

By: Representative Clark

To: Drug Policy

HOUSE BILL NO. 140

1 AN ACT TO BE KNOWN AS THE MISSISSIPPI TOBACCO MINIMUM LEGAL
 2 SALE AGE OF 21 ACT; TO MAKE CERTAIN LEGISLATIVE FINDINGS REGARDING
 3 THE EFFECTS OF TOBACCO USE BY MINORS; TO DEFINE CERTAIN TERMS; TO
 4 PROHIBIT THE SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO PERSONS
 5 UNDER THE AGE OF 21; TO REQUIRE DISTRIBUTORS TO VERIFY THE AGE OF
 6 THE RECIPIENTS BEFORE DISTRIBUTING ANY TOBACCO PRODUCT; TO REQUIRE
 7 TOBACCO SELLERS TO POST SIGNS ABOUT THE AGE RESTRICTION ON TOBACCO
 8 SALES; TO AUTHORIZE THE STATE DEPARTMENT OF HEALTH TO CONDUCT
 9 RANDOM, UNANNOUNCED INSPECTIONS TO TEST AND ENSURE COMPLIANCE WITH
 10 THIS ACT; TO PROVIDE FOR PENALTIES FOR VIOLATIONS OF THIS ACT; TO
 11 PROVIDE FOR CERTAIN EXCEPTIONS AND DEFENSES; TO AMEND SECTIONS
 12 97-32-5, 97-32-7, 97-32-9, 97-32-11, 97-32-13, 97-32-15, 97-32-21,
 13 97-32-27 AND 97-32-51, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE
 14 PRECEDING PROVISIONS; AND FOR RELATED PURPOSES.

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

16 **SECTION 1. Short title.** This act shall be known as the
 17 Mississippi Tobacco Minimum Legal Sale Age of 21 Act.

18 **SECTION 2. Findings of fact and purpose.** (1) The
 19 Legislature makes the following findings:

20 (a) The State of Mississippi recognizes that the use of
 21 tobacco products has devastating health and economic consequences;

22 (b) Tobacco use is the foremost preventable cause of
 23 premature death in America. It causes half a million deaths
 24 annually and has been responsible for 20.8 million premature



25 deaths in the United States over the past fifty (50) years since
26 the first Surgeon General's report on smoking in 1964. This leads
27 to more than \$300 billion in health care and lost worker
28 productivity costs each year;

29 (c) Young people are particularly susceptible to the
30 addictive properties of tobacco products, and are particularly
31 likely to become lifelong users;

32 (d) An estimated 5.6 million youth aged zero (0) to
33 seventeen (17) are projected to die prematurely from a
34 tobacco-related illness if prevalence rates do not change;

35 (e) National data show that ninety-five percent (95%)
36 of adult smokers begin smoking before they turn twenty-one (21).
37 The ages of eighteen (18) to twenty-one (21) are a critical period
38 when many smokers move from experimental smoking to regular, daily
39 use;

40 (f) Young minds are particularly susceptible to the
41 addictive properties of nicotine. Tobacco industry documents show
42 that those who start smoking by the age of eighteen (18) are
43 almost twice as likely to become lifetime smokers as those who
44 start after they turn twenty-one (21);

45 (g) Electronic smoking device use among minors has
46 recently tripled and use of electronic smoking devices is
47 associated with and may encourage the use of conventional tobacco
48 products;



49 (h) Ninety percent (90%) of all adults who purchase
50 tobacco products for minors are between the ages of eighteen (18)
51 and twenty (20);

52 (i) In 2015, the Institute of Medicine concluded that
53 raising the minimum legal sales age for tobacco products
54 nationwide will reduce tobacco initiation, particularly among
55 adolescents aged fifteen (15) to seventeen (17), improve health
56 across the lifespan, and save lives; and that raising the minimum
57 legal sales age for tobacco products nationwide to twenty-one (21)
58 would, over time, lead to a twelve percent (12%) decrease in
59 smoking prevalence;

60 (j) The Institute of Medicine also predicts that
61 raising the minimum legal sales age for tobacco products
62 nationwide to twenty-one (21) would result in two hundred
63 twenty-three thousand (223,000) fewer premature deaths, fifty
64 thousand (50,000) fewer deaths from lung cancer, and 4.2 million
65 fewer years of life lost for those born between 2000 and 2019, and
66 would result in near immediate reductions in preterm birth, low
67 birth weight, and sudden infant death syndrome;

