

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 * * * twenty-one (21) years of age unless the
13 individual under * * * twenty-one (21) years of age holds a
14 retailer's license to sell tobacco under Section 27-69-1 et seq.,
15 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 under * * *
19 twenty-one (21) years of age in violation of this article had
20 requested and examined a government-issued photographic



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

39 Any person who violates this section shall be liable as
40 follows: For a first conviction, a fine of * * * One Hundred
41 Fifty Dollars (\$150.00); for a second conviction, a fine of * * *
42 Two Hundred Twenty-five Dollars (\$225.00); and for all subsequent
43 convictions, a fine of * * * Four Hundred Fifty Dollars (\$450.00)
44 shall be imposed.



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

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

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

67 It shall not be considered a violation of this section on the
68 part of any law enforcement officer or person under * * *
69 twenty-one (21) years of age for any law enforcement officer of



70 this state to use persons under * * * twenty-one (21) years of age
71 to purchase or attempt to purchase tobacco products for the
72 purpose of monitoring compliance with this section, as long as
73 those persons are supervised by duly authorized law enforcement
74 agency officials.

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

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

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



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

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

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

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

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



118 (2) Any person violating the provisions of this section
119 shall be penalized not less than * * * One Hundred Fifty Dollars
120 (\$150.00) nor more than * * * Three Hundred Dollars (\$300.00).

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

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

126 97-32-9. No person under * * * twenty-one (21) years of age
127 shall purchase any tobacco product. No student of any high
128 school, junior high school or elementary school shall possess
129 tobacco on any educational property as defined in Section
130 97-37-17.

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

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

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



143 97-32-11. Point of sale warning signs are required, and each
144 seller shall place and maintain in legible condition, at each
145 point of sale of tobacco products to consumers, a sign no smaller
146 than eight and one-half (8-1/2) by eleven (11) inches or
147 ninety-three (93) square inches stating: "STATE LAW PROHIBITS THE
148 SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF * * * 21
149 YEARS. PROOF OF AGE REQUIRED."

150 Any person who violates this section shall be punished by a
151 penalty of not more than * * * Three Hundred Dollars (\$300.00).

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

154 97-32-13. Any person under the age of * * * twenty-one (21)
155 years who falsely states he is * * * twenty-one (21) years of age
156 or older, or presents any document that indicates he is * * *
157 twenty-one (21) years of age or older, for the purpose of
158 purchasing or possessing any tobacco or tobacco product shall be
159 penalized not less than * * * Seventy-five Dollars (\$75.00) nor
160 more than * * * Six Hundred Dollars (\$600.00) or required to
161 complete at least thirty (30) days community service, or both.

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

164 97-32-15. It shall be unlawful for any person to sell
165 tobacco products through a vending machine, unless the vending
166 machine is located in an establishment to which individuals under
167 the age of * * * twenty-one (21) years are denied access or are



168 required to be accompanied by an adult. A person who violates
169 this section shall be punished by a penalty of not more than * * *
170 Seven Hundred Fifty Dollars (\$750.00).

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

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



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

195 97-32-23. It shall be unlawful to publish the name or
196 identity of any person under the age of * * * twenty-one (21)
197 years who is convicted or adjudicated of any violation of this
198 article.

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

201 97-32-51. (1) For the purposes of this section:

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

203 1. An electronic cigarette; or

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

207 (ii) Alternative nicotine product does not
208 include:

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

211 2. A product that is a drug under 21 USCS
212 321(g) (1);

213 3. A product that is a device under 21 USCS
214 321(h); or

215 4. A combination product described in 21 USCS
216 353(g) .



217 (b) (i) "Electronic cigarette" means an electronic
218 product or device that produces a vapor that delivers nicotine or
219 other substances to the person inhaling from the device to
220 simulate smoking, and is likely to be offered to, or purchased by,
221 consumers as an electronic cigarette, electronic cigar, electronic
222 cigarillo or electronic pipe.

223 (ii) Electronic cigarette does not include:

224 1. A cigarette or other tobacco products 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 (2) No person, either directly or indirectly by an agent or
233 employee, or by a vending machine owned by the person or located
234 in the person's establishment, shall sell, offer for sale, give or
235 furnish any alternative nicotine product, or any cartridge or
236 component of an alternative nicotine product, to an individual
237 under * * * twenty-one (21) years of age. A violation of this
238 subsection is punishable as follows:

239 (a) By a fine of * * * One Hundred Fifty Dollars
240 (\$150.00) for a first offense;



241 (b) By a fine of * * * Two Hundred Twenty-five Dollars
242 (\$225.00) for a second offense; and

243 (c) By a fine of * * * Three Hundred Dollars (\$300.00)
244 for a third or subsequent offense.

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

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

254 (b) For sales made through the Internet or other remote
255 sales methods, performing an age verification through an
256 independent, third-party age verification service that compares
257 information available from public records to the personal
258 information entered by the individual during the ordering process
259 that establishes the individual is * * * twenty-one (21) years of
260 age or older.

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

