

By: Representative Willis

To: Ways and Means

HOUSE BILL NO. 1486

1 AN ACT TO AMEND SECTIONS 27-69-3, 27-69-5, 27-69-13, 27-69-27
2 AND 27-69-35, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERM
3 "ALTERNATIVE NICOTINE PRODUCT" AND INCLUDE SUCH PRODUCTS WITHIN
4 THE REGULATORY PROVISIONS OF THE TOBACCO TAX LAW; TO LEVY A TAX ON
5 ALTERNATIVE NICOTINE PRODUCTS; TO AMEND SECTION 97-32-51,
6 MISSISSIPPI CODE OF 1972, TO INCREASE THE PENALTIES FOR THE SALE
7 OF ALTERNATIVE NICOTINE PRODUCTS OR ANY CARTRIDGE OR COMPONENT OF
8 A NICOTINE PRODUCT TO INDIVIDUALS UNDER THE AGE OF 18; TO PROVIDE
9 THAT AN EMPLOYER SHALL NOT BE IMMUNE FROM LIABILITY FOR VIOLATION
10 BY AN EMPLOYEE AND THE PENALTY ASSESSED TO AN EMPLOYEE SHALL ALSO
11 BE ASSESSED TO THE EMPLOYER; TO PENALIZE PERSONS UNDER THE AGE OF
12 18 WHO PRESENT FALSE IDENTIFICATION FOR THE PURPOSE OF PURCHASING
13 ALTERNATIVE NICOTINE PRODUCTS OR ANY CARTRIDGE OR COMPONENT OF AN
14 ALTERNATIVE NICOTINE PRODUCT; TO AUTHORIZE LAW ENFORCEMENT
15 OFFICERS TO USE PERSONS UNDER THE AGE OF 18 TO PURCHASE OR ATTEMPT
16 TO PURCHASE ALTERNATIVE NICOTINE PRODUCTS FOR THE PURPOSE OF
17 MONITORING COMPLIANCE; TO REQUIRE LAW ENFORCEMENT AGENCIES
18 CONDUCTING ENFORCEMENT EFFORTS TO MAKE CERTAIN REPORTS; TO REQUIRE
19 THE DEPARTMENT OF REVENUE TO BE NOTIFIED OF VIOLATIONS; TO REQUIRE
20 THE DEPARTMENT OF REVENUE TO INITIATE PROCEDURES TO REVOKE
21 RETAILERS PERMITS FOR CERTAIN VIOLATIONS; TO CREATE NEW SECTIONS
22 97-32-53, 97-32-55, 97-32-57, 97-32-59 AND 97-32-61, MISSISSIPPI
23 CODE OF 1972, TO PROHIBIT THE PURCHASE OF ALTERNATIVE NICOTINE
24 PRODUCTS AND THEIR COMPONENTS BY PERSONS UNDER THE AGE OF 18 AND
25 TO PROHIBIT THE POSSESSION OF ALTERNATIVE NICOTINE PRODUCTS OR
26 THEIR COMPONENTS BY STUDENTS AT ANY HIGH SCHOOL, JUNIOR HIGH
27 SCHOOL, MIDDLE SCHOOL OR ELEMENTARY SCHOOL; TO REQUIRE EMPLOYERS
28 TO INFORM EMPLOYEES REGARDING THE PROHIBITION ON THE SALE OF
29 ALTERNATIVE NICOTINE PRODUCTS AND THEIR COMPONENTS TO PERSONS
30 UNDER THE AGE OF 18 AND TO REQUIRE EMPLOYEES TO SIGN A FORM TO
31 THAT EFFECT; TO REQUIRE CERTAIN WARNING SIGNS TO BE POSTED AT EACH
32 POINT OF SALE OF ALTERNATIVE NICOTINE PRODUCTS; TO PROVIDE THAT
33 RETAILERS SHALL NOT DISTRIBUTE ALTERNATIVE NICOTINE PRODUCTS OR
34 THEIR COMPONENTS OTHER THAN IN A SEALED PACKAGE PROVIDED BY THE



35 MANUFACTURER WITH THE REQUIRED HEALTH WARNING; TO REQUIRE RANDOM,
36 UNANNOUNCED INSPECTIONS AT LOCATIONS WHERE ALTERNATIVE NICOTINE
37 PRODUCTS ARE SOLD TO ENSURE COMPLIANCE; AND FOR RELATED PURPOSES.