68 (k) A growing number of states and local governments
69 have enacted "Minimum Legal Sale Age of 21" (MLSA 21) laws to
70 further restrict access to tobacco, and these regulations can be
71 effective;



72 (1) Three-fourths of adults favor raising the minimum
73 legal sale age for tobacco products to twenty-one (21), including
74 seven (7) in ten (10) smokers;

75 (m) The financial impact of tobacco MLSA 21 laws on
76 retailers is likely to be minimal, decreasing tobacco sales by
77 only two percent (2%); and

78 (n) Raising the minimum age to purchase tobacco
79 products is consistent with raising the legal drinking age to
80 twenty-one (21), which led to reduced alcohol use and dependence
81 among youth, and contributed to the decline in drunk driving
82 fatalities.

83 (2) Therefore, the Legislature enacts this act to reduce
84 tobacco use by keeping tobacco products out of the hands of young
85 people.

86 **SECTION 3. Definitions.** As used in this act, the following
87 terms shall be defined as provided in this section:

88 (a) "Distribute" or "distribution" means to furnish,
89 give, provide, or to attempt to do so, whether gratuitously or for
90 any type of compensation.

91 (b) "Distributor" means a person who distributes a
92 tobacco product.

93 (c) "Electronic smoking device" means any device that
94 can be used to deliver aerosolized or vaporized nicotine to the
95 person inhaling from the device, including, but not limited to, an
96 e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic



97 smoking device includes any component, part, or accessory of such
98 a device, whether or not sold separately, and includes any
99 substance intended to be aerosolized or vaporized during the use
100 of the device. Electronic smoking device does not include drugs,
101 devices, or combination products authorized for sale by the U.S.
102 Food and Drug Administration, as those terms are defined in the
103 Federal Food, Drug and Cosmetic Act.

104 (d) "Person" means any natural person, partnership,
105 joint venture, society, club, trustee, trust, association,
106 organization, or corporation, or any officer, agent, employee,
107 factor, or any other personal representative thereof, in any
108 capacity.

109 (e) "Recipient" means any person who obtains or
110 attempts to obtain a tobacco product.

111 (f) "Tobacco product" means any product that is made
112 from or derived from tobacco, and is intended for human
113 consumption or is likely to be consumed, whether smoked, heated,
114 chewed, absorbed, dissolved, inhaled or ingested by any other
115 means, including, but not limited to, a cigarette, a cigar, pipe
116 tobacco, chewing tobacco, snuff, snus, or an electronic smoking
117 device. The term includes any component or accessory used in the
118 consumption of a tobacco product, such as filters, rolling papers,
119 pipes, or liquids used in electronic smoking devices. Tobacco
120 product does not include drugs, devices, or combination products
121 authorized for sale by the U.S. Food and Drug Administration, as



122 those terms are defined in the Federal Food, Drug and Cosmetic
123 Act.

124 **SECTION 4. Minimum legal sales age for tobacco products.**

125 The sale or distribution of any tobacco product to a person under
126 the age of twenty-one (21) is prohibited.

127 **SECTION 5. Age verification.** Before distributing any
128 tobacco product, the distributor shall verify that the recipient
129 is at least twenty-one (21) years of age. Each distributor shall
130 examine the recipient's government-issued photographic
131 identification. No such verification is required for a person
132 over the age of thirty (30). That a recipient appeared to be
133 thirty (30) years of age or older does not constitute a defense to
134 a violation of this section.

135 **SECTION 6. Signage.** No person shall sell or permit the sale
136 of tobacco products in the State of Mississippi unless a clearly
137 visible notice is posted at the location where tobacco products
138 are available for purchase, which shall state "No person under the
139 age of twenty-one (21) may purchase tobacco products," legibly
140 printed in letters at least one-half ($1/2$) inch high.

141 **SECTION 7. Enforcement.** The State Department of Health or
142 its authorized designee may conduct random, unannounced
143 inspections at locations where tobacco products are distributed to
144 test and ensure compliance with this act.

