

By: Representative Dixon

To: Ways and Means

HOUSE BILL NO. 835

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, 97-32-23 AND 97-32-51, MISSISSIPPI
3 CODE OF 1972, TO RAISE TO TWENTY-ONE YEARS OF AGE THE MINIMUM AGE
4 REQUIRED IN ORDER FOR A PERSON TO PURCHASE TOBACCO PRODUCTS AND TO
5 INCREASE THE FINES FOR VIOLATIONS OF THIS ACT; AND FOR RELATED
6 PURPOSES.

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

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

10 97-32-5. It shall be unlawful for any person, or retailer,
11 to sell, barter, deliver or give tobacco products to any
12 individual under * * * ~~eighteen (18)~~ twenty-one (21) years of age
13 unless the individual under * * * ~~eighteen (18)~~ twenty-one (21)
14 years of age holds a retailer's license to sell tobacco under
15 Section 27-69-1 et seq., Mississippi Code of 1972.

16 It shall be an absolute affirmative defense that the person
17 selling, bartering, delivering or giving tobacco products over the
18 counter in a retail establishment to an individual
19 under * * * ~~eighteen (18)~~ twenty-one (21) years of age in violation
20 of this article had requested and examined a government-issued



21 photographic identification from such person establishing his age
22 as at least * * *~~eighteen (18)~~ twenty-one (21) years prior to
23 selling such person a tobacco product. The failure of a seller,
24 barterer, deliverer or giver of tobacco products over the counter
25 in a retail establishment to request and examine photographic
26 identification from a person under * * *~~eighteen (18)~~ twenty-one
27 (21) years of age prior to the sale of a tobacco product to such
28 person if the individual is not known to the seller, barterer,
29 deliverer or giver of the tobacco product to be over the age
30 of * * *~~eighteen (18)~~ twenty-one (21) years, shall be construed
31 against the seller, barterer, deliverer or giver and form a
32 conclusive basis for the seller's violation of this section.

33 It shall be an absolute affirmative defense that the person
34 or entity giving tobacco products through the mail to an
35 individual under * * *~~eighteen (18)~~ twenty-one (21) years of age
36 in violation of this article had requested and received
37 documentary or written evidence from such person purportedly
38 establishing his age to be at least * * *~~eighteen (18)~~ twenty-one
39 (21) years of age.

40 Any person who violates this section shall be liable as
41 follows: For a first conviction, a fine of * * *~~Fifty Dollars~~
42 ~~(\$50.00)~~ One Hundred Fifty Dollars (\$150.00); for a second
43 conviction, a fine of * * *~~Seventy-five Dollars (\$75.00)~~ Two
44 Hundred Twenty-five Dollars (\$225.00); and for all subsequent



45 convictions, a fine of * * *~~One Hundred Fifty Dollars (\$150.00)~~
46 Four Hundred Fifty Dollars (\$450.00) shall be imposed.

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

57 For a third or subsequent violation of this section by any
58 retailer, within one (1) year of the two (2) prior violations, any
59 retailer's permit issued pursuant to Section 27-69-1 et seq.,
60 Mississippi Code of 1972, may be revoked or suspended for a period
61 of at least one (1) year after notice and opportunity for hearing.
62 If said permit is revoked by the * * *~~Tax Commission~~ Department
63 of Revenue, the retailer may not reapply for a permit to sell
64 tobacco for a period of six (6) months. For the purposes of this
65 section, "subsequent violations" are those committed at the same
66 place of business.

67 It is the responsibility of all law enforcement officers and
68 law enforcement agencies of this state to ensure that the
69 provisions of this article are enforced.



70 It shall not be considered a violation of this section on the
71 part of any law enforcement officer or person under * * *~~eighteen~~
72 ~~(18)~~ twenty-one (21) years of age for any law enforcement officer
73 of this state to use persons under * * *~~eighteen~~ ~~(18)~~ twenty-one
74 (21) years of age to purchase or attempt to purchase tobacco
75 products for the purpose of monitoring compliance with this
76 section, as long as those persons are supervised by duly
77 authorized law enforcement agency officials.

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

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

93 In accordance with the procedures of Section 27-69-9,
94 Mississippi Code of 1972, the * * *~~State Tax Commission~~ Department



95 of Revenue shall initiate revocation procedures of the retailer's
96 permit. The Office of the Attorney General shall provide legal
97 assistance in revocation procedures when requested by the * * *
98 ~~Tax Commission~~ Department of Revenue.

