, might be as old as twenty-nine (29) years of age. I promise to obey this law, and I understand that monetary or criminal penalties may be imposed on me if I violate this law.

**(2)** If the commissioner assesses a penalty against the store owner or manager, the owner or manager may present to the commissioner a copy of the statement described in subdivision (e)(1) that was signed by the employee who made the sale to a minor, along with a sworn statement by the owner or manager that the employee had signed the statement prior to the sale to the minor, and the name and address of the employee who made the sale. If the owner or manager does not know which employee made the sale to the minor, the owner or manager may present to the commissioner copies of the statements described in subdivision (e)(1) that were signed by all employees working at the store on the day the sale was made, along with a sworn statement that these employees had signed those statements prior to the sale to the minor.

**(3)** When the store owner or manager presents to the commissioner the statements described in subdivision (e)(2):

**(A)** If the violation is the second violation determined to have occurred at that store, the penalty against the store owner or manager shall be eliminated; or  
**(B)** If the violation is the third or subsequent violation determined to have occurred at that store, the commissioner shall consider that evidence and any other evidence with respect to the amount of the penalty against the owner or manager.

**(f)** The department shall prepare annually for submission by the governor to the secretary of the United States department of health and human services the report required by Section 1926 of subpart I of Part B of Title XIX of the Public Health Service Act (42 U.S.C. § 300x-26). The department shall prepare for submission to the general assembly and the public an annual report describing in detail the department's enforcement efforts under this part.

## **39-17-1510. Criminal penalties.**

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A person who violates § 39-17-1504, § 39-17-1506, § 39-17-1507, or § 39-17-1508 commits a Class C misdemeanor.



## 39-17-1511. Maintenance of smoking paraphernalia in area inaccessible to customers.

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(a) For the purpose of this section:

(1) "Counter" means the point of purchase at a retail establishment;

(2) "Retail establishment" means a place of business open to the general public for the sale of goods or services; and

(3) "Smoking paraphernalia" means:

(A) A cigarette holder;

(B) A smoking pipe made of metal, wood, acrylic, glass, stone, or plastic with or without screens, permanent screens, hashish heads or punctured metal bowls;

(C) A water pipe;

(D) Rose and pen combinations; or

(E) Vapor products; and

(4) "Smoking paraphernalia" does not include a smoking pipe or smoking device when sold at retail, if the smoking pipe or smoking device is primarily made of briar, meerschaum, clay or corn cob.

(b) All smoking paraphernalia shall be maintained behind the counter of a retail establishment in an area inaccessible to a customer or in a locked display case that makes the products unavailable to a customer without the assistance of an employee.

(c)

(1) A violation of this section is punishable as provided in § 39-17-1509.

(2) If smoking paraphernalia is sold in violation of this section by an employee, the owner or operator of the retail establishment where the employee sold the products shall be in violation of this section.

## 39-17-1512. Liquid nicotine containers to satisfy federal child-resistant effectiveness standards.

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(a) As used in this section, "liquid nicotine container":

(1) Means a bottle or other container that contains liquid nicotine or any other substance containing nicotine, where the liquid or other substance is sold, marketed, or intended for use in a vapor product; and

(2) Does not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed, or intended for use in a vapor product; provided, that such cartridge is prefilled and sealed by the manufacturer, and not intended to be opened by the consumer.

(b) Unless specifically preempted by federal law, a liquid nicotine container used in conjunction with a vapor product that is sold at retail in this state shall satisfy the child-resistant effectiveness standards under 16 CFR 1700.15(b)(1) when tested in accordance with the requirements of 16 CFR 1700.20.

## 39-17-1513. Department of agriculture encouraged to study effects of sale and distribution of vapor products to persons under 21.

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The department of agriculture is urged to study the effects of the sale and distribution of vapor products to persons under twenty-one (21) years of age and is encouraged to make recommendations to the legislature with regard to reducing such sale and distribution.

## 39-17-1551. Preemption of field of legislation concerning regulation of tobacco products, smokeless nicotine products, and vapor products — Exemptions — Authority to prohibit smoking — Authority to prohibit use of tobacco products or vapor products.