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

39 **SECTION 1.** Section 27-69-3, Mississippi Code of 1972, is
40 amended as follows:

41 27-69-3. When used in this chapter:

42 (a) "State" means the State of Mississippi as
43 geographically defined, and any and all waters under the
44 jurisdiction of the State of Mississippi.

45 (b) "State Auditor" means the Auditor of Public
46 Accounts of the State of Mississippi, or his legally appointed
47 deputy, clerk or agent.

48 (c) "Commissioner" means the Commissioner of Revenue of
49 the Department of Revenue, and his authorized agents and
50 employees.

51 (d) "Person" means any individual, company,
52 corporation, partnership, association, joint venture, estate,
53 trust, or any other group, or combination acting as a unit, and
54 the plural as well as the singular, unless the intention to give a
55 more limited meaning is disclosed by the context.

56 (e) "Consumer" means a person who comes into possession
57 of tobacco for the purpose of consuming it, giving it away, or
58 disposing of it in any way by sale, barter or exchange.

59 (f) "Tobacco" means any cigarettes, cigars, cheroots,
60 stogies, smoking tobacco (including granulated, plug cut, crimp
61 cut, ready rubbed, and other kinds and forms of tobacco, or



62 substitutes therefor, prepared in such manner as to be suitable
63 for smoking in a pipe or cigarette) and including plug and twist
64 chewing tobacco and snuff, when such "tobacco" is manufactured and
65 prepared for sale or personal consumption. The term "tobacco"
66 shall also include alternative nicotine products as defined in
67 Section 97-32-51. All words used herein except alternative
68 nicotine product shall be given the meaning as defined in the
69 regulations of the Treasury Department of the United States of
70 America.

71 (g) "First sale" means and includes the first sale, or
72 distribution of such tobacco in intrastate commerce, or the first
73 use or consumption of such tobacco within this state.

74 (h) "Drop shipment" means and includes any delivery of
75 tobacco received by any person within this state, when payment for
76 such tobacco is made to the shipper, or seller by or through a
77 person other than a consignee.

78 (i) "Distributor" includes every person, except
79 retailers as defined herein, in the state who manufactures or
80 produces tobacco or who ships, transports, or imports into this
81 state, or in any manner acquires or possesses tobacco, and makes a
82 first sale of the same in the state.

83 (j) "Wholesaler" includes dealers, whose principal
84 business is that of a wholesale dealer or jobber, who is known to
85 the retail trade as such, and whose place of business is located
86 in Mississippi or in a state which affords reciprocity to



wholesalers domiciled in Mississippi, who shall sell any taxable tobacco to retail dealers only for the purpose of resale.

(k) "Retailer" includes every person, other than a wholesale dealer, as defined above, whose principal business is that of selling merchandise at retail, who shall sell, or offer for sale tobacco to the consumer. The sale of tobacco in quantity lots by retailers to other retailers, transient vendors, or other persons, shall not be construed as wholesale and shall not qualify such retailer for a permit as a wholesaler.

(l) "Dealer" includes every person, firm, corporation or association of persons, except retailers as defined herein, who manufacture tobacco for distribution, for sale, for use or for consumption in the State of Mississippi.

The word "dealer" is further defined to mean any person, firm, corporation or association of persons, except retailers as defined herein, who imports tobacco from any state or foreign country for distribution, sale, use, or consumption in the State of Mississippi.

(m) "Distributing agent" includes every person in the state who acts as an agent of any person outside the State of Mississippi, by receiving tobacco in interstate commerce, and storing such tobacco in this state subject to distribution, or delivery upon order from the person outside the state to distributors, wholesalers, retailers and dealers.



(n) "Transient vendor" means and includes every person commonly and generally termed "peddlers" and every person acting for himself, or as an agent, employee, salesman, or in any capacity for another, whether as owner, bailee, or other custodian of tobacco, and going from person to person, dealer to dealer, house to house, or place to place, and selling or offering for sale at retail or wholesale tobacco, and every person who does not keep a regular place of business open at all times in regular hours, and every person who goes from person to person, dealer to dealer, house to house, or place to place, and sells or offers for sale tobacco which he carries with him, and who delivers the same at the time of, or immediately after the sale, or without returning to the place of business operations (a permanent place of business within the state) between the taking of the order and the delivery of the tobacco, or

