

By: Representatives Bain, Karriem

To: Judiciary B; Ways and Means

HOUSE BILL NO. 1407

1 AN ACT TO AMEND SECTION 27-69-3, MISSISSIPPI CODE OF 1972, TO
 2 REVISE THE DEFINITION OF THE TERM "TOBACCO" FOR PURPOSES OF THE
 3 TOBACCO TAX LAW TO INCLUDE ALTERNATIVE NICOTINE PRODUCTS AND
 4 ELECTRONIC CIGARETTES; TO AMEND SECTIONS 97-32-3, 97-32-5,
 5 97-32-7, 97-32-9, 97-32-11, 97-32-13, 97-32-15, 97-32-17, 97-32-19
 6 AND 97-32-21, MISSISSIPPI CODE OF 1972, TO RAISE THE MINIMUM AGE
 7 FOR A PERSON TO PURCHASE TOBACCO PRODUCTS TO TWENTY-ONE YEARS, AND
 8 TO INCREASE PENALTIES FOR VIOLATING "THE MISSISSIPPI JUVENILE
 9 TOBACCO ACCESS PREVENTION ACT OF 1997"; TO REGULATE THE INTERNET
 10 SALES OF TOBACCO PRODUCTS; TO AMEND SECTION 97-32-23, MISSISSIPPI
 11 CODE OF 1972, TO RAISE TO 21 YEARS OF AGE, THE PROHIBITION FROM
 12 PUBLISHING THOSE CONVICTED UNDER THESE PROVISIONS; TO AMEND
 13 SECTION 97-32-27, MISSISSIPPI CODE OF 1972, TO INCLUDE ALTERNATIVE
 14 NICOTINE PRODUCTS IN THE DEFINITION OF "TOBACCO PRODUCTS"; TO
 15 REVISE DEFINITIONS FOR "MINOR" AND "ADULT"; TO AMEND SECTIONS
 16 97-32-29 AND 97-32-51, MISSISSIPPI CODE OF 1972, TO REVISE THE
 17 PENALTIES FOR THE SALE OF ANY CARTRIDGE OR COMPONENT OF AN
 18 ALTERNATIVE NICOTINE PRODUCT; TO BRING FORWARD SECTIONS 27-69-13
 19 AND 27-69-5, MISSISSIPPI CODE OF 1972, FOR PURPOSES OF AMENDMENT;
 20 AND FOR RELATED PURPOSES.

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

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

24 27-69-3. When used in this chapter:

25 (a) "State" means the State of Mississippi as
 26 geographically defined, and any and all waters under the
 27 jurisdiction of the State of Mississippi.



28 (b) "State Auditor" means the Auditor of Public
29 Accounts of the State of Mississippi, or his legally appointed
30 deputy, clerk or agent.

31 (c) "Commissioner" means the Commissioner of Revenue of
32 the Department of Revenue, and his authorized agents and
33 employees.

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

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

42 (f) "Tobacco" means any cigarettes, cigars, cheroots,
43 stogies, smoking tobacco (including granulated, plug cut, crimp
44 cut, ready rubbed, and other kinds and forms of tobacco, or
45 substitutes therefor, prepared in such manner as to be suitable
46 for smoking in a pipe or cigarette) and including plug and twist
47 chewing tobacco and snuff, when such "tobacco" is manufactured and
48 prepared for sale or personal consumption, or any other product
49 containing, made of, or derived from tobacco or nicotine that is
50 intended for human consumption or is likely to be consumed,
51 whether inhaled, absorbed, or ingested by any means; any
52 substances that may be aerosolized or vaporized by such device,



53 whether or not the substance contains nicotine by an electronic
54 smoking device, including any component, part, or accessory
55 thereof, whether or not any of these contain tobacco or nicotine,
56 including, but not limited to, filters, rolling papers, blunt or
57 hemp wraps, and pipes. The term "tobacco" also means and includes
58 alternative nicotine products and electronic cigarettes as defined
59 in Section 97-32-51. All words used herein shall be given the
60 meaning as defined in the regulations of the Treasury Department
61 of the United States of America.