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(a) The general assembly preempts and occupies the entire field of legislation concerning the regulation of tobacco products, smokeless nicotine products, and vapor products. Any law or regulation of tobacco products enacted or promulgated after March 15, 1994, or vapor products or smokeless nicotine products enacted or promulgated after July 1, 2021, by any agency or political subdivision of this state or any agency thereof is void; provided, that cities, counties, and counties having a metropolitan form of government may regulate the use of tobacco products or vapor products in buildings owned or leased by the political subdivisions; and provided further, that airport authorities created pursuant to title 42; utility districts created pursuant to title 7; and special school districts may regulate the use of tobacco products, smokeless nicotine products, or vapor products in buildings owned or leased by the entities. Notwithstanding any law to the contrary, individual owners or operators of retail establishments located within an enclosed shopping mall retain the right to determine the policy on the use of tobacco products or vapor products within the person's establishment.

(b)

(1) Notwithstanding subsection (a) or any other provision of this title, a municipality, a county, or a county having a metropolitan form of government is authorized by local ordinance or resolution to prohibit smoking or use of a vapor product on the grounds of a hospital or in the public areas immediately outside of a hospital building and its entrances, including public sidewalks.

(2) Any regulation or ordinance that is passed or adopted by a local government pursuant to the authority granted by this subsection (b) may prohibit smoking or use of a vapor product by a distance of up to fifty feet (50') from a hospital's entrance unless the application of a fifty-foot limit would place hospital patients in a potentially unsafe condition. In which case, the fifty-foot limit shall be extended to such distance as is necessary to ensure patient safety as determined by the local government's legislative body in consultation with representatives of any hospitals that are subject to the regulation or ordinance.

(c)

(1) Notwithstanding subsection (a) or any other provision of this title, a local government is authorized by ordinance to prohibit smoking or use of a vapor product on the grounds of a swimming pool owned or operated by such local government or an outdoor amphitheater with a seating capacity of at least six thousand (6,000) owned or operated by such local government.

(2) Subdivision (c)(1) only applies to:

(A) Municipalities located in a county having a population of not less than one hundred fifty-six thousand eight hundred (156,800) nor more than one hundred fifty-six thousand nine hundred (156,900), according to the 2010 federal census or any subsequent federal census; or

(B) Any county having a metropolitan form of government with a population of more than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census.

**(d)**

**(1)** Notwithstanding subsection (a) or any other provision of this title, a local government is authorized by ordinance to prohibit smoking or use of a vapor product on the grounds of an urban park center, as described in § 57-4-102.

**(2)** Subdivision (d)(1) only applies to municipalities located in a county having a population of not less than seventy-two thousand three hundred (72,300) nor more than seventy-two thousand four hundred (72,400), according to the 2010 federal census or any subsequent federal census.

**(e) [See Code Commission Notes.]**

**(1)** Notwithstanding subsection (a) or any other provision of this title, a local government is authorized by ordinance to prohibit smoking or use of a vapor product on the grounds of a playground by adopting a resolution or ordinance approved by a two-thirds ( $\frac{2}{3}$ ) vote of the legislative body of the local government.

**(2)** As used in this subsection (e) "playground" means an indoor or outdoor facility that is intended for recreation of children and owned by the local government.

**(f) [See Code Commission Notes.]**

**(1)** Notwithstanding subsection (a) or any other provision of this title, a municipality, a county, or a county having a metropolitan form of government is authorized by local ordinance or resolution, as applicable, to prohibit the use of tobacco products or vapor products, or both, on the grounds of a public park, public playground, public greenway, or any public property that is accessible to use by youth as long as the public park, public playground, public greenway, or public property is owned or controlled by the respective municipality or county.

**(2)** Notwithstanding subdivision (f)(1), a prohibition enacted pursuant to this subsection (f) does not apply to buildings, sidewalks, or roads.

**(3)** As used in this subsection (f):

**(A)**

**(i)** "Greenway" means:

**(a)** An open-space area following a natural or man-made linear feature designed to be used for recreation, transportation, and conservation, and to link services and facilities; or

**(b)** A paved, gravel-covered, woodchip-covered, or wood-covered path that connects one greenway entrance with another greenway entrance;

**(ii)** If a greenway traverses a park that is owned or operated by a county, municipality, or instrumentality thereof, the greenway is considered a portion of that park unless designated otherwise by the local legislative body;

**(B)** "Playground" means an indoor or outdoor facility that is intended for recreation of children;

**(C)** "Tobacco product" means any product that contains tobacco and is intended for human use; and

**(D)** "Youth" means persons under twenty-one (21) years of age.

**(g)** Notwithstanding subsection (a) or another provision of this title, municipalities, counties, and counties having a metropolitan form of government may regulate, including prohibiting, by passing a resolution or ordinance, the following activities in age-restricted venues that are not retail tobacco stores, retail vapor product stores, or cigar bars:

**(1)** Smoking, as defined in § 39-17-1802; and

**(2)** The use of vapor products.