All persons who go from person to person, house to house, place to place, or dealer to dealer, soliciting orders by exhibiting samples, or taking orders, and thereafter making delivery of tobacco, or filling the order without carrying or sending the order to the permanent place of business, and thereafter making delivery of the tobacco pursuant to the terms of the order, or

All persons who go from person to person, place to place, house to house, or dealer to dealer, carrying samples and selling tobacco from samples, and afterwards making delivery without



taking and sending an order therefor to a permanent place of business for the filling of the order, and delivery of the tobacco, or the exchange of tobacco having become damaged or unsalable, or the purchase by tobacco of advertising space, or

All persons who have in their possession, or under their control, any tobacco offered, or to be offered for sale or to be delivered, unless the sale or delivery thereof is to be made in pursuance of a bona fide order for the tobacco, to be sold or delivered, the order to be evidenced by an invoice or memorandum.

(o) "Contraband tobacco" means all tobacco found in the possession of any person whose permit to engage in dealing in tobacco has been revoked by the commissioner; and any cigarettes found in the possession of any person to which the proper tax stamps have not been affixed; and any cigarettes improperly stamped when found in the possession of any person; and all other tobacco upon which the excise tax has not been paid.

(p) "Sale" means an exchange for money or goods, giving away, or distributing any tobacco as defined in this chapter.

(q) "Forty-eight (48) hours" and "seventy-two (72) hours" means two (2) calendar days and three (3) calendar days, respectively, excluding Sundays and legal holidays.

(r) "Stamp" or "stamping," or the import of such word, when used in this chapter, means any manner of stamp or impression permitted by the commissioner that carries out the purposes of the chapter in clearly indicating upon the packages of cigarettes



161 taxed the due payment of the tax and clearly identifying, by
162 serial number or otherwise, the permittee who affixed the stamp to
163 the particular package.

164 (s) "Manufacturer's list price" means the full sales
165 price at which tobacco is sold or offered for sale by a
166 manufacturer to the wholesaler or distributor in this state
167 without any deduction for freight, trade discount, cash discounts,
168 special discounts or deals, cash rebates, or any other reduction
169 from the regular selling price. In the event freight charges on
170 shipments to wholesalers or distributors are not paid by the
171 manufacturer, then such freight charges required to be paid by the
172 wholesalers and distributors shall be added to the amount paid to
173 the manufacturer in order to determine "manufacturer's list
174 price." In the case of a wholesaler or distributor whose place of
175 business is located outside this state, the "manufacturer's list
176 price" for tobacco sold in this state by such wholesaler or
177 distributor shall in all cases be considered to be the same as
178 that of a wholesaler or distributor located within this state.

179 **SECTION 2.** Section 27-69-5, Mississippi Code of 1972, is
180 amended as follows:

181 27-69-5. (1) Every distributor, wholesaler, dealer or
182 retailer who desires to become engaged in the sale or use of
183 tobacco upon which a tax is required to be paid shall file with
184 the commissioner an application for a permit to engage in such
185 business. The application for a permit shall be filed on blanks



to be furnished by the commissioner for that purpose. The application must be subscribed and sworn to by the person owning the business, or having an ownership interest in the business. If the applicant is a corporation, a duly authorized agent shall execute the application. The application shall show the name of such person, and in case of partnership, the name of each partner, the person's post-office address, the location of the place of business to which the permit shall apply, and the nature of the business in which engaged, and any other information the commissioner may require. No distributor, wholesaler, dealer or retailer shall sell any tobacco until the application has been filed, the prescribed permit fee paid, and the permit obtained. Except as otherwise provided in this subsection, the permit shall expire on January 31 of each year. However, a retail permit shall continue in force during the time that the permit holder to whom it is issued continues in the same business at the same location unless such permit is revoked by the commissioner for cause or is revoked or suspended pursuant to any provision of Section 27-70-1 et seq., Section 75-23-1 et seq. * * *, the Mississippi Juvenile Tobacco Access Prevention Act in Sections 97-32-1 through 97-32-23 or Section 97-32-51 et seq.

(2) An application shall be filed, and a permit obtained for each place of business owned or operated by each distributor, wholesaler, dealer or retailer.