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

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

69 (i) "Distributor" includes every person, except
70 retailers as defined herein, in the state who manufactures or
71 produces tobacco or who ships, transports, or imports into this
72 state, or in any manner acquires or possesses tobacco, and makes a
73 first sale of the same in the state.

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



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

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

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

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

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



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

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

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



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

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

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

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

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

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



152 taxed the due payment of the tax and clearly identifying, by
153 serial number or otherwise, the permittee who affixed the stamp to
154 the particular package.

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

170 **SECTION 2.** Section 97-32-3, Mississippi Code of 1972, is
171 amended as follows:

172 97-32-3. For the purposes of this article:

173 (a) "Dealer" means every person, firm, corporation or
174 association of persons, except retailers as defined herein, who
175 receives the product from the manufacturer of tobacco for



176 distribution, for sale, for use, or for consumption in the State
177 of Mississippi.

178 (b) "Person" means any natural person.

179 (c) "Photographic identification" means any
180 government-issued card that includes a photograph of the person
181 seeking to purchase tobacco products and that is accepted as proof
182 of age under Mississippi law.

183 (d) "Point of sale" means a store, stand, or any other
184 place of business or point of distribution maintained by a seller
185 from which tobacco products are made available for sale or
186 distribution to consumers.

187 (e) "Retailer" includes every company, corporation,
188 partnership, business association, joint venture, estate, trust,
189 or any other combination acting as a unit or legal entity other
190 than a wholesale dealer as defined below, whose business is that
191 of selling merchandise at retail, who shall sell or offer for sale
192 tobacco to the consumer.

193 (f) "Seller" means any natural person, company,
194 corporation, firm, partnership, organization or other legal entity
195 who sells, dispenses, distributes or issues tobacco products for
196 commercial purposes.

197 (g) "Tobacco product" means any substance that contains
198 tobacco, including, but not limited to, cigarettes, cigars, pipes,
199 cheroots, stogies, snuff, smoking tobacco or smokeless tobacco
200 (either of which may include granulated, plug cut, crimp cut,



201 ready rubbed, and other kinds and forms of tobacco, or substitutes
202 therefor, prepared in such manner as to be suitable for smoking in
203 a pipe or cigarette); "tobacco product" also means cigarette
204 rolling papers including plug and twist chewing tobacco and snuff,
205 when such "tobacco" is manufactured and prepared for sale or
206 personal consumption, or any other product containing, made of, or
207 derived from tobacco or nicotine that is intended for human
208 consumption or is likely to be consumed, whether inhaled,
209 absorbed, or ingested by any means; any substances that may be
210 aerosolized or vaporized by such device, whether or not the
211 substance contains nicotine by an electronic smoking device,
212 including any component, part, or accessory thereof, whether or
213 not any of these contain tobacco or nicotine, including, but not
214 limited to, filters, rolling papers, blunt or hemp wraps, and
215 pipes. The term "tobacco" also means and includes alternative
216 nicotine products and electronic cigarettes as defined in Section
217 97-32-51. All words used herein shall be given the meaning as
218 defined in the regulations of the Treasury Department of the
219 United States of America.

220 (h) "Wholesaler" includes dealers whose principal
221 business is that of wholesale dealer or jobber, who is known to
222 the retail trade as such, and whose place of business is located
223 in Mississippi or in a state which affords reciprocity to
224 wholesalers domiciled in Mississippi, who shall sell any taxable
225 tobacco to retail dealers only for the purpose of resale.



226 (i) "Retailer Tobacco Prevention Education Program"
227 includes any program authorized by the Attorney General that
228 teaches and informs retailers and wholesalers about the laws
229 regarding youth access to tobacco products.

230 **SECTION 3.** Section 97-32-5, Mississippi Code of 1972, is
231 amended as follows:

232 97-32-5. (1) (a) It shall be unlawful for any person, or
233 retailer, to sell, barter, deliver or give tobacco products to any
234 individual under * * * twenty-one (21) years of age unless the
235 individual under * * * twenty-one (21) years of age holds a
236 retailer's license to sell tobacco under Section 27-69-1 et seq.,
237 Mississippi Code of 1972.

