

By: Senator(s) DeLano

To: Finance

SENATE BILL NO. 2596  
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 67-1-81, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE PENALTIES FOR THE SALE OR FURNISHING OF ALCOHOLIC  
3 BEVERAGES TO A MINOR, AND TO AUTHORIZE THE COMMISSIONER OF REVENUE  
4 TO IMPOSE CERTAIN ADMINISTRATIVE PENALTIES ON ALCOHOLIC BEVERAGE  
5 PERMITTEES FOR VIOLATIONS OF THIS SECTION; TO CREATE NEW SECTION  
6 97-32-52, MISSISSIPPI CODE OF 1972, TO DECLARE AS UNLAWFUL, AND TO  
7 PROVIDE THE PENALTIES FOR, THE SALE OR FURNISHING OF AN  
8 ALTERNATIVE NICOTINE PRODUCT TO A MINOR WITHIN 1,500 FEET OF A  
9 BUILDING ON EDUCATIONAL PROPERTY, OR WITHIN 1,000 FEET OF A  
10 CHURCH, PUBLIC PARK, BALLPARK, PUBLIC GYMNASIUM, YOUTH CENTER OR  
11 MOVIE THEATER; TO AMEND SECTION 97-32-51, MISSISSIPPI CODE OF  
12 1972, TO REVISE THE DEFINITION OF "ALTERNATIVE NICOTINE PRODUCT,"  
13 AND TO REVISE THE PENALTIES AND AGE LIMIT FOR OFFENSES CONCERNING  
14 THE DISTRIBUTION OF ALTERNATIVE NICOTINE PRODUCTS TO MINORS; TO  
15 AMEND SECTION 97-32-9, MISSISSIPPI CODE OF 1972, TO REVISE THE  
16 PENALTIES AND AGE LIMIT FOR THE PURCHASE AND POSSESSION OF TOBACCO  
17 BY MINORS, AND TO EXPAND THE PROHIBITIONS TO THE PURCHASE AND  
18 POSSESSION OF ALTERNATIVE NICOTINE PRODUCTS; TO AMEND SECTIONS  
19 97-32-7, 97-32-13 AND 97-32-21, MISSISSIPPI CODE OF 1972, IN  
20 CONFORMITY TO THE ABOVE; TO AMEND SECTION 97-32-2, MISSISSIPPI  
21 CODE OF 1972, TO PROVIDE FOR STATEWIDE UNIFORMITY WITH RESPECT TO  
22 CERTAIN LAWS CONCERNING THE SALE, PROMOTION AND DISTRIBUTION OF  
23 ALTERNATIVE NICOTINE PRODUCTS, TOBACCO AND TOBACCO PRODUCTS; AND  
24 FOR RELATED PURPOSES.

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

26 **SECTION 1.** Section 67-1-81, Mississippi Code of 1972, is  
27 amended as follows:

28 67-1-81. (1) (a) Any permittee or other person who shall  
29 sell, furnish, dispose of, give, or cause to be sold, furnished,



30 disposed of, or given, any alcoholic beverage to any person under  
31 the age of twenty-one (21) years shall be guilty of a misdemeanor  
32 and shall be punished by a fine of not less than Five Hundred  
33 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00)  
34 for a first offense. For a second or subsequent offense, such  
35 permittee or other person shall be punished by a fine of not less  
36 than One Thousand Dollars (\$1,000.00) nor more than Two Thousand  
37 Dollars (\$2,000.00), or by imprisonment for not more than one (1)  
38 year, or by both such fine and imprisonment in the discretion of  
39 the court. \* \* \*

40 (b) (i) If a permittee, or any employee of a  
41 permittee, violates paragraph (a) of this subsection (1), then, in  
42 addition to any other penalty provided for by law, the  
43 commissioner may impose the following penalties against the  
44 permittee on whose premises the alcoholic beverages were sold,  
45 given or furnished:

46 1. For the first offense on the licensed  
47 premises, suspension of the permit for not more than one (1) week.

48 2. For a second offense occurring on the  
49 licensed premises within a twelve-month period, suspension of the  
50 permit for not more than two (2) weeks.

51 3. For a third offense occurring on the  
52 licensed premises within a twelve-month period, suspension of the  
53 permit for not more than three (3) weeks or revocation of the  
54 permit.



