

By: Representative Dixon

To: Drug Policy

HOUSE BILL NO. 190

1 AN ACT TO AMEND SECTIONS 97-32-5, 97-32-7, 97-32-9, 97-32-11,
2 97-32-13, 97-32-15, 97-32-21, 97-32-27 AND 97-32-51, MISSISSIPPI
3 CODE OF 1972, TO RAISE TO TWENTY-ONE YEARS OLD THE MINIMUM AGE
4 REQUIRED IN ORDER FOR A PERSON TO PURCHASE TOBACCO PRODUCTS; AND
5 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 * * * twenty-one (21) years of age unless the
12 individual under * * * twenty-one (21) years of age holds a
13 retailer's license to sell tobacco under Section 27-69-1 et seq.,
14 Mississippi Code of 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 * * *
18 twenty-one (21) years of age in violation of this article had
19 requested and examined a government-issued photographic



20 identification from such person establishing his age as at
21 least * * * twenty-one (21) years prior to selling such person a
22 tobacco product. The failure of a seller, barterer, deliverer or
23 giver of tobacco products over the counter in a retail
24 establishment to request and examine photographic identification
25 from a person under * * * twenty-one (21) years of age prior to
26 the sale of a tobacco product to such person if the individual is
27 not known to the seller, barterer, deliverer or giver of the
28 tobacco product to be over the age of * * * twenty-one (21) years,
29 shall be construed against the seller, barterer, deliverer or
30 giver and form a conclusive basis for the seller's violation of
31 this section.

32 It shall be an absolute affirmative defense that the person
33 or entity giving tobacco products through the mail to an
34 individual under * * * twenty-one (21) years of age in violation
35 of this article had requested and received documentary or written
36 evidence from such person purportedly establishing his age to be
37 at least * * * twenty-one (21) years of age.

38 Any person who violates this section shall be liable as
39 follows: For a first conviction, a fine of Fifty Dollars
40 (\$50.00); for a second conviction, a fine of Seventy-five Dollars
41 (\$75.00); and for all subsequent convictions, a fine of One
42 Hundred Fifty Dollars (\$150.00) shall be imposed.

43 Any person found in violation of this section shall be issued
44 a citation and the holder of the retailer permit shall be sent



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

53 For a third or subsequent violation of this section by any
54 retailer, within one (1) year of the two (2) prior violations, any
55 retailer's permit issued pursuant to Section 27-69-1 et seq.,
56 Mississippi Code of 1972, may be revoked or suspended for a period
57 of at least one (1) year after notice and opportunity for hearing.
58 If said permit is revoked by the * * * Department of Revenue, the
59 retailer may not reapply for a permit to sell tobacco for a period
60 of six (6) months. For the purposes of this section, "subsequent
61 violations" are those 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 * * *
67 twenty-one (21) years of age for any law enforcement officer of
68 this state to use persons under * * * twenty-one (21) years of age
69 to purchase or attempt to purchase tobacco products for the



70 purpose of monitoring compliance with this section, as long as
71 those persons are supervised by duly authorized law enforcement
72 agency officials.

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

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

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



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

98 (a) Prohibits the sale or distribution of tobacco
99 products, including samples, to any person under * * * twenty-one
100 (21) years of age and the purchase or receipt of tobacco products
101 by any person under * * * twenty-one (21) years of age * * *; and

102 (b) Requires that proof of age be demanded from a
103 prospective purchaser or recipient if the prospective purchaser or
104 recipient is under the age of * * * twenty-one (21) years. Every
105 person employed by a person engaged in the business of selling
106 tobacco products at retail shall sign an agreement with his
107 employer in substantially the following or similar form:

108 "I understand that state * * * law prohibits the sale or
109 distribution of tobacco products to persons under the age of * * *
110 twenty-one (21) years and out-of-package sales, and requires that
111 proof of age be demanded from a prospective purchaser or
112 recipient * * * twenty-one (21) years of age if the individual is
113 not known to the seller, barterer, deliverer or giver of the
114 tobacco product to be over the age of * * * twenty-one (21) years.
115 I promise, as a condition of my employment, to observe this law."