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

101 97-32-7. (1) Every person engaged in the business of
102 selling tobacco products at retail shall notify each individual
103 employed by that person as a retail sales clerk that state law:

104 (a) Prohibits the sale or distribution of tobacco
105 products, including samples, to any person under * * *~~eighteen~~
106 ~~(18)~~ twenty-one (21) years of age and the purchase or receipt of
107 tobacco products by any person under * * *~~eighteen (18)~~ twenty-one
108 (21) years of age * * *~~7;~~ and

109 (b) Requires that proof of age be demanded from a
110 prospective purchaser or recipient if the prospective purchaser or
111 recipient is under the age of * * *~~eighteen (18)~~ twenty-one (21)
112 years. Every person employed by a person engaged in the business
113 of selling tobacco products at retail shall sign an agreement with
114 his employer in substantially the following or similar form:

115 "I understand that state and federal law prohibit the sale or
116 distribution of tobacco products to persons under the age
117 of * * *~~eighteen (18)~~ twenty-one (21) years and out-of-package
118 sales, and requires that proof of age be demanded from a
119 prospective purchaser or recipient under * * *~~eighteen (18)~~



120 twenty-one (21) years of age if the individual is not known to the
121 seller, barterer, deliverer or giver of the tobacco product to be
122 over the age of * * *~~eighteen (18)~~ twenty-one (21) years. I
123 promise, as a condition of my employment, to observe this law."

124 (2) Any person violating the provisions of this section
125 shall be penalized not less than * * *~~Fifty Dollars (\$50.00)~~ One
126 Hundred Fifty Dollars (\$150.00) nor more than * * *~~One Hundred~~
127 ~~Dollars (\$100.00)~~ Three Hundred Dollars (\$300.00).

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

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

133 97-32-9. No person under * * *~~eighteen (18)~~ twenty-one (21)
134 years of age shall purchase any tobacco product. No student of
135 any high school, junior high school or elementary school shall
136 possess tobacco on any educational property as defined in Section
137 97-37-17.

138 (a) If a person under * * *~~eighteen (18)~~ twenty-one
139 (21) years of age is found by a court to be in violation of any
140 other statute and is also found to be in possession of a tobacco
141 product, the court may order the minor to perform up to three (3)
142 hours of community service, in addition to any other punishment
143 imposed by the court.



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

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

150 97-32-11. Point of sale warning signs are required, and each
151 seller shall place and maintain in legible condition, at each
152 point of sale of tobacco products to consumers, a sign no smaller
153 than eight and one-half (8-1/2) by eleven (11) inches or
154 ninety-three (93) square inches stating: "STATE LAW PROHIBITS THE
155 SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF * * *~~18~~ 21
156 YEARS. PROOF OF AGE REQUIRED."

157 Any person who violates this section shall be punished by a
158 penalty of not more than * * *~~One Hundred Dollars (\$100.00)~~ Three
159 Hundred Dollars (\$300.00).

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

162 97-32-13. Any person under the age of * * *~~eighteen (18)~~
163 twenty-one (21) years who falsely states he is * * *~~eighteen (18)~~
164 twenty-one (21) years of age or older, or presents any document
165 that indicates he is * * *~~eighteen (18)~~ twenty-one (21) years of
166 age or older, for the purpose of purchasing or possessing any
167 tobacco or tobacco product shall be penalized not less
168 than * * *~~Twenty-five Dollars (\$25.00)~~ Seventy-five Dollars



169 (\$75.00) nor more than * * *~~Two Hundred Dollars (\$200.00)~~ Six
170 Hundred Dollars (\$600.00) or required to complete at least thirty
171 (30) days community service, or both.

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

174 97-32-15. It shall be unlawful for any person to sell
175 tobacco products through a vending machine, unless the vending
176 machine is located in an establishment to which individuals under
177 the age of * * *~~eighteen (18)~~ twenty-one (21) years are denied
178 access or are required to be accompanied by an adult. A person
179 who violates this section shall be punished by a penalty of not
180 more than * * *~~Two Hundred Fifty Dollars (\$250.00)~~ Seven Hundred
181 Fifty Dollars (\$750.00).