55                   4. For a fourth or subsequent offense  
56 occurring on the licensed premises within a twelve-month period,  
57 revocation of the permit.

58           A violation of paragraph (a) of this subsection (1) shall be  
59 sufficient to impose the administrative penalties authorized under  
60 this paragraph (b), and any expunction of conviction shall have no  
61 effect on any administrative penalty imposed against a permittee  
62 under this paragraph (b).

63           (2) Any person under the age of twenty-one (21) years who  
64 purchases, receives, or has in his or her possession in any public  
65 place, any alcoholic beverages, shall be guilty of a misdemeanor  
66 and shall be punished by a fine of not less than Two Hundred  
67 Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00).  
68 Provided, that clearing or busing tables that have glasses or  
69 other containers that contain or did contain alcoholic beverages,  
70 or stocking, bagging or otherwise handling purchases of alcoholic  
71 beverages shall not be deemed possession of alcoholic beverages  
72 for the purposes of this section. Provided further, that a person  
73 who is at least eighteen (18) years of age but under the age of  
74 twenty-one (21) years who waits on tables by taking orders for or  
75 delivering orders of alcoholic beverages shall not be deemed to  
76 unlawfully possess or furnish alcoholic beverages if in the scope  
77 of his employment by the holder of an on-premises retailer's  
78 permit. This exception shall not authorize a person under the age  
79 of twenty-one (21) to tend bar or act in the capacity of



80 bartender. Any person under the age of twenty-one (21) who  
81 knowingly makes a false statement to the effect that he or she is  
82 twenty-one (21) years old or older or presents any document that  
83 indicates he or she is twenty-one (21) years of age or older for  
84 the purpose of purchasing alcoholic beverages from any person  
85 engaged in the sale of alcoholic beverages shall be guilty of a  
86 misdemeanor and shall be punished by a fine of not less than Two  
87 Hundred Dollars (\$200.00) nor more than Five Hundred Dollars  
88 (\$500.00), and a sentence to not more than thirty (30) days'  
89 community service.

90 (3) The term "community service" as used in this section  
91 shall mean work, projects or services for the benefit of the  
92 community assigned, supervised and recorded by appropriate public  
93 officials.

94 (4) If a person under the age of twenty-one (21) years is  
95 convicted or enters a plea of guilty of purchasing, receiving or  
96 having in his or her possession in any public place any alcoholic  
97 beverages in violation of subsection (2) of this section, the  
98 trial judge, in lieu of the penalties otherwise provided under  
99 subsection (2) of this section, shall suspend the minor's driver's  
100 license by taking and keeping it in the custody of the court for a  
101 period of time not to exceed ninety (90) days. The judge so  
102 ordering the suspension shall enter upon his docket "DEFENDANT'S  
103 DRIVER'S LICENSE SUSPENDED FOR \_\_\_\_ DAYS IN LIEU OF CONVICTION"  
104 and such action by the trial judge shall not constitute a



conviction. During the period that the minor's driver's license is suspended, the trial judge shall suspend the imposition of any fines or penalties that may be imposed under subsection (2) of this section and may place the minor on probation subject to such conditions as the judge deems appropriate. If the minor violates any of the conditions of probation, then the trial judge shall return the driver's license to the minor and impose the fines, penalties or both, that he would have otherwise imposed, and such action shall constitute a conviction.

**SECTION 2.** The following shall be codified as Section 97-32-52, Mississippi Code of 1972:

97-32-52. (1) It shall be unlawful for any person who is in, on or within one thousand five hundred (1,500) feet of a building or outbuilding which is all or part of educational property as defined by Section 97-37-17 to sell or furnish an alternative nicotine product to any individual under twenty-one (21) years of age. Each violation of the provisions of this subsection (1) shall be treated as a separate offense.

(2) Upon conviction for violation of the provisions in subsection (1) of this section, the offender shall be punished as follows:

(a) For a first offense, a fine of Five Hundred Dollars (\$500.00), and no more than twenty (20) hours of community service;



(b) For a second offense, a fine of One Thousand Dollars (\$1,000.00), and no more than thirty (30) hours of community service; and

(c) For a third offense or subsequent offense, a fine of One Thousand Five Hundred Dollars (\$1,500.00), and no more than fifty (50) hours of community service.

