

By: Senator(s) Michel, Walley, Pickering,
White, Nunnelee, Clarke, Chassaniol

To: Judiciary, Division B

SENATE BILL NO. 3001

1 AN ACT TO AMEND SECTION 97-32-5, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE PENALTIES FOR PROVIDING TOBACCO PRODUCTS TO A CHILD
3 UNDER THE AGE OF 18; TO AMEND SECTION 97-32-9, MISSISSIPPI CODE OF
4 1972, TO REVISE THE PENALTIES FOR POSSESSION OF TOBACCO PRODUCTS
5 BY A CHILD UNDER THE AGE OF 18; TO AMEND SECTION 97-32-13,
6 MISSISSIPPI CODE OF 1972, TO REVISE THE PENALTIES FOR
7 MISREPRESENTATION OF AGE BY A CHILD UNDER THE AGE OF 18 IN ORDER
8 TO POSSESS OR OBTAIN TOBACCO PRODUCTS; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 97-32-5, Mississippi Code of 1972, is
11 amended as follows:

12 97-32-5. (1) (a) It shall be unlawful for any person, or
13 retailer, to sell, barter, deliver or give tobacco products to any
14 individual under eighteen (18) years of age unless the individual
15 under eighteen (18) years of age holds a retailer's license to
16 sell tobacco under Section 27-69-1 et seq., Mississippi Code of
17 1972.

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

31 to be over the age of eighteen (18) years, shall be construed
32 against the seller, barterer, deliverer or giver and form a
33 conclusive basis for the seller's violation of this section.

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

40 (2) Except as provided in subsection (5), any person who
41 violates this section shall be liable as follows: For a first
42 conviction, a fine of Fifty Dollars (\$50.00); for a second
43 conviction, a fine of Seventy-five Dollars (\$75.00); and for all
44 subsequent convictions, a fine of One Hundred Fifty Dollars
45 (\$150.00) shall be imposed.

46 Any person found in violation of this section shall be issued
47 a citation and the holder of the retailer permit involved, if any,
48 shall be sent notification of this citation by registered mail by
49 the law enforcement agency issuing the citation. Notification
50 shall include the opportunity for hearing before the appropriate
51 court. For a first conviction, the retailer shall be sent a
52 warning letter informing him of the retailer's responsibility in
53 the selling of tobacco products. For a second conviction, the
54 retailer, or retailer's designee, shall be required to enroll in
55 and complete a "Retailer Tobacco Education Program."

56 For a third or subsequent violation of this section by any
57 retailer, within one (1) year of the two (2) prior violations, any
58 retailer's permit issued pursuant to Section 27-69-1 et seq.,
59 Mississippi Code of 1972, may be revoked or suspended for a period
60 of at least one (1) year after notice and opportunity for hearing.
61 If said permit is revoked by the Tax Commission, the retailer may
62 not reapply for a permit to sell tobacco for a period of six (6)

63 months. For the purposes of this section, "subsequent violations"
64 are those committed at the same place of business.

65 (3) It is the responsibility of all law enforcement officers
66 and law enforcement agencies of this state to ensure that the
67 provisions of this article are enforced.

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

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

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

91 (iii) In accordance with the procedures of Section
92 27-69-9, Mississippi Code of 1972, the State Tax Commission shall
93 initiate revocation procedures of the retailer's permit. The
94 Office of the Attorney General shall provide legal assistance in
95 revocation procedures when requested by the Tax Commission.

96 (5) (a) Any person eighteen (18) years of age or older who
97 knowingly purchases tobacco products for, or gives or makes
98 available tobacco products to, a person under the age of eighteen
99 (18) years, shall be guilty of a misdemeanor and upon conviction
100 shall be punished by a fine of not less than Three Hundred Dollars
101 (\$300.00) nor more than Five Hundred Dollars (\$500.00) and a
102 sentence to not more than thirty (30) days community service.

103 (b) The term "community service" as used in this
104 subsection shall mean work, projects or services for the benefit
105 of the community assigned, supervised and recorded by appropriate
106 public officials.

107 **SECTION 2.** Section 97-32-9, Mississippi Code of 1972, is
108 amended as follows:

109 97-32-9. (1) No person under eighteen (18) years of age
110 shall purchase any tobacco product. No student of any high
111 school, junior high school or elementary school shall possess
112 tobacco on any educational property as defined in Section
113 97-37-17, Mississippi Code of 1972.

114 (2) (a) Any person under the age of eighteen (18) years who
115 purchases or possesses any tobacco product as prohibited by this
116 section shall be guilty of a misdemeanor, and upon conviction
117 shall be punished by a fine of not less than Two Hundred Dollars
118 (\$200.00) nor more than Five Hundred Dollars (\$500.00) and a
119 sentence to not more than thirty (30) days community service; the
120 minor may also be sentenced to a tobacco cessation class.

121 (b) If a person is convicted or enters a plea of guilty
122 under this section, the trial judge, in lieu of the fine otherwise
123 provided under this section, may suspend the minor's driver's
124 license by taking and keeping it in the custody of the court for a
125 period of time not to exceed ninety (90) days. The judge so
126 ordering the suspension shall enter upon his docket "DEFENDANT'S
127 DRIVER'S LICENSE SUSPENDED FOR ____ () DAYS IN LIEU OF CONVICTION"
128 and such action by the trial judge shall not constitute a

129 conviction. During the period that the minor's driver's license
130 is suspended, the trial judge shall suspend the imposition of any
131 finances that may be imposed under this section and may place the
132 minor on probation subject to such conditions as the judge deems
133 appropriate. If the minor violates any of the conditions of
134 probation, then the trial judge shall return the driver's license
135 to the minor and impose the fines and penalties that he would have
136 otherwise imposed, and such action shall constitute a conviction.

137 **SECTION 3.** Section 97-32-13, Mississippi Code of 1972, is
138 amended as follows:

139 97-32-13. (1) Any person under the age of eighteen (18)
140 years who falsely states he is eighteen (18) years of age or
141 older, or presents any document that indicates he is eighteen (18)
142 years of age or older, for the purpose of purchasing or possessing
143 any tobacco or tobacco product shall be penalized not less than
144 Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars
145 (\$500.00) and required to complete not more than thirty (30) days
146 community service, and may also be sentenced to attend a tobacco
147 cessation class.

148 (2) If a person is convicted or enters a plea of guilty
149 under this section, the trial judge, in lieu of the penalties
150 otherwise provided under this section, may suspend the minor's
151 driver's license by taking and keeping it in the custody of the
152 court for a period of time not to exceed ninety (90) days. The
153 judge so ordering the suspension shall enter upon his docket
154 "DEFENDANT'S DRIVER'S LICENSE SUSPENDED FOR ____ () DAYS IN LIEU
155 OF CONVICTION" and such action by the trial judge shall not
156 constitute a conviction. During the period that the minor's
157 driver's license is suspended, the trial judge shall suspend the
158 imposition of any fines that may be imposed under this section and
159 may place the minor on probation subject to such conditions as the
160 judge deems appropriate. If the minor violates any of the
161 conditions of probation, then the trial judge shall return the

162 driver's license to the minor and impose the fines and penalties
163 that he would have otherwise imposed, and such action shall
164 constitute a conviction.

165 **SECTION 4.** This act shall take effect and be in force from
166 and after July 1, 2007.