238 It shall be an absolute affirmative defense that the person
239 selling, bartering, delivering or giving tobacco products over the
240 counter in a retail establishment to an individual under * * *
241 twenty-one (21) years of age in violation of this article had
242 requested and examined a government-issued photographic
243 identification from such person establishing his age as at
244 least * * * twenty-one (21) years prior to selling such person a
245 tobacco product. The failure of a seller, barterer, deliverer or
246 giver of tobacco products over the counter in a retail
247 establishment to request and examine photographic identification
248 from a person under * * * twenty-one (21) years of age prior to
249 the sale of a tobacco product to such person if the individual is
250 not known to the seller, barterer, deliverer or giver of the



251 tobacco product to be over the age of * * * twenty-one (21) years,
252 shall be construed against the seller, barterer, deliverer or
253 giver and form a conclusive basis for the seller's violation of
254 this section.

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

261 Any person who violates the provisions of this section shall
262 be liable as follows: For a first conviction, a fine of * * * Two
263 Hundred Dollars (\$200.00); for a second conviction, a fine
264 of * * * Four Hundred Dollars (\$400.00); and for all subsequent
265 convictions, a fine of * * * One Thousand Dollars (\$1,000.00)
266 shall be imposed.

267 Any person found in violation of this section shall be issued
268 a citation and the holder of the retailer permit shall be sent
269 notification of this citation by registered mail by the law
270 enforcement agency issuing the citation. Notification shall
271 include the opportunity for hearing before the appropriate court.
272 For a first conviction, the retailer shall be sent a warning
273 letter informing him of the retailer's responsibility in the
274 selling of tobacco products and fined not less than Five Hundred
275 Dollars (\$500.00). For a second conviction, the retailer, or



276 retailer's designee, shall be required to enroll in and complete a
277 "Retailer Tobacco Education Program * * *", and fined not less
278 than Two Thousand Dollars (\$2,000.00).

279 For a third or subsequent violation of this section by any
280 retailer, within * * * three (3) years of the two (2) prior
281 violations, any retailer's permit issued pursuant to Section
282 27-69-1 et seq., Mississippi Code of 1972, * * * shall be revoked
283 or suspended for a period of at least one (1) year after notice
284 and opportunity for hearing, and shall be fined not less than Ten
285 Thousand Dollars (\$10,000.00). If said permit is revoked by
286 the * * * Department of Revenue, the retailer may not reapply for
287 a permit to sell tobacco for a period of six (6) months. Also, no
288 other retailer may apply for a permit or license to sell tobacco
289 products in that location for a period not less than six (6)
290 months from the date of revocation or suspension of a permit or
291 license. For the purposes of this section, "subsequent
292 violations" are those committed at the same place of business.

293 It is the responsibility of all law enforcement officers and
294 law enforcement agencies of this state to ensure that the
295 provisions of this article are enforced.

296 It shall not be considered a violation of this section on the
297 part of any law enforcement officer or person under * * *
298 twenty-one (21) years of age for any law enforcement officer of
299 this state to use persons under * * * twenty-one (21) years of age
300 to purchase or attempt to purchase tobacco products for the



301 purpose of monitoring compliance with this section, as long as
302 those persons are supervised by duly authorized law enforcement
303 agency officials.

304 Any law enforcement agency conducting enforcement efforts
305 undertaken pursuant to this article shall prepare a report as
306 prescribed by the Attorney General which includes the number of
307 unannounced inspections conducted by the agency, a summary of
308 enforcement actions taken pursuant to this article, the name and
309 permit number of the retailer pursuant to Section 27-69-1 et seq.,
310 Mississippi Code of 1972, and final judicial disposition on all
311 enforcement actions. Reports shall be forwarded to the Office of
312 the Attorney General within twenty (20) working days of the final
313 judicial disposition.

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

318 In accordance with the procedures of Section 27-69-9,
319 Mississippi Code of 1972, the * * * Department of Revenue shall
320 initiate revocation procedures of the retailer's permit. The
321 Office of the Attorney General shall provide legal assistance in
322 revocation procedures when requested by the * * * Department of
323 Revenue.

