

By: Representative Wallace

To: Judiciary B

HOUSE BILL NO. 1448

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; AND FOR RELATED PURPOSES.

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

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

22 27-69-3. When used in this chapter:

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



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

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

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

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

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



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

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

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

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

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



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

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

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

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

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



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

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

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



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

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

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

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

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

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



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

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

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

170 97-32-3. For the purposes of this article:

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



174 distribution, for sale, for use, or for consumption in the State
175 of Mississippi.

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

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

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

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

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

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



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

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



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

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

230 97-32-5. (1) (a) It shall be unlawful for any person, or
231 retailer, to sell, barter, deliver or give tobacco products to any
232 individual under * * * twenty-one (21) years of age unless the
233 individual under * * * twenty-one (21) years of age holds a
234 retailer's license to sell tobacco under Section 27-69-1 et seq.,
235 Mississippi Code of 1972.

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



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

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

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

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



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

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

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

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



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

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

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

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

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



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

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

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

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



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

350 97-32-7. (1) Every person engaged in the business of
351 selling tobacco products at retail shall notify each individual
352 employed by that person as a retail sales clerk that state law:

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

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

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

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



373 (\$500.00) nor more than * * * One Thousand Five Hundred Dollars
374 (\$1,500.00).

375 * * *

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

378 97-32-9. No person under * * * twenty-one (21) years of age
379 shall purchase any tobacco product. No student of any high
380 school, junior high school or elementary school shall possess
381 tobacco on any educational property as defined in Section
382 97-37-17.

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

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

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

395 97-32-11. Point of sale warning signs are required, and each
396 seller shall place and maintain in legible condition, at each
397 point of sale of tobacco products to consumers, a sign no smaller



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

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

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

406 97-32-13. Any person under the age of * * * twenty-one (21)
407 years who falsely states he is * * * twenty-one (21) years of age
408 or older, or presents any document that indicates he is * * *
409 twenty-one (21) years of age or older, for the purpose of
410 purchasing or possessing any tobacco or tobacco product shall be
411 penalized not less than * * * One Hundred Dollars (\$100.00) nor
412 more than * * * Five Hundred Dollars (\$500.00) or required to
413 complete at least * * * ninety (90) days community service, or
414 both.

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

417 97-32-15. It shall be unlawful for any person to sell
418 tobacco products through a vending machine, unless the vending
419 machine is located in an establishment to which individuals under
420 the age of * * * twenty-one (21) years are denied access or are
421 required to be accompanied by an adult. A person who violates
422 this section shall be punished by a * * * fine of:



423 (a) Two Hundred Fifty Dollars (\$250.00) for a first
424 offense;

425 (b) Five Hundred Dollars (\$500.00) for a second
426 offense; and

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

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

431 97-32-17. No retailer shall distribute tobacco products
432 other than cigars and pipe tobacco for commercial purposes other
433 than in a sealed package provided by the manufacturer with the
434 required health warning. A retailer who is in violation of this
435 section shall be liable for a penalty of not more than * * * Five
436 Hundred Dollars (\$500.00) for the first violation or enrollment in
437 a Retailer Tobacco Education Prevention Program, or both; not more
438 than * * * One Thousand Dollars (\$1,000.00) for a second violation
439 within * * * three (3) years of a prior violation; and a penalty
440 of * * * Two Thousand Dollars (\$2,000.00) for all subsequent
441 violations.

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



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

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

458 97-32-19. No distributor or wholesaler of tobacco products
459 shall sell, distribute, deliver, or in any other manner transfer
460 any tobacco products for sale at retail to any person not
461 possessing a valid tobacco permit under Section 27-69-1 et seq.,
462 Mississippi Code of 1972.

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

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



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

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

477 97-32-21. The Office of the Attorney General or local law
478 enforcement agencies shall at least annually conduct random,
479 unannounced inspections at locations where tobacco products are
480 sold or distributed to ensure compliance with the Mississippi
481 Tobacco Youth Access Prevention Act of 1997. Persons under the
482 age of * * * twenty-one (21) years may be enlisted by the Office
483 of the Attorney General or local law enforcement to test
484 compliance with the Mississippi Juvenile Tobacco Access Prevention
485 Act of 1997, provided that the parent or legal guardian of the
486 person under * * * twenty-one (21) years of age so utilized has
487 given prior written consent for the minor's participation in
488 unannounced inspections. The Office of the Attorney General must
489 prepare a report of the findings, and report these findings to the
490 Department of Health and Department of Mental Health. The
491 Department of Mental Health shall prepare the annual report
492 required by Section 1926, subpart 1 of Part B, Title XIX of the
493 Federal Public Health Service Act (42 USCS 300X-26). The report
494 shall be approved by the Governor and then promptly transmitted to
495 the Secretary of the United States Department of Health and Human
496 Services.



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

499 97-32-23. It shall be unlawful to publish the name or
500 identity of any person under the age of * * * twenty-one (21)
501 years who is convicted or adjudicated of any violation of this
502 article.

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

505 97-32-27. (1) "Adult" means any natural person at
506 least * * * twenty-one (21) years old.

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

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

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



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

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

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

545 97-32-29. No person shall use any tobacco product on any
546 educational property as defined in Section 97-32-27. Any adult



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

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

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

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

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

568 97-32-51. (1) For the purposes of this section:

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

570 1. An electronic cigarette; or



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

574 (ii) Alternative nicotine product does not
575 include:

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

578 2. A product that is a drug under 21 USCS
579 321(g) (1);

580 3. A product that is a device under 21 USCS
581 321(h); or

582 4. A combination product described in 21 USCS
583 353(g).

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

593 (ii) Electronic cigarette does not include:

594 1. A cigarette * * *;



- 595 2. A product that is a drug under 21 USCS
596 321(g) (1) ;
597 3. A product that is a device under 21 USCS
598 321(h) ; or
599 4. A combination product described in 21 USCS
600 353(g) .

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

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



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

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

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

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



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

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

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

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

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

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



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

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

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

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



694 **SECTION 16.** This act shall take effect and be in force from
695 and after July 1, 2020.

