

By: Compretta

To: Judiciary B

HOUSE BILL NO. 1532

1 AN ACT TO AMEND SECTIONS 97-32-5, 97-32-7, 97-32-9, 97-32-13  
2 AND 97-32-21, MISSISSIPPI CODE OF 1972, TO REVISE PENALTIES UNDER  
3 THE MISSISSIPPI JUVENILE TOBACCO ACCESS PREVENTION ACT OF 1997; TO  
4 CLARIFY THE LIABILITY OF RETAILERS; TO REVISE UNANNOUNCED  
5 INSPECTION REQUIREMENTS; AND FOR RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 SECTION 1. Section 97-32-5, Mississippi Code of 1972, is  
8 amended as follows:

9 97-32-5. It shall be unlawful for any person, or retailer,  
10 to sell, barter, deliver or give tobacco products to any  
11 individual under eighteen (18) years of age unless the individual  
12 under eighteen (18) years of age holds a retailer's license to  
13 sell tobacco under Section 27-69-1 et seq., Mississippi Code of  
14 1972.

15 It shall be an absolute affirmative defense that the person  
16 selling, bartering, delivering or giving tobacco products over the  
17 counter in a retail establishment to an individual under eighteen  
18 (18) years of age in violation of this act had requested and  
19 examined a government-issued photographic identification from such  
20 person establishing his age as at least eighteen (18) years prior  
21 to selling such person a tobacco product. The failure of a  
22 seller, barterer, deliverer or giver of tobacco products over the  
23 counter in a retail establishment to request and examine  
24 photographic identification from a person under eighteen (18)  
25 years of age prior to the sale of a tobacco product to such person  
26 if the individual is not known to the seller, barterer, deliverer  
27 or giver of the tobacco product to be over the age of eighteen

28 (18) years, shall be construed against the seller, barterer,  
29 deliverer or giver and form a conclusive basis for the seller's  
30 violation of this section.

31 It shall be an absolute affirmative defense that the person  
32 or entity giving tobacco products through the mail to an  
33 individual under eighteen (18) years of age in violation of this  
34 act had requested and received documentary or written evidence  
35 from such person purportedly establishing his age to be at least  
36 eighteen (18) years of age.

37 Any person who violates this section shall be liable as  
38 follows: For a first conviction, a fine of One Hundred Dollars  
39 (\$100.00); for a second conviction, a fine of Two Hundred Dollars  
40 (\$200.00); and for all subsequent convictions, a fine of Three  
41 Hundred Dollars (\$300.00) shall be imposed.

42 Any person found in violation of this section shall be issued  
43 a citation and the holder of the retailer permit shall be sent  
44 notification of this citation by registered mail by the law  
45 enforcement agency issuing the citation. \* \* \* For a first  
46 conviction of any person at a point of sale, the retailer shall be  
47 sent a warning letter informing him of the retailer's  
48 responsibility in the selling of tobacco products. For a second  
49 conviction of any person at a point of sale, the retailer, or  
50 retailer's designee, shall be required to enroll in and complete a  
51 "Retailer Tobacco Education Program."

52 For a third or subsequent violation of this section by any  
53 retailer, or any person at the same point of sale, within twelve  
54 (12) months of the two (2) prior violations, any retailer's permit  
55 issued pursuant to Section 27-69-1 et seq., Mississippi Code of  
56 1972, shall be revoked or suspended for a period of up to one (1)  
57 year after notice and opportunity for hearing. If said permit is  
58 revoked by the Tax Commission, the retailer may not reapply for a  
59 permit to sell tobacco for a period of one (1) year. For the  
60 purposes of this section, "subsequent violations" are those  
61 committed at the same place of business.

62 It is the responsibility of all law enforcement officers and  
63 law enforcement agencies of this state to ensure that the  
64 provisions of this article are enforced.

65           It shall not be considered a violation of this section on the  
66 part of any law enforcement officer or person under eighteen (18)  
67 years of age for any law enforcement officer of this state to use  
68 persons under eighteen (18) years of age to purchase or attempt to  
69 purchase tobacco products for the purpose of monitoring compliance  
70 with this section, as long as those persons are supervised by duly  
71 authorized law enforcement agency officials.

72           Any law enforcement agency conducting enforcement efforts  
73 undertaken pursuant to this article shall prepare a report as  
74 prescribed by the Attorney General which includes the number of  
75 unannounced inspections conducted by the agency, a summary of  
76 enforcement actions taken pursuant to this article, the name and  
77 permit number of the retailer pursuant to Section 27-69-1 et seq.,  
78 Mississippi Code of 1972, and final judicial disposition on all  
79 enforcement actions. Reports shall be forwarded to the Office of  
80 the Attorney General within twenty (20) working days of citation  
81 being issued and within twenty (20) working days of the final  
82 judicial disposition.

83           On notification from local law enforcement that a retailer  
84 has violated this article so as to warrant a revocation of the  
85 retailer's permit, the Attorney General shall notify in writing  
86 the State Tax Commission within twenty (20) working days.

87           In accordance with the procedures of Section 27-69-9,  
88 Mississippi Code of 1972, the State Tax Commission shall initiate  
89 revocation procedures of the retailer's permit. The Office of the  
90 Attorney General shall provide legal assistance in revocation  
91 procedures when requested by the Tax Commission.