145 **SECTION 8. Penalties.** (1) In general. Except as otherwise
146 provided in subsection (2) of this section, any person who



147 violates this act shall be fined not less than Three Hundred
148 Dollars (\$300.00) for the first offense, not less than Six Hundred
149 Dollars (\$600.00) for the second offense, and not less than One
150 Thousand Dollars (\$1,000.00) for each offense thereafter. Each
151 violation, and every day in which a violation occurs, constitutes
152 a separate violation.

153 (2) **Violations by minors.** Any person under the age of
154 twenty-one (21) who violates Section 5 of this act shall be fined
155 Ten Dollars (\$10.00) for the first offense, and Fifty Dollars
156 (\$50.00) for each offense thereafter, no part of which may be
157 suspended, or the person shall be required to perform not less
158 than forty-eight (48) hours nor more than seventy-two (72) hours
159 of community service during the hours when the person is not
160 employed and is not attending school.

161 **SECTION 9. Exceptions and defenses.** (1) The penalties in
162 this act do not apply to a person younger than twenty-one (21)
163 years old who purchases or attempts to purchase tobacco products
164 while under the direct supervision of employees of a state agency
165 for training, education, research, or enforcement purposes.

166 (2) Nothing in this act prohibits a person under the age of
167 twenty-one (21) from handling tobacco products in the course of
168 lawful employment.

169 (3) It is an affirmative defense to a violation of this act
170 for a person to have reasonably relied on proof of age as
171 described by state law.



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

174 97-32-5. It shall be unlawful for any person, or retailer,
175 to sell, barter, deliver or give tobacco products to any
176 individual under * * * twenty-one (21) years of age unless the
177 individual under * * * twenty-one (21) years of age holds a
178 retailer's license to sell tobacco under Section 27-69-1 et
179 seq. * * *

180 It shall be an absolute affirmative defense that the person
181 selling, bartering, delivering or giving tobacco products over the
182 counter in a retail establishment to an individual under * * *
183 twenty-one (21) years of age in violation of this article had
184 requested and examined a government-issued photographic
185 identification from such person establishing his age as at
186 least * * * twenty-one (21) years prior to selling such person a
187 tobacco product. The failure of a seller, barterer, deliverer or
188 giver of tobacco products over the counter in a retail
189 establishment to request and examine photographic identification
190 from a person under * * * twenty-one (21) years of age prior to
191 the sale of a tobacco product to such person if the individual is
192 not known to the seller, barterer, deliverer or giver of the
193 tobacco product to be over the age of * * * twenty-one (21) years,
194 shall be construed against the seller, barterer, deliverer or
195 giver and form a conclusive basis for the seller's violation of
196 this section.



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

203 Any person who violates this section shall be liable as
204 follows: For a first conviction, a fine of Fifty Dollars
205 (\$50.00); for a second conviction, a fine of Seventy-five Dollars
206 (\$75.00); and for all subsequent convictions, a fine of One
207 Hundred Fifty Dollars (\$150.00) shall be imposed.

208 Any person found in violation of this section shall be issued
209 a citation and the holder of the retailer permit shall be sent
210 notification of this citation by registered mail by the law
211 enforcement agency issuing the citation. Notification shall
212 include the opportunity for hearing before the appropriate court.
213 For a first conviction, the retailer shall be sent a warning
214 letter informing him of the retailer's responsibility in the
215 selling of tobacco products. For a second conviction, the
216 retailer, or retailer's designee, shall be required to enroll in
217 and complete a "Retailer Tobacco Education Program."

218 For a third or subsequent violation of this section by any
219 retailer, within one (1) year of the two (2) prior violations, any
220 retailer's permit issued pursuant to Section 27-69-1 et seq. * * *
221 may be revoked or suspended for a period of at least one (1) year



222 after notice and opportunity for hearing. If * * * the permit is
223 revoked by the * * * Department of Revenue, the retailer may not
224 reapply for a permit to sell tobacco for a period of six (6)
225 months. For the purposes of this section, "subsequent violations"
226 are those committed at the same place of business.

227 It is the responsibility of all law enforcement officers and
228 law enforcement agencies of this state to ensure that the
229 provisions of this article are enforced.