210 (3) Upon receipt of the application and any permit fee
211 provided for in this chapter, the commissioner may issue to every
212 distributor, wholesaler, dealer or retailer, for the place of
213 business designated, a nonassignable permit, authorizing the sale
214 or use of tobacco in the state. The permit shall provide that it
215 is revocable, and may be forfeited or suspended upon violation of
216 any provision of this chapter, the Mississippi Tobacco Youth
217 Access Prevention Act of 1997, Section 27-70-7 et seq., Section
218 97-32-51 et seq., Section 75-23-1 et seq. or any rule or
219 regulation adopted by the commissioner. If the permit is revoked
220 or suspended, the distributor, wholesaler, dealer or retailer
221 shall not sell any tobacco from the place of business until a new
222 permit is granted, or the suspension of the old permit removed.

223 (4) A permit cannot be transferred from one person to
224 another, and the permit shall at all times be publicly displayed
225 by the distributor, wholesaler, dealer or retailer in his place of
226 business so as to be seen easily by the public. A permit may be
227 refused to any person previously convicted of violations of this
228 chapter or Section 27-70-1 et seq.

229 (5) Information contained on a permit may be disclosed to
230 the holder of a wholesaler's permit, to law enforcement agencies
231 of the federal government, state or any political subdivision of
232 the state, and to the Attorney General and federal agencies
233 responsible for administering tobacco laws.



234 **SECTION 3.** Section 27-69-13, Mississippi Code of 1972, is
235 amended as follows:

236 27-69-13. There is hereby imposed, levied and assessed, to
237 be collected and paid as hereinafter provided in this chapter, an
238 excise tax on each person or dealer in cigarettes, cigars,
239 stogies, snuff, chewing tobacco, * * * smoking tobacco and
240 alternative nicotine products, or substitutes therefor, upon the
241 sale, use, consumption, handling or distribution in the State of
242 Mississippi, as follows:

243 (a) On cigarettes, the rate of tax shall be Three and
244 Four-tenths Cents (3.4¢) on each cigarette sold with a maximum
245 length of one hundred twenty (120) millimeters; any cigarette in
246 excess of this length shall be taxed as if it were two (2) or more
247 cigarettes. Provided, however, if the federal tax rate on
248 cigarettes in effect on June 1, 1985, is reduced, then the rate as
249 provided herein shall be increased by the amount of the federal
250 tax reduction. Such tax increase shall take effect on the first
251 day of the month following the effective date of such reduction in
252 the federal tax rate.

253 (b) On cigars, cheroots, stogies, snuff, chewing and
254 smoking tobacco and all other tobacco products except cigarettes,
255 the rate of tax shall be fifteen percent (15%) of the
256 manufacturer's list price.



257 (c) On alternative nicotine products, a tax of Five
258 Cents (5¢) per milliliter of consumable nicotine liquid solution
259 or other similar material containing nicotine.

260 No stamp evidencing the tax herein levied on cigarettes shall
261 be of a denomination of less than One Cent (1¢), and whenever the
262 tax computed at the rates herein prescribed on cigarettes shall be
263 a specified amount, plus a fractional part of One Cent (1¢), the
264 package shall be stamped for the next full cent; however, the
265 additional face value of stamps purchased to comply with taxes
266 imposed by this section after June 1, 1985, shall be subject to a
267 four percent (4%) discount or compensation to dealers for their
268 services rather than the eight percent (8%) discount or
269 compensation allowed by Section 27-69-31.

270 Every wholesaler shall purchase stamps as provided in this
271 chapter, and affix the same to all packages of cigarettes handled
272 by him as herein provided.

273 The above tax is levied upon the sale, use, gift, possession
274 or consumption of tobacco within the State of Mississippi, and the
275 impact of the tax levied by this chapter is hereby declared to be
276 on the vendee, user, consumer or possessor of tobacco in this
277 state; and when said tax is paid by any other person, such payment
278 shall be considered as an advance payment and shall thereafter be
279 added to the price of the tobacco and recovered from the ultimate
280 consumer or user.



281 **SECTION 4.** Section 27-69-27, Mississippi Code of 1972, is
282 amended as follows:

283 27-69-27. (1) (a) The payment of the tax imposed by this
284 chapter shall be evidenced by affixing stamps to each individual
285 package of cigarettes usually sold to consumers, as distinguished
286 from cartons or larger units which are composed of a number of
287 individual packages.