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

184 97-32-21. The Office of the Attorney General or local law
185 enforcement agencies shall at least annually conduct random,
186 unannounced inspections at locations where tobacco products are
187 sold or distributed to ensure compliance with the Mississippi
188 Tobacco Youth Access Prevention Act of 1997. Persons under the
189 age of * * *~~eighteen (18)~~ twenty-one (21) years may be enlisted by
190 the Office of the Attorney General or local law enforcement to
191 test compliance with the Mississippi Juvenile Tobacco Access
192 Prevention Act of 1997, provided that the parent or legal guardian
193 of the person under * * *~~eighteen (18)~~ twenty-one (21) years of



194 age so utilized has given prior written consent for the minor's
195 participation in unannounced inspections. The Office of the
196 Attorney General must prepare a report of the findings, and report
197 these findings to the Department of Health and Department of
198 Mental Health. The Department of Mental Health shall prepare the
199 annual report required by Section 1926, subpart 1 of Part B, Title
200 XIX of the Federal Public Health Service Act (42 USCS 300X-26).
201 The report shall be approved by the Governor and then promptly
202 transmitted to the Secretary of the United States Department of
203 Health and Human Services.

204 **SECTION 8.** Section 97-32-23, Mississippi Code of 1972, is
205 amended as follows:

206 97-32-23. It shall be unlawful to publish the name or
207 identity of any person under the age of * * *~~eighteen (18)~~
208 twenty-one (21) years who is convicted or adjudicated of any
209 violation of this article.

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

212 97-32-51. (1) For the purposes of this section:

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

214 1. An electronic cigarette; or

215 2. Any other product that consists of or

216 contains nicotine that can be ingested into the body by chewing,
217 smoking, absorbing, dissolving, inhaling or by any other means.



218 (ii) Alternative nicotine product does not
219 include:
220 1. A cigarette or other tobacco product as
221 defined in Section 97-32-3;
222 2. A product that is a drug under 21 USCS
223 321(g) (1);
224 3. A product that is a device under 21 USCS
225 321(h); or
226 4. A combination product described in 21 USCS
227 353(g).

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

234 (ii) Electronic cigarette does not include:
235 1. A cigarette or other tobacco products as
236 defined in Section 97-32-3;
237 2. A product that is a drug under 21 USCS
238 321(g) (1);
239 3. A product that is a device under 21 USCS
240 321(h); or
241 4. A combination product described in 21 USCS
242 353(g).



243 (2) No person, either directly or indirectly by an agent or
244 employee, or by a vending machine owned by the person or located
245 in the person's establishment, shall sell, offer for sale, give or
246 furnish any alternative nicotine product, or any cartridge or
247 component of an alternative nicotine product, to an individual
248 under * * *~~eighteen (18)~~ twenty-one (21) years of age. A
249 violation of this subsection is punishable as follows:

250 (a) By a fine of * * *~~Fifty Dollars (\$50.00)~~ One
251 Hundred Fifty Dollars (\$150.00) for a first offense;

252 (b) By a fine of * * *~~Seventy-five Dollars (\$75.00)~~ Two
253 Hundred Twenty-five Dollars (\$225.00) for a second offense; and

254 (c) By a fine of * * *~~One Hundred Dollars (\$100.00)~~
255 Three Hundred Dollars (\$300.00) for a third or subsequent offense.

256 (3) Before selling, offering for sale, giving or furnishing
257 an alternative nicotine product, or any cartridge or component of
258 an alternative nicotine product to an individual, a person shall
259 verify that the individual is at least * * *~~eighteen (18)~~
260 twenty-one (21) years of age by:

261 (a) Examining from any individual that appears to be
262 under twenty-seven (27) years of age a government-issued
263 photographic identification that establishes the individual is at
264 least * * *~~eighteen (18)~~ twenty-one (21) years of age; or

265 (b) For sales made through the Internet or other remote
266 sales methods, performing an age verification through an
267 independent, third-party age verification service that compares



268 information available from public records to the personal
269 information entered by the individual during the ordering process
270 that establishes the individual is * * *~~eighteen (18)~~ twenty-one
271 (21) years of age or older.

272 **SECTION 10.** This act shall take effect and be in force from
273 and after July 1, 2018.