230 It shall not be considered a violation of this section on the
231 part of any law enforcement officer or person under * * *
232 twenty-one (21) years of age for any law enforcement officer of
233 this state to use persons under * * * twenty-one (21) years of age
234 to purchase or attempt to purchase tobacco products for the
235 purpose of monitoring compliance with this section, as long as
236 those persons are supervised by duly authorized law enforcement
237 agency officials.

238 Any law enforcement agency conducting enforcement efforts
239 undertaken pursuant to this article shall prepare a report as
240 prescribed by the Attorney General which includes the number of
241 unannounced inspections conducted by the agency, a summary of
242 enforcement actions taken pursuant to this article, the name and
243 permit number of the retailer pursuant to Section 27-69-1 et
244 seq., * * * and final judicial disposition on all enforcement
245 actions. Reports shall be forwarded to the Office of the Attorney



246 General within twenty (20) working days of the final judicial
247 disposition.

248 On notification from local law enforcement that a retailer
249 has violated this article so as to warrant a revocation of the
250 retailer's permit, the Attorney General shall notify in writing
251 the * * * Department of Revenue within twenty (20) working days.

252 In accordance with the procedures of Section 27-69-9, * * *
253 the * * * Department of Revenue shall initiate revocation
254 procedures of the retailer's permit. The Office of the Attorney
255 General shall provide legal assistance in revocation procedures
256 when requested by the * * * Department of Revenue.

257 **SECTION 11.** Section 97-32-7, Mississippi Code of 1972, is
258 amended as follows:

259 97-32-7. (1) Every person engaged in the business of
260 selling tobacco products at retail shall notify each individual
261 employed by that person as a retail sales clerk that state law:

262 (a) Prohibits the sale or distribution of tobacco
263 products, including samples, to any person under eighteen (18)
264 years of age and the purchase or receipt of tobacco products by
265 any person under eighteen (18) years of age * * *; and

266 (b) Requires that proof of age be demanded from a
267 prospective purchaser or recipient if the prospective purchaser or
268 recipient is under the age of eighteen (18) years. Every person
269 employed by a person engaged in the business of selling tobacco



270 products at retail shall sign an agreement with his employer in
271 substantially the following or similar form:

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

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

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

286 **SECTION 12.** Section 97-32-9, Mississippi Code of 1972, is
287 amended as follows:

288 97-32-9. No person under * * * twenty-one (21) years of age
289 shall purchase any tobacco product. No student of any high
290 school, junior high school or elementary school shall possess
291 tobacco on any educational property as defined in Section
292 97-37-17.

293 (a) If a person under * * * twenty-one (21) years of
294 age is found by a court to be in violation of any other statute



295 and is also found to be in possession of a tobacco product, the
296 court may order the minor to perform up to three (3) hours of
297 community service, in addition to any other punishment imposed by
298 the court.

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

303 **SECTION 13.** Section 97-32-11, Mississippi Code of 1972, is
304 amended as follows:

305 97-32-11. Point of sale warning signs are required, and each
306 seller shall place and maintain in legible condition, at each
307 point of sale of tobacco products to consumers, a sign no smaller
308 than eight and one-half (8-1/2) by eleven (11) inches or
309 ninety-three (93) square inches stating: "STATE LAW PROHIBITS THE
310 SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF * * * 21
311 YEARS. PROOF OF AGE REQUIRED."

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

314 **SECTION 14.** Section 97-32-13, Mississippi Code of 1972, is
315 amended as follows:

316 97-32-13. Any person under the age of eighteen (18) years
317 who falsely states he is * * * twenty-one (21) years of age or
318 older, or presents any document that indicates he is * * *
319 twenty-one (21) years of age or older, for the purpose of



320 purchasing or possessing any tobacco or tobacco product shall be
321 penalized not less than Twenty-five Dollars (\$25.00) nor more than
322 Two Hundred Dollars (\$200.00) or required to complete at least
323 thirty (30) days community service, or both.

324 **SECTION 15.** Section 97-32-15, Mississippi Code of 1972, is
325 amended as follows:

326 97-32-15. It shall be unlawful for any person to sell
327 tobacco products through a vending machine, unless the vending
328 machine is located in an establishment to which individuals under
329 the age of * * * twenty-one (21) years are denied access or are
330 required to be accompanied by an adult. A person who violates
331 this section shall be punished by a penalty of not more than Two
332 Hundred Fifty Dollars (\$250.00).