324 (b) Any person who violates this subsection in, on, or
325 within one thousand five hundred (1,500) feet of a building or



326 outbuilding which is all or part of a public or private
327 elementary, vocational or secondary school, or any church, public
328 park, ballpark, public gymnasium, youth center or movie theater or
329 within one thousand (1,000) feet of, the real property comprising
330 such public or private elementary, vocational or secondary school,
331 or any church, public park, ballpark, public gymnasium, youth
332 center or movie theater shall, upon conviction thereof, be
333 punished by a fine of up to twice that authorized by this
334 subsection.

335 (2) Any person who sells tobacco products remotely or using
336 the Internet shall use an independent, third-party age
337 verification service shall be used for Internet or remote sales of
338 tobacco products. The age verification must compare information
339 available from public records to the personal information entered
340 during the ordering process by the purchaser of the tobacco
341 products that provides proof that the purchaser is twenty-one (21)
342 years of age or older.

343 To receive a direct shipment of any tobacco products, a
344 resident of this state shall be at least twenty-one (21) years of
345 age, and a person who is at least twenty-one (21) years of age
346 must sign for any tobacco product from a direct shipper.

347 The Commissioner of Revenue may adopt any rules or
348 regulations as necessary to carry out the provisions of this
349 section.



350 **SECTION 4.** Section 97-32-7, Mississippi Code of 1972, is
351 amended as follows:

352 97-32-7. (1) Every person engaged in the business of
353 selling tobacco products at retail shall notify each individual
354 employed by that person as a retail sales clerk that state law:

355 (a) Prohibits the sale or distribution of tobacco
356 products, including samples, to any person under * * * twenty-one
357 (21) years of age and the purchase or receipt of tobacco products
358 by any person under * * * twenty-one (21) years of age * * *; and

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

365 "I understand that state and federal law prohibit the sale or
366 distribution of tobacco products to persons under the age of * * *
367 twenty-one (21) years and out-of-package sales, and requires that
368 proof of age be demanded from a prospective purchaser or recipient
369 under * * * twenty-one (21) years of age if the individual is not
370 known to the seller, barterer, deliverer or giver of the tobacco
371 product to be over the age of * * * twenty-one (21) years. I
372 promise, as a condition of my employment, to observe this law."

373 (2) Any person violating the provisions of this section
374 shall be penalized not less than * * * Five Hundred Dollars



375 (\$500.00) nor more than * * * One Thousand Five Hundred Dollars
376 (\$1,500.00).

377 * * *

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

380 97-32-9. No person under * * * twenty-one (21) years of age
381 shall purchase any tobacco product. No student of any high
382 school, junior high school or elementary school shall possess
383 tobacco on any educational property as defined in Section
384 97-37-17.

385 (a) If a person under * * * twenty-one (21) years of
386 age is found by a court to be in violation of any other statute
387 and is also found to be in possession of a tobacco product, the
388 court may order the minor to perform up to three (3) hours of
389 community service, in addition to any other punishment imposed by
390 the court.

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

395 **SECTION 6.** Section 97-32-11, Mississippi Code of 1972, is
396 amended as follows:

397 97-32-11. Point of sale warning signs are required, and each
398 seller shall place and maintain in legible condition, at each
399 point of sale of tobacco products to consumers, a sign no smaller



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

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

406 **SECTION 7.** Section 97-32-13, Mississippi Code of 1972, is
407 amended as follows:

408 97-32-13. Any person under the age of * * * twenty-one (21)
409 years who falsely states he is * * * twenty-one (21) years of age
410 or older, or presents any document that indicates he is * * *
411 twenty-one (21) years of age or older, for the purpose of
412 purchasing or possessing any tobacco or tobacco product shall be
413 penalized not less than * * * One Hundred Dollars (\$100.00) nor
414 more than * * * Five Hundred Dollars (\$500.00) or required to
415 complete at least * * * ninety (90) days community service, or
416 both.