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



119 (3) No retailer who instructs his employee as provided in
120 this section shall be liable for any violations committed by such
121 employees.

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

124 97-32-9. No person under * * * twenty-one (21) years of age
125 shall purchase any tobacco product. No student of any high
126 school, junior high school or elementary school shall possess
127 tobacco on any educational property as defined in Section
128 97-37-17.

129 (a) If a person under * * * twenty-one (21) years of
130 age is found by a court to be in violation of any other statute
131 and is also found to be in possession of a tobacco product, the
132 court may order the minor to perform up to three (3) hours of
133 community service, in addition to any other punishment imposed by
134 the court.

135 (b) A violation under this section is not to be
136 recorded on the criminal history of the minor and, upon proof of
137 satisfaction of the court's order, the record shall be expunged
138 from any records other than youth court records.

139 **SECTION 4.** Section 97-32-11, Mississippi Code of 1972, is
140 amended as follows:

141 97-32-11. Point of sale warning signs are required, and each
142 seller shall place and maintain in legible condition, at each
143 point of sale of tobacco products to consumers, a sign no smaller



144 than eight and one-half (8-1/2) by eleven (11) inches or
145 ninety-three (93) square inches stating: "STATE LAW PROHIBITS THE
146 SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF * * * 21
147 YEARS. PROOF OF AGE REQUIRED."

148 Any person who violates this section shall be punished by a
149 penalty of not more than One Hundred Dollars (\$100.00).

150 **SECTION 5.** Section 97-32-13, Mississippi Code of 1972, is
151 amended as follows:

152 97-32-13. Any person under the age of * * * twenty-one (21)
153 years who falsely states he is * * * twenty-one (21) years of age
154 or older, or presents any document that indicates he is * * *
155 twenty-one (21) years of age or older, for the purpose of
156 purchasing or possessing any tobacco or tobacco product shall be
157 penalized not less than Twenty-five Dollars (\$25.00) nor more than
158 Two Hundred Dollars (\$200.00) or required to complete at least
159 thirty (30) days community service, or both.

160 **SECTION 6.** Section 97-32-15, Mississippi Code of 1972, is
161 amended as follows:

162 97-32-15. It shall be unlawful for any person to sell
163 tobacco products through a vending machine, unless the vending
164 machine is located in an establishment to which individuals under
165 the age of * * * twenty-one (21) years are denied access or are
166 required to be accompanied by an adult. A person who violates
167 this section shall be punished by a penalty of not more than Two
168 Hundred Fifty Dollars (\$250.00).



169 **SECTION 7.** Section 97-32-21, Mississippi Code of 1972, is
170 amended as follows:

171 97-32-21. The Office of the Attorney General or local law
172 enforcement agencies shall at least annually conduct random,
173 unannounced inspections at locations where tobacco products are
174 sold or distributed to ensure compliance with the Mississippi
175 Tobacco Youth Access Prevention Act of 1997. Persons under the
176 age of * * * twenty-one (21) years may be enlisted by the Office
177 of the Attorney General or local law enforcement to test
178 compliance with the Mississippi Juvenile Tobacco Access Prevention
179 Act of 1997, provided that the parent or legal guardian of the
180 person under * * * twenty-one (21) years of age so utilized has
181 given prior written consent for the minor's participation in
182 unannounced inspections. The Office of the Attorney General must
183 prepare a report of the findings, and report these findings to the
184 Department of Health and Department of Mental Health. The
185 Department of Mental Health shall prepare the annual report
186 required by Section 1926, subpart 1 of Part B, Title XIX of the
187 Federal Public Health Service Act (42 USCS 300X-26). The report
188 shall be approved by the Governor and then promptly transmitted to
189 the Secretary of the United States Department of Health and Human
190 Services.