333 **SECTION 16.** Section 97-32-21, Mississippi Code of 1972, is
334 amended as follows:

335 97-32-21. The Office of the Attorney General or local law
336 enforcement agencies shall at least annually conduct random,
337 unannounced inspections at locations where tobacco products are
338 sold or distributed to ensure compliance with the Mississippi
339 Juvenile Tobacco * * * Access Prevention Act of 1997. Persons
340 under the age of * * * twenty-one (21) years may be enlisted by
341 the Office of the Attorney General or local law enforcement to
342 test compliance with the Mississippi Juvenile Tobacco Access
343 Prevention Act of 1997, provided that the parent or legal guardian
344 of the person under * * * twenty-one (21) years of age so utilized



345 has given prior written consent for the minor's participation in
346 unannounced inspections. The Office of the Attorney General must
347 prepare a report of the findings, and report these findings to the
348 Department of Health and Department of Mental Health. The
349 Department of Mental Health shall prepare the annual report
350 required by Section 1926, subpart 1 of Part B, Title XIX of the
351 Federal Public Health Service Act (42 USCS 300X-26). The report
352 shall be approved by the Governor and then promptly transmitted to
353 the Secretary of the United States Department of Health and Human
354 Services.

355 **SECTION 17.** Section 97-32-27, Mississippi Code of 1972, is
356 amended as follows:

357 97-32-27. (1) "Adult" means any natural person at
358 least * * * twenty-one (21) years old.

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

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

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

365 (5) "Educational property" means any public school building
366 or bus, public school campus, grounds, recreational area, athletic
367 field or other property owned, used or operated by any local
368 school board, school or directors for the administration of any
369 public educational institution or during a school-related



370 activity; provided, however, that the term "educational property"
371 shall not include any sixteenth section school land or lieu land
372 on which is not located a public school building, public school
373 campus, public school recreational area or public school athletic
374 field. Educational property shall not include property owned or
375 operated by the state institutions of higher learning, the public
376 community and junior colleges, or vocational-technical complexes
377 where only adult students are in attendance.

378 **SECTION 18.** Section 97-32-51, Mississippi Code of 1972, is
379 amended as follows:

380 97-32-51. (1) For the purposes of this section:

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

382 1. An electronic cigarette; or

383 2. Any other product that consists of or
384 contains nicotine that can be ingested into the body by chewing,
385 smoking, absorbing, dissolving, inhaling or by any other means.

386 (ii) Alternative nicotine product does not
387 include:

388 1. A cigarette or other tobacco product as
389 defined in Section 97-32-3;

390 2. A product that is a drug under 21 USCS
391 321(g) (1);

392 3. A product that is a device under 21 USCS
393 321(h); or



394 4. A combination product described in 21 USCS
395 353(g).

396 (b) (i) "Electronic cigarette" means an electronic
397 product or device that produces a vapor that delivers nicotine or
398 other substances to the person inhaling from the device to
399 simulate smoking, and is likely to be offered to, or purchased by,
400 consumers as an electronic cigarette, electronic cigar, electronic
401 cigarillo or electronic pipe.

402 (ii) Electronic cigarette does not include:

403 1. A cigarette or other tobacco products as
404 defined in Section 97-32-3;

405 2. A product that is a drug under 21 USCS
406 321(g) (1);

407 3. A product that is a device under 21 USCS
408 321(h); or

409 4. A combination product described in 21 USCS
410 353(g).

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



418 (a) By a fine of Fifty Dollars (\$50.00) for a first
419 offense;

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

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

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

429 (a) Examining from any individual that appears to be
430 under twenty-seven (27) years of age a government-issued
431 photographic identification that establishes the individual is at
432 least * * * twenty-one (21) years of age; or

433 (b) For sales made through the Internet or other remote
434 sales methods, performing an age verification through an
435 independent, third-party age verification service that compares
436 information available from public records to the personal
437 information entered by the individual during the ordering process
438 that establishes the individual is * * * twenty-one (21) years of
439 age or older.

440 **SECTION 19.** This act shall take effect and be in force from
441 and after July 1, 2018.