417 **SECTION 8.** Section 97-32-15, Mississippi Code of 1972, is
418 amended as follows:

419 97-32-15. It shall be unlawful for any person to sell
420 tobacco products through a vending machine, unless the vending
421 machine is located in an establishment to which individuals under
422 the age of * * * twenty-one (21) years are denied access or are
423 required to be accompanied by an adult. A person who violates
424 this section shall be punished by a * * * fine of:



425 (a) Two Hundred Fifty Dollars (\$250.00) for a first
426 offense;

427 (b) Five Hundred Dollars (\$500.00) for a second
428 offense; and

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

431 **SECTION 9.** Section 97-32-17, Mississippi Code of 1972, is
432 amended as follows:

433 97-32-17. No retailer shall distribute tobacco products
434 other than cigars and pipe tobacco for commercial purposes other
435 than in a sealed package provided by the manufacturer with the
436 required health warning. A retailer who is in violation of this
437 section shall be liable for a penalty of not more than * * * Five
438 Hundred Dollars (\$500.00) for the first violation or enrollment in
439 a Retailer Tobacco Education Prevention Program, or both; not more
440 than * * * One Thousand Dollars (\$1,000.00) for a second violation
441 within * * * three (3) years of a prior violation; and a penalty
442 of * * * Two Thousand Dollars (\$2,000.00) for all subsequent
443 violations.

444 In addition, for a third and all subsequent violations
445 within * * * three (3) years of two (2) prior violations, the
446 permit to sell tobacco products of any person violating this
447 section * * * shall be suspended or revoked under the provisions
448 of Section 27-69-1 et seq., Mississippi Code of 1972, for a period
449 of one (1) year or more after notice and opportunity for a



450 hearing. If the permit or license to sell is revoked, the
451 retailer may not reapply for a permit to sell nicotine products
452 for a period of not less than six (6) months. Also, no other
453 retailer may apply for a permit or license to sell tobacco
454 products in that location for a period not less than six (6)
455 months from the date of revocation or suspension of a permit or
456 license. For the purposes of this section, "subsequent
457 violations" are those committed at the same place of business.

458 **SECTION 10.** Section 97-32-19, Mississippi Code of 1972, is
459 amended as follows:

460 97-32-19. No distributor or wholesaler of tobacco products
461 shall sell, distribute, deliver, or in any other manner transfer
462 any tobacco products for sale at retail to any person not
463 possessing a valid tobacco permit under Section 27-69-1 et seq.,
464 Mississippi Code of 1972.

465 Any distributor or wholesaler who violates this section shall
466 be liable for a penalty of up to * * * Five Hundred Dollars
467 (\$500.00) for a first offense. For a second offense within one
468 (1) year of the prior offense, any distributor or wholesaler shall
469 be liable for a penalty of up to * * * One Thousand Dollars
470 (\$1,000.00).

471 For all subsequent offenses within * * * three (3) years of
472 two (2) prior offenses, the distributor or wholesaler * * * shall
473 become ineligible to hold a tobacco distributor's permit for a
474 period of * * * not less than one (1) year under Section 27-69-1



475 et seq., Mississippi Code of 1972, and shall be liable for a
476 penalty of * * * Two Thousand Dollars (\$2,000.00).

477 **SECTION 11.** Section 97-32-21, Mississippi Code of 1972, is
478 amended as follows:

479 97-32-21. The Office of the Attorney General or local law
480 enforcement agencies shall at least annually conduct random,
481 unannounced inspections at locations where tobacco products are
482 sold or distributed to ensure compliance with the Mississippi
483 Tobacco Youth Access Prevention Act of 1997. Persons under the
484 age of * * * twenty-one (21) years may be enlisted by the Office
485 of the Attorney General or local law enforcement to test
486 compliance with the Mississippi Juvenile Tobacco Access Prevention
487 Act of 1997, provided that the parent or legal guardian of the
488 person under * * * twenty-one (21) years of age so utilized has
489 given prior written consent for the minor's participation in
490 unannounced inspections. The Office of the Attorney General must
491 prepare a report of the findings, and report these findings to the
492 Department of Health and Department of Mental Health. The
493 Department of Mental Health shall prepare the annual report
494 required by Section 1926, subpart 1 of Part B, Title XIX of the
495 Federal Public Health Service Act (42 USCS 300X-26). The report
496 shall be approved by the Governor and then promptly transmitted to
497 the Secretary of the United States Department of Health and Human
498 Services.