288 (b) Except as otherwise provided in this paragraph, the
289 stamp shall be affixed within seventy-two (72) hours after the
290 receipt of the cigarettes by the wholesaler, and within
291 forty-eight (48) hours after receipt of the cigarettes by the
292 retailer; provided, that in the case a dealer conducts a wholesale
293 and retail business at one (1) place of business, stamps shall be
294 affixed within forty-eight (48) hours after receipt of the
295 cigarettes. However, the provisions of this paragraph shall not
296 apply to tobacco at the point it is purchased at a sale under
297 Section 27-69-56. The stamp must be so securely affixed as to
298 require the continued application of water or of steam to remove
299 it, or so that it cannot be otherwise removed without destruction
300 or mutilation.

301 (2) The excise tax imposed on cigars, smoking tobacco,
302 chewing tobacco, snuff and all other tobacco products except
303 cigarettes and alternative nicotine products shall be computed by
304 the application of the excise tax rate to the manufacturer's list
305 price on all purchases of such tobacco. The excise tax shall be



due and payable on or before the fifteenth day of the month next succeeding the month in which the tax accrues. The tax shall be filed with the commissioner on forms prescribed by the commissioner.

(3) The excise tax imposed on alternative nicotine products shall be computed by the application of the excise tax rate to the total volume of consumable nicotine liquid solution or other similar material containing nicotine on all purchases of inventory made during the taxable period. The excise tax shall be due and payable on or before the fifteenth day of the month next succeeding the month in which the tax accrues. The tax shall be filed with the commissioner on forms prescribed by the commissioner.

(4) (a) * * * Manufacturers or other wholesale distributors of tobacco, which are subject to the excise taxes imposed by Section 27-69-13 of this chapter for the privilege of selling or using such tobaccos within this state, who maintain "terminals" or warehouses in which such tobaccos are stored, and who sell only to licensed wholesale dealers within the state who are qualified to purchase and affix the stamps required, may maintain such "spot stocks," intended only for such sales, without affixing the stamps or filing returns and paying the tax.

(b) Any person desiring to maintain such "terminal" or warehouse, shall make application to the commissioner and obtain a permit to maintain such stocks without affixing stamps thereto,



for sale exclusively to out-of-state purchasers, or licensed wholesale dealers within this state, and the commissioner is hereby authorized to grant such permit upon the execution and filing with the commissioner, by the applicant, a bond with surety companies, authorized to do business in Mississippi, as surety thereon, and conditioned for the strict compliance by the applicant, with the following conditions under which * * * the privilege may be granted.

(c) The person maintaining such stock of untaxed tobacco shall supply to the commissioner monthly, or at such times as the commissioner may require, complete invoices of all tobaccos received, and shall also supply correct invoices of all tobaccos removed from such "terminal" or warehouse, * * * the invoices to contain the correct name and address of all persons to whom such tobacco shall be delivered or consigned, whether within or without the State of Mississippi.

(d) The penalty of such bond shall be determined by the commissioner, in an amount sufficient to protect the State of Mississippi from any loss of revenue which might occur by reason of the failure of principal to strictly adhere to the requirement that no tobacco would be sold from such stock within the State of Mississippi, except to licensed wholesale dealers.

SECTION 5. Section 27-69-35, Mississippi Code of 1972, is amended as follows:



27-69-35. It shall be the duty of every person subject to the provisions of this chapter, to keep an accurate set of records, showing all transactions had with reference to the purchase, sale or gift of cigars, cigarettes, * * * smoking tobacco, or alternative nicotine products, and * * * the person shall keep separately all invoices of cigars, cigarettes * * *, smoking tobacco or alternative nicotine products, and shall keep a record of all stamps purchased, and * * * the records, and all stocks of cigars, cigarettes * * *, smoking tobacco or alternative nicotine products on hand, shall be open to inspection at all reasonable times to the commissioner; * * * however, * * * all retail dealers, transient vendors, distributing agents, or other dealers purchasing, or receiving cigars, cigarettes, * * * smoking tobacco, or alternative nicotine products from without the state, whether * * * they shall have been ordered through a wholesaler, or jobber in this state, or by drop shipment, or otherwise, shall within five (5) days after receipt of the * * * cigars, cigarettes, smoking tobacco, or alternative nicotine products, mail a duplicate invoice of all * * * those purchases, or receipts, to the commissioner, and failure to furnish * * * the duplicate invoices shall be deemed a misdemeanor.