(3) It shall be unlawful for any person who is in, on or within one thousand (1,000) feet of any church, public park, ballpark, public gymnasium, youth center or movie theater to sell or furnish an alternative nicotine product to any individual under twenty-one (21) years of age. Each violation of the provisions of this subsection (3) shall be treated as a separate offense.

(4) Upon conviction for violation of the provisions in subsection (3) of this section, the offender shall be punished with treble the fines and community service described in subsection (2) of this section.

(5) If the alternative nicotine product sold or furnished in violation of this section contains any controlled substance that is otherwise prohibited by law, or any other substance that causes the recipient to require emergency medical care as a result of using the product, the penalty, upon conviction, shall be treble the fines and community service described in subsection (2) of this section, plus any other penalty provided by law for the sale or furnishing of the controlled substance or other substance.



**SECTION 3.** Section 97-32-51, Mississippi Code of 1972, is amended as follows:

97-32-51. (1) For the purposes of this \* \* \* chapter:

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

1. An electronic cigarette; \* \* \*

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 \* \* \*;

3. Any electronic device that can be used to deliver nicotine to an individual inhaling from the device, including, but not limited to, any cartridge component, liquid, capsule or powder used to refill or resupply such an electronic device; or

4. An electronic cigar or cigarillo.

(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) .



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

(ii) Electronic cigarette does not include:

1. A cigarette or other tobacco products 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).

(2) No person, either directly or indirectly by an agent or employee, or by a vending machine owned by the person or located in the person's establishment, shall sell, offer for sale, give or furnish any alternative nicotine product, or any cartridge \* \* \*, component \* \* \*, liquid, capsule or powder thereof, to an individual under \* \* \* twenty-one (21) years of age. The penalties described in this subsection shall be treble the fines described in this section, plus any other penalty provided by law, for the sale, use, possession or furnishing of a controlled substance or other substance to a person, if the alternative





nicotine product contains any controlled substance that is  
otherwise prohibited by law, or any other substance that causes  
the recipient of such to require emergency medical care as a  
result of using the product. Each violation of the provisions of  
this section shall be treated as a separate offense. A violation  
of this subsection is punishable as follows:

(a) By a fine of \* \* \* Two Hundred Fifty Dollars  
(\$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.

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

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

(b) For sales made through the internet or other remote  
sales methods, performing an age verification through an  
independent, third-party age verification service that compares  
information available from public records to the personal



information entered by the individual during the ordering process that establishes the individual is \* \* \* twenty-one (21) years of age or older.

**SECTION 4.** Section 97-32-9, Mississippi Code of 1972, is amended as follows:

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

(a) If a person under \* \* \* twenty-one (21) 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 a tobacco or alternative nicotine product, the court \* \* \* shall punish the minor as follows:

(i) For a first offense, pay a fine of One Hundred Dollars (\$100.00), and perform no more than fifteen (15) hours of community service;

(ii) For a second offense, a fine of Three Hundred Dollars (\$300.00), and no more than twenty-five (25) hours of community service;

(iii) For a third offense or subsequent offense, a fine of Five Hundred Dollars (\$500.00), and no more than forty (40) hours of community service.



(b) 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 5.** Section 97-32-7, Mississippi Code of 1972, is amended as follows:

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

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

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

"I understand that state and federal law prohibit the sale or distribution of tobacco products and alternative nicotine products



277 to persons under the age of \* \* \* twenty-one (21) years and  
278 out-of-package sales, and requires that proof of age be demanded  
279 from a prospective purchaser or recipient under \* \* \* twenty-one  
280 (21) years of age if the individual is not known to the seller,  
281 barterer, deliverer or giver of the tobacco product or alternative  
282 nicotine product to be over the age of \* \* \* twenty-one (21)  
283 years. I promise, as a condition of my employment, to observe  
284 this law."

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

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

291 **SECTION 6.** Section 97-32-13, Mississippi Code of 1972, is  
292 amended as follows:

293 97-32-13. Any person under the age of \* \* \* twenty-one (21)  
294 years who falsely states he is \* \* \* twenty-one (21) years of age  
295 or older, or presents any document that indicates he is