499 **SECTION 12.** Section 97-32-23, Mississippi Code of 1972, is
500 amended as follows:

501 97-32-23. It shall be unlawful to publish the name or
502 identity of any person under the age of * * * twenty-one (21)
503 years who is convicted or adjudicated of any violation of this
504 article.

505 **SECTION 13.** Section 97-32-27, Mississippi Code of 1972, is
506 amended as follows:

507 97-32-27. (1) "Adult" means any natural person at
508 least * * * twenty-one (21) years old.

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

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

512 (4) "Tobacco product" means * * * any cigarettes, cigars,
513 cheroots, stogies, smoking tobacco (including granulated, plug
514 cut, crimp cut, ready rubbed, and other kinds and forms of
515 tobacco, or substitutes therefor, prepared in such manner as to be
516 suitable for smoking in a pipe or cigarette) and including plug
517 and twist chewing tobacco and snuff, when such "tobacco" is
518 manufactured and prepared for sale or personal consumption, or any
519 other product containing, made of, or derived from tobacco or
520 nicotine that is intended for human consumption or is likely to be
521 consumed, whether inhaled, absorbed, or ingested by any means; any
522 substances that may be aerosolized or vaporized by such device,
523 whether or not the substance contains nicotine by an electronic



524 smoking device, including any component, part, or accessory
525 thereof, whether or not any of these contain tobacco or nicotine,
526 including, but not limited to, filters, rolling papers, blunt or
527 hemp wraps, and pipes. The term "tobacco" also means and includes
528 alternative nicotine products and electronic cigarettes as defined
529 in Section 97-32-51. All words used herein shall be given the
530 meaning as defined in the regulations of the Treasury Department
531 of the United States of America.

532 (5) "Educational property" means any public school building
533 or bus, public school campus, grounds, recreational area, athletic
534 field or other property owned, used or operated by any local
535 school board, school or directors for the administration of any
536 public educational institution or during a school-related
537 activity; provided, however, that the term "educational property"
538 shall not include any sixteenth section school land or lieu land
539 on which is not located a public school building, public school
540 campus, public school recreational area or public school athletic
541 field. Educational property shall not include property owned or
542 operated by the state institutions of higher learning, the public
543 community and junior colleges, or vocational-technical complexes
544 where only adult students are in attendance.

545 **SECTION 14.** Section 97-32-29, Mississippi Code of 1972, is
546 amended as follows:

547 97-32-29. No person shall use any tobacco product on any
548 educational property as defined in Section 97-32-27. Any adult



549 who violates this section shall be subject to a fine and shall be
550 liable as follows: (a) for a first conviction, a * * * fine of
551 Seventy-five Dollars (\$75.00); (b) for a second conviction, a fine
552 of * * * One Hundred Fifty Dollars (\$150.00); and (c) for all
553 subsequent convictions, a fine not to exceed * * * Five Hundred
554 Dollars (\$500.00) shall be imposed.

555 Any adult found in violation of this section shall be issued
556 a citation by a law enforcement officer, which citation shall
557 include notice of the date, time and location for hearing before
558 the justice court having jurisdiction where the violation is
559 alleged to have occurred. For the purposes of this section,
560 "subsequent convictions" are for violations committed on any
561 educational property within the State of Mississippi.

562 Anyone convicted under this article shall be recorded as
563 being fined for a civil violation of this article and not for
564 violating a criminal statute.

565 It is the responsibility of all law enforcement officers and
566 law enforcement agencies of this state to ensure that the
567 provisions of this article are enforced.

568 **SECTION 15.** Section 97-32-51, Mississippi Code of 1972, is
569 amended as follows:

570 97-32-51. (1) For the purposes of this section:

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

572 1. An electronic cigarette; or



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

576 (ii) Alternative nicotine product does not
577 include:

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

580 2. A product that is a drug under 21 USCS
581 321(g) (1);

582 3. A product that is a device under 21 USCS
583 321(h); or

584 4. A combination product described in 21 USCS
585 353(g).

586 (b) (i) "Electronic cigarette" means an electronic
587 product or device * * * may be used to deliver any aerosolized or
588 vaporized substance to the person inhaling from the device,
589 including, but not limited to, an e-cigar, e-pipe, vape pen or
590 e-hookah; and includes any component, part, or accessory of the
591 electronic product or device, and also includes any substance
592 intended to be aerosolized or vaporized during the use of the
593 electronic product or device, whether or not the substance
594 contains nicotine.