It is further provided that all manufacturers, distributors and wholesalers of cigars, cigarettes * * *, smoking tobacco or alternative nicotine products, who have a permit required by this chapter shall furnish the commissioner with a statement monthly,



showing the amount of taxable tobacco received, and must also furnish the commissioner with duplicate invoices covering stamps affixed to drop shipments purchased by retailers.

In the examination of * * * books, records, etc., the commissioner shall have the power to administer oaths to any person, and any person answering falsely, under oath, any * * * questions, shall be guilty of perjury.

If any person being so examined, fails to answer questions propounded to him by the commissioner, or if any person, being summoned to appear and answer such questions, shall fail or refuse to do so, or if any person shall fail or refuse to permit the inspection of his stock of merchandise, or invoices, or books, or papers pertaining to any dealers in cigars, cigarettes * * *, smoking tobacco or alternative nicotine products, the commissioner may make * * * that fact known to the circuit court of the county in which such failure or refusal occurs, or judge thereof in termtime or in vacation, by petition, and * * * the circuit court, or judge thereof, shall issue a summons for * * * the person so refusing, returnable on a date to be fixed by * * * the court * * * or * * * the judge, and on * * * that date, the * * * circuit court * * * or the circuit judge * * * shall proceed to examine into the truth of the matter set out in * * * the petition, and if the * * * matter is found to be true, the * * * circuit court * * * or circuit judge * * * shall issue a writ of subpoena duces tecum ordering and directing the person so summoned



to bring into court, and exhibit for the inspection of the commissioner, all * * * books, records, invoices, etc., as the court may deem proper from all the facts and circumstances in the case. Any person failing or refusing to present * * * the books, records, invoices, etc., or failing or refusing to testify, shall be punished for contempt as provided by Section 9-1-17 * * *.

SECTION 6. Section 97-32-51, Mississippi Code of 1972, is amended as follows:

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

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

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

(ii) Alternative nicotine product does not include:

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



429 (b) (i) "Electronic cigarette" means an electronic
430 product or device that produces a vapor that delivers nicotine or
431 other substances to the person inhaling from the device to
432 simulate smoking, and is likely to be offered to, or purchased by,
433 consumers as an electronic cigarette, electronic cigar, electronic
434 cigarillo or electronic pipe.

435 (ii) Electronic cigarette does not include:

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

438 2. A product that is a drug under 21 USCS
439 321(g) (1);

440 3. A product that is a device under 21 USCS
441 321(h); or

442 4. A combination product described in 21 USCS
443 353(g) .

444 (2) No person, either directly or indirectly by an agent or
445 employee, or by a vending machine owned by the person or located
446 in the person's establishment, shall sell, offer for sale, give or
447 furnish any alternative nicotine product, or any cartridge or
448 component of an alternative nicotine product, to an individual
449 under eighteen (18) years of age. A violation of this subsection
450 is punishable as follows:

451 (a) By a fine of * * * Two Hundred Fifty Dollars
452 (\$250.00) for a first offense;



(b) By a fine of * * * Five Hundred Dollars (\$500.00)
for a second offense; and

(c) By a fine of * * * One Thousand Dollars (\$1,000.00)
for a third or subsequent offense.

Any person found in violation of this section shall be issued
a citation and the holder of the retailer permit shall be sent
notification of the citation by registered mail by the law
enforcement agency issuing the citation. Notification shall
include the opportunity for hearing before the appropriate court.
For a second conviction, the retailer, or retailer's designee,
shall be required to enroll in a "Retailer Tobacco Education
Program."

For a third or subsequent violation of this section by any
retailer, within one (1) year of the two (2) prior violations, any
permit issued pursuant to Section 27-69-1 et seq., shall be
revoked or suspended for a period of at least one (1) year after
notice and opportunity for hearing. If a permit is revoked by the
Department of Revenue, the retailer may not reapply for a permit
to sell tobacco for a period of one (1) year. For the purposes of
this section, "subsequent violations" are those committed at the
same place of business.

(3) An employer shall not be immune from liability for
violation of this section by an employee and the penalty assessed
to the employee for a violation shall also be assessed against the
employer.



478 (4) Any person under the age of eighteen (18) years who
479 falsely states he or she is eighteen (18) years of age or older,
480 or presents any document that indicates that he or she is eighteen
481 (18) years of age or older, for the purpose of purchasing or
482 possessing any alternative nicotine product or any cartridge or
483 component of an alternative nicotine product, shall be penalized
484 not less than Twenty-five Dollars (\$25.00) nor more than One
485 Hundred Dollars (\$100.00), or required to complete at least thirty
486 (30) days of community service or both.