92           SECTION 2. Section 97-32-7, Mississippi Code of 1972, is  
93 amended as follows:

94           97-32-7. (1) Every person engaged in the business of  
95 selling tobacco products at retail shall notify each individual  
96 employed by that person as a retail sales clerk that state law:

97           (a) Prohibits the sale or distribution of tobacco

products, including samples, to any person under eighteen (18) years of age and the purchase or receipt of tobacco products by any person under eighteen (18) years of age, and

(b) Requires that proof of age be demanded from a prospective purchaser or recipient if the prospective purchaser or recipient is under the age of eighteen (18) years. Every person employed by a person engaged in the business of selling tobacco products at retail shall sign an agreement with his employer in substantially the following or similar form:

"I understand that state and federal law prohibit the sale or distribution of tobacco products to persons under the age of eighteen (18) years and out-of-package sales, and requires that proof of age be demanded from a prospective purchaser or recipient under eighteen (18) years of age if the individual is not known to the seller, barterer, deliverer or giver of the tobacco product to be over the age of eighteen (18) years. I promise, as a condition of my employment, to observe this law."

(2) Any person violating the provisions of this section shall be penalized not less than Fifty Dollars (\$50.00) nor more than One Hundred Dollars (\$100.00).

(3) A retailer who instructs his employee as provided in this section shall not be criminally liable for any individual violations \* \* \* by his employees; however, such instruction shall not be an affirmative defense to violations affecting permit revocation.

SECTION 3. Section 97-32-9, Mississippi Code of 1972, is amended as follows:

97-32-9. (1) It shall be unlawful for any person under eighteen (18) years of age to purchase, possess, use or consume any tobacco product. No student of any high school, junior high school or elementary school shall possess tobacco on any educational property as defined in Section 97-37-17, Mississippi Code of 1972.

131       (2) Any person under the age of eighteen (18) years who  
132 violates the provisions of this chapter, in addition to any other  
133 punishment authorized by law, may have his driver's license  
134 suspended for a period of up to six (6) months, and shall pay a  
135 fine of Twenty-five Dollars (\$25.00) for the first offense, or  
136 shall have his driver's license suspended for three (3) months and  
137 pay a fine not to exceed Five Hundred Dollars (\$500.00) for a  
138 second or subsequent offense.

139       (3) Upon conviction or adjudication of any person under the  
140 age of eighteen (18) years for a violation of this chapter, the  
141 judge shall notify the Commissioner of Public Safety of the  
142 adjudication on a form to be devised by the commissioner. The  
143 commissioner or his authorized agent shall suspend the driver's  
144 license or permit to drive or deny the issuance of a license or  
145 permit to the person as provided in this section.

146       SECTION 4. Section 97-32-13, Mississippi Code of 1972, is  
147 amended as follows:

148       97-32-13. (1) Any person under the age of eighteen (18)  
149 years who falsely states he is eighteen (18) years of age or  
150 older, or presents any document that indicates he is eighteen (18)  
151 years of age or older, for the purpose of purchasing or possessing  
152 any tobacco or tobacco product shall be penalized not less than  
153 Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars  
154 (\$200.00) or required to complete at least thirty (30) days  
155 community service, or both.

156       (2) (a) Any person under the age of eighteen (18) years who  
157 violates the provisions of this chapter, in addition to any other  
158 punishment authorized by law, may have his driver's license  
159 suspended for a period of one (1) month, and shall pay a fine of  
160 Twenty-five Dollars (\$25.00) for the first offense, or shall have  
161 his driver's license suspended for three (3) months and pay a fine  
162 not to exceed Five Hundred Dollars (\$500.00) for a second or  
163 subsequent offense.

164           (b) Upon conviction or adjudication of any person under  
165 the age of eighteen (18) years pay a fine of Twenty-five Dollars  
166 (\$25.00) for the first offense, or shall have his driver's license  
167 suspended for three (3) months and pay a fine not to exceed Five  
168 Hundred Dollars (\$500.00) for a second or subsequent offense.

169           (3) Upon conviction or adjudication of any person under the  
170 age of eighteen (18) years for a violation of this chapter, the  
171 judge shall notify the Commissioner of Public Safety of the  
172 adjudication on a form to be devised by the commissioner. The  
173 commissioner or his authorized agent shall suspend the driver's  
174 license or permit to drive or deny the issuance of a license or  
175 permit to the person as provided in this section.

176           SECTION 5. Section 97-32-21, Mississippi Code of 1972, is  
177 amended as follows:

178           97-32-21. The Office of the Attorney General or local law  
179 enforcement agencies shall as needed conduct random, unannounced  
180 inspections at locations where tobacco products are sold or  
181 distributed to ensure compliance with the Mississippi Tobacco  
182 Youth Access Prevention Act of 1997. Persons under the age of  
183 eighteen (18) years may be enlisted by the Office of the Attorney  
184 General or local law enforcement to test compliance with the  
185 Mississippi Juvenile Tobacco Access Prevention Act of 1997,  
186 provided that the parent or legal guardian of the person under  
187 eighteen (18) years of age so utilized has given prior written  
188 consent for the minor's participation in unannounced inspections.

189           The Office of the Attorney General must prepare a report of the  
190 findings, and report these findings to the Department of Health  
191 and Department of Mental Health. The Department of Mental Health  
192 shall prepare the annual report required by Section 1926, subpart  
193 1 of Part B, Title XIX of the Federal Public Health Service Act  
194 (42 USCS 300X-26). The report shall be approved by the Governor  
195 and then promptly transmitted to the Secretary of the United  
196 States Department of Health and Human Services.

197           SECTION 6. This act shall take effect and be in force from  
198 and after July 1, 2000.