191 **SECTION 8.** Section 97-32-27, Mississippi Code of 1972, is
192 amended as follows:



193 97-32-27. (1) "Adult" means any natural person at
194 least * * * twenty-one (21) years old.

195 (2) "Minor" means any natural person under the age of * * *
196 twenty-one (21) years.

197 (3) "Person" means any natural person.

198 (4) "Tobacco product" means any substance that contains
199 tobacco, including, but not limited to, cigarettes, cigars, pipes,
200 snuff, smoking tobacco or smokeless tobacco.

201 (5) "Educational property" means any public school building
202 or bus, public school campus, grounds, recreational area, athletic
203 field or other property owned, used or operated by any local
204 school board, school or directors for the administration of any
205 public educational institution or during a school-related
206 activity; provided, however, that the term "educational property"
207 shall not include any sixteenth section school land or lieu land
208 on which is not located a public school building, public school
209 campus, public school recreational area or public school athletic
210 field. Educational property shall not include property owned or
211 operated by the state institutions of higher learning, the public
212 community and junior colleges, or vocational-technical complexes
213 where only adult students are in attendance.

214 **SECTION 9.** Section 97-32-51, Mississippi Code of 1972, is
215 amended as follows:

216 97-32-51. (1) For the purposes of this section:

217 (a) (i) "Alternative nicotine product" means:



218 1. An electronic cigarette; or
219 2. Any other product that consists of or
220 contains nicotine that can be ingested into the body by chewing,
221 smoking, absorbing, dissolving, inhaling or by any other means.

222 (ii) Alternative nicotine product does not
223 include:

224 1. A cigarette or other tobacco product as
225 defined in Section 97-32-3;
226 2. A product that is a drug under 21 USCS
227 321(g) (1);
228 3. A product that is a device under 21 USCS
229 321(h); or
230 4. A combination product described in 21 USCS
231 353(g).

232 (b) (i) "Electronic cigarette" means an electronic
233 product or device that produces a vapor that delivers nicotine or
234 other substances to the person inhaling from the device to
235 simulate smoking, and is likely to be offered to, or purchased by,
236 consumers as an electronic cigarette, electronic cigar, electronic
237 cigarillo or electronic pipe.

238 (ii) Electronic cigarette does not include:

239 1. A cigarette or other tobacco products as
240 defined in Section 97-32-3;
241 2. A product that is a drug under 21 USCS
242 321(g) (1);



243 3. A product that is a device under 21 USCS
244 321(h); or

245 4. A combination product described in 21 USCS
246 353(g).

247 (2) No person, either directly or indirectly by an agent or
248 employee, or by a vending machine owned by the person or located
249 in the person's establishment, shall sell, offer for sale, give or
250 furnish any alternative nicotine product, or any cartridge or
251 component of an alternative nicotine product, to an individual
252 under * * * twenty-one (21) years of age. A violation of this
253 subsection is punishable as follows:

254 (a) By a fine of Fifty Dollars (\$50.00) for a first
255 offense;

256 (b) By a fine of Seventy-five Dollars (\$75.00) for a
257 second offense; and

258 (c) By a fine of One Hundred Dollars (\$100.00) for a
259 third or subsequent offense.

260 (3) Before selling, offering for sale, giving or furnishing
261 an alternative nicotine product, or any cartridge or component of
262 an alternative nicotine product to an individual, a person shall
263 verify that the individual is at least * * * twenty-one (21) years
264 of age by:

265 (a) Examining from any individual that appears to be
266 under twenty-seven (27) years of age a government-issued



267 photographic identification that establishes the individual is at
268 least * * * twenty-one (21) years of age; or

269 (b) For sales made through the Internet or other remote
270 sales methods, performing an age verification through an
271 independent, third-party age verification service that compares
272 information available from public records to the personal
273 information entered by the individual during the ordering process
274 that establishes the individual is * * * twenty-one (21) years of
275 age or older.

276 **SECTION 10.** This act shall take effect and be in force from
277 and after July 1, 2017.