487 (* * *5) Before selling, offering for sale, giving or
488 furnishing an alternative nicotine product, or any cartridge or
489 component of an alternative nicotine product to an individual, a
490 person shall verify that the individual is at least eighteen (18)
491 years of age by:

492 (a) Examining from any individual that appears to be
493 under twenty-seven (27) years of age a government-issued
494 photographic identification that establishes the individual is at
495 least eighteen (18) years of age; or

496 (b) For sales made through the Internet or other remote
497 sales methods, performing an age verification through an
498 independent, third-party age verification service that compares
499 information available from public records to the personal
500 information entered by the individual during the ordering process
501 that establishes the individual is eighteen (18) years of age or
502 older.



503 (6) (a) It is the responsibility of all law enforcement
504 officers and law enforcement agencies of this state to ensure that
505 the provisions of this section are enforced.

506 (b) It shall not be considered a violation of this
507 section on the part of any law enforcement officer or person under
508 eighteen (18) years of age for any law enforcement officer of this
509 state to use persons under eighteen (18) years of age to purchase
510 or attempt to purchase alternative nicotine products for the
511 purpose of monitoring compliance with this section, as long as
512 those persons are supervised by duly authorized law enforcement
513 agency officials.

514 (c) Any law enforcement agency conducting enforcement
515 efforts undertaken pursuant to this section shall prepare a report
516 as prescribed by the Attorney General which includes the number of
517 unannounced inspections conducted by the agency, a summary of
518 enforcement actions taken pursuant to this section, the name and
519 permit number of the retailer pursuant to Section 27-69-1 et seq.,
520 and final judicial disposition on all enforcement actions.
521 Reports shall be forwarded to the Office of the Attorney General
522 within twenty (20) working days of the final judicial disposition.

523 (d) On notification from local law enforcement that a
524 retailer has violated this section so as to warrant a revocation
525 of the retailer's permit, the Attorney General shall notify in
526 writing the Department of Revenue within twenty (20) working days.



(e) In accordance with the procedures of Section 27-69-9, the Department of Revenue shall initiate revocation procedures of the retailer's permit. The Office of the Attorney General shall provide legal assistance in revocation procedures when requested by the Department of Revenue.

SECTION 7. The following shall be codified as Section 97-32-53, Mississippi Code of 1972:

97-32-53. (1) No person under eighteen (18) years of age shall purchase any alternative nicotine product or any cartridge or component of an alternative nicotine product. No student of any high school, junior high school, middle school or elementary school shall possess an alternative nicotine product or any cartridge or component of an alternative nicotine product on any educational property as defined in Section 97-32-51.

(2) If a person under eighteen (18) years of age is found by a court to be in violation of any other statute and is also found to be in possession of an alternative nicotine product or any cartridge or component of an alternative nicotine product the court may order the minor to perform up to three (3) hours of community service, in addition to any other punishment imposed by the court.

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



SECTION 8. The following shall be codified as Section 97-32-55, Mississippi Code of 1972:

97-32-55. (1) Every person engaged in the business of selling alternative nicotine products or any cartridge or component of an alternative nicotine product at retail shall notify each individual employed by that person as a retail sales clerk that state law prohibits the sale or distribution of alternative nicotine products or any cartridge or component of an alternative nicotine product, including samples, to any person under eighteen (18) years of age and the purchase or receipt of alternative nicotine products by any person under eighteen (18) years of age, and requires that proof of age be demanded from a prospective purchaser or recipient if the prospective purchaser or recipient appears to be under the age of twenty-seven (27) years.

(2) Every person employed by a person engaged in the business of selling alternative nicotine products or any cartridge or component of an alternative nicotine product at retail shall sign an agreement with his or her employer in substantially the following or similar form:

"I understand that state and federal law prohibit the sale or distribution of alternative nicotine products or any cartridge or component of an alternative nicotine product to persons under the age of eighteen (18) years and out-of-package sales, and that state law requires that proof of age be demanded from a prospective purchaser or recipient who appears to be under



577 twenty-seven (27) years of age. I promise, as a condition of my
578 employment, to observe this law."