595 (ii) Electronic cigarette does not include:

596 1. A cigarette * * *;



- 597 2. A product that is a drug under 21 USCS
598 321(g) (1) ;
599 3. A product that is a device under 21 USCS
600 321(h) ; or
601 4. A combination product described in 21 USCS
602 353(g) .

603 (2) No person, either directly or indirectly by an agent or
604 employee, or by a vending machine owned by the person or located
605 in the person's establishment, unless the vending machine is
606 located in an establishment to which individuals under the age of
607 twenty-one (21) years are denied access or are required to be
608 accompanied by an adult, shall sell, offer for sale, give or
609 furnish * * * any cartridge or component of an alternative
610 nicotine product, to an individual under * * * twenty-one (21)
611 years of age. A violation of this subsection is punishable * * *
612 by a fine of:

- 613 (a) * * * Two Hundred Fifty Dollars (\$250.00) for a
614 first offense;
615 (b) * * * Five Hundred Dollars (\$500.00) for a second
616 offense; and
617 (c) * * * One Thousand Dollars (\$1,000.00) for a third
618 or subsequent offense. For a third or subsequent violation of
619 this section, within three (3) years of the two (2) prior
620 violations, any vendor's permit or license shall be revoked or
621 suspended for a period of one (1) year or more after notice and



622 opportunity for hearing, and shall be fined not less than Ten
623 Thousand Dollars (\$10,000.00). If the permit or license to sell
624 is revoked by the Department of Revenue, the retailer may not
625 reapply for a permit to sell nicotine products for a period of not
626 less than six (6) months. Also, no other retailer may apply for a
627 permit or license to sell nicotine products in that location for a
628 period not less than six (6) months from the date of revocation or
629 suspension of a permit or license. For the purposes of this
630 section, "subsequent violations" are those committed at the same
631 place of business.

632 It is the responsibility of all law enforcement officers and
633 law enforcement agencies of this state to ensure that the
634 provisions of this article are enforced.

635 It shall not be considered a violation of this section on the
636 part of any law enforcement officer or person under twenty-one
637 (21) years of age for any law enforcement officer of this state to
638 use persons under twenty-one (21) years of age to purchase or
639 attempt to purchase tobacco products for the purpose of monitoring
640 compliance with this section, as long as those persons are
641 supervised by duly authorized law enforcement agency officials.

642 Any law enforcement agency conducting enforcement efforts
643 undertaken pursuant to this article shall prepare a report as
644 prescribed by the Attorney General which includes the number of
645 unannounced inspections conducted by the agency, a summary of
646 enforcement actions taken pursuant to this act, the name and



647 permit number of the retailer pursuant to Section 27-69-1 et seq.,
648 Mississippi Code of 1972, and final judicial disposition on all
649 enforcement actions. Reports shall be forwarded to the Office of
650 the Attorney General within twenty (20) working days of the final
651 judicial disposition.

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

656 In accordance with the procedures of Section 27-69-9,
657 Mississippi Code of 1972, the Department of Revenue shall initiate
658 revocation procedures of the permit. The Office of the Attorney
659 General shall provide legal assistance in revocation procedures
660 when requested by the Department of Revenue.

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

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

669 (b) (i) For sales made through the Internet or other
670 remote sales methods, performing an age verification through an
671 independent, third-party age verification service that compares



672 information available from public records to the personal
673 information entered by the individual during the ordering process
674 that establishes the individual is * * * twenty-one (21) years of
675 age or older.

676 (ii) To receive a direct shipment of any cartridge
677 or component of an alternative nicotine product, a resident of
678 this state shall be at least twenty-one (21) years of age, and a
679 person who is at least twenty-one (21) years of age must sign for
680 any cartridge or component of an alternative nicotine product from
681 a direct shipper of such.

682 (iii) The Commissioner of Revenue may adopt any
683 rules or regulations as necessary to carry out the provisions of
684 this section.