579 (2) Any person violating the provisions of this section
580 shall be penalized not less than One Hundred Dollars (\$100.00) nor
581 more than Five Hundred Dollars (\$500.00).

582 **SECTION 9.** The following shall be codified as Section
583 97-32-57, Mississippi Code of 1972:

584 97-32-57. (1) Point-of-sale warning signs are required, and
585 each seller shall place and maintain in legible condition, at each
586 point of sale of alternative nicotine products to consumers, a
587 sign no smaller than eight and one-half (8-1/2) by eleven (11)
588 inches or ninety-three (93) square inches stating:

589 "STATE LAW PROHIBITS THE SALE OF ALTERNATIVE NICOTINE
590 PRODUCTS OR ANY CARTRIDGE OR COMPONENT OF AN ALTERNATIVE
591 NICOTINE PRODUCT TO PERSONS UNDER THE AGE OF 18 YEARS.
592 PROOF OF AGE REQUIRED."

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

595 **SECTION 10.** The following shall be codified as Section
596 97-32-59, Mississippi Code of 1972:

597 97-32-59. (1) (a) No retailer shall distribute alternative
598 nicotine products or any cartridge or component of an alternative
599 nicotine product for commercial purposes other than in a sealed
600 package provided by the manufacturer with the required health
601 warning.



602 (b) A retailer who is in violation of this subsection
603 shall be liable for a penalty of not more than One Hundred Dollars
604 (\$100.00) for the first violation or enrollment in a "Retailer
605 Tobacco Education Prevention Program," or both for a first
606 offense. For a second offense occurring within one (1) year of
607 the prior offense, the retailer shall be liable for a penalty of
608 not more than Two Hundred Dollars (\$200.00). For all subsequent
609 violations, a retailer shall be liable for a penalty of Three
610 Hundred Dollars (\$300.00). In addition, for a third and all
611 subsequent violations within one (1) year of two (2) prior
612 violations, the retailer permit issued under Section 27-69-1 et
613 seq. of any person violating this section shall be suspended or
614 revoked under the provisions of Section 27-69-1 et seq. for a
615 period of one (1) year after notice and opportunity for a hearing.
616 For the purposes of this section, "subsequent violations" are
617 those committed at the same place of business.

618 (2) (a) No distributor or wholesaler of alternative
619 nicotine products or any cartridges or components of an
620 alternative nicotine product shall sell, distribute, deliver, or
621 in any other manner transfer any tobacco products for sale at
622 retail to any person not possessing a valid permit under Section
623 27-69-1.

624 (b) Any distributor or wholesaler who violates this
625 section shall be liable for a penalty of not more than Two Hundred
626 Fifty Dollars (\$250.00) for a first offense. For a second offense



627 occurring within one (1) year of the prior offense, any
628 distributor or wholesaler shall be liable for a penalty of not
629 more than Five Hundred Dollars (\$500.00). For all subsequent
630 offenses within one (1) year of two (2) prior offenses, the
631 distributor or wholesaler shall become ineligible to hold
632 a tobacco distributor's permit for a period of at least one (1)
633 year under Section 27-69-1 et seq., and shall be liable for a
634 penalty of One Thousand Dollars (\$1,000.00).

635 **SECTION 11.** The following shall be codified as Section
636 97-32-61, Mississippi Code of 1972:

637 97-32-61. The Office of the Attorney General or local law
638 enforcement agencies shall at least annually conduct random,
639 unannounced inspections at locations where tobacco products are
640 sold or distributed to ensure compliance with this article.
641 Persons under the age of twenty-one (21) years may be enlisted by
642 the Office of the Attorney General or local law enforcement to
643 test compliance with this article, provided that the parent or
644 legal guardian of the person under twenty-one (21) years of age so
645 utilized has given prior written consent for the minor's
646 participation in unannounced inspections. The Office of the
647 Attorney General must prepare a report of the findings, and report
648 these findings to the Department of Health and Department of
649 Mental Health. The Department of Mental Health shall prepare the
650 annual report required by Section 1926, subpart 1 of Part B, Title
651 XIX of the Federal Public Health Service Act (42 USCS 300X-26).



652 The report shall be approved by the Governor and then promptly
653 transmitted to the Secretary of the United States Department of
654 Health and Human Services.

655 **SECTION 12.** This act shall take effect and be in force from
656 and after July 1, 2019.