685 (4) Any person who violates this section in, on, or within
686 one thousand five hundred (1,500) feet of a building or
687 outbuilding which is all or part of a public or private
688 elementary, vocational or secondary school, or any church, public
689 park, ballpark, public gymnasium, youth center or movie theater or
690 within one thousand (1,000) feet of, the real property comprising
691 such public or private elementary, vocational or secondary school,
692 or any church, public park, ballpark, public gymnasium, youth
693 center or movie theater shall, upon conviction thereof, be
694 punished by a fine of up to twice that authorized by this
695 subsection.



696 **SECTION 16.** Section 27-69-13, Mississippi Code of 1972, is
697 brought forward as follows:

698 27-69-13. There is hereby imposed, levied and assessed, to
699 be collected and paid as hereinafter provided in this chapter, an
700 excise tax on each person or dealer in cigarettes, cigars,
701 stogies, snuff, chewing tobacco, and smoking tobacco, or
702 substitutes therefor, upon the sale, use, consumption, handling or
703 distribution in the State of Mississippi, as follows:

704 (a) On cigarettes, the rate of tax shall be Three and
705 Four-tenths Cents (3.4¢) on each cigarette sold with a maximum
706 length of one hundred twenty (120) millimeters; any cigarette in
707 excess of this length shall be taxed as if it were two (2) or more
708 cigarettes. Provided, however, if the federal tax rate on
709 cigarettes in effect on June 1, 1985, is reduced, then the rate as
710 provided herein shall be increased by the amount of the federal
711 tax reduction. Such tax increase shall take effect on the first
712 day of the month following the effective date of such reduction in
713 the federal tax rate.

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

718 No stamp evidencing the tax herein levied on cigarettes shall
719 be of a denomination of less than One Cent (1¢), and whenever the
720 tax computed at the rates herein prescribed on cigarettes shall be



721 a specified amount, plus a fractional part of One Cent (1¢), the
722 package shall be stamped for the next full cent; however, the
723 additional face value of stamps purchased to comply with taxes
724 imposed by this section after June 1, 1985, shall be subject to a
725 four percent (4%) discount or compensation to dealers for their
726 services rather than the eight percent (8%) discount or
727 compensation allowed by Section 27-69-31.

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

731 The above tax is levied upon the sale, use, gift, possession
732 or consumption of tobacco within the State of Mississippi, and the
733 impact of the tax levied by this chapter is hereby declared to be
734 on the vendee, user, consumer or possessor of tobacco in this
735 state; and when said tax is paid by any other person, such payment
736 shall be considered as an advance payment and shall thereafter be
737 added to the price of the tobacco and recovered from the ultimate
738 consumer or user.

739 **SECTION 17.** Section 27-69-5, Mississippi Code of 1972, is
740 brought forward as follows:

741 27-69-5. (1) Every distributor, wholesaler, dealer or
742 retailer who desires to become engaged in the sale or use of
743 tobacco upon which a tax is required to be paid shall file with
744 the commissioner an application for a permit to engage in such
745 business. The application for a permit shall be filed on blanks



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

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

769 (3) Upon receipt of the application and any permit fee
770 provided for in this chapter, the commissioner may issue to every



771 distributor, wholesaler, dealer or retailer, for the place of
772 business designated, a nonassignable permit, authorizing the sale
773 or use of tobacco in the state. The permit shall provide that it
774 is revocable, and may be forfeited or suspended upon violation of
775 any provision of this chapter, the Mississippi Tobacco Youth
776 Access Prevention Act of 1997, Section 27-70-7 et seq., Section
777 75-23-1 et seq. or any rule or regulation adopted by the
778 commissioner. If the permit is revoked or suspended, the
779 distributor, wholesaler, dealer or retailer shall not sell any
780 tobacco from the place of business until a new permit is granted,
781 or the suspension of the old permit removed.

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

788 (5) Information contained on a permit may be disclosed to
789 the holder of a wholesaler's permit, to law enforcement agencies
790 of the federal government, state or any political subdivision of
791 the state, and to the Attorney General and federal agencies
792 responsible for administering tobacco laws.

793 **SECTION 18.** This act shall take effect and be in force from
794 and after July 1, 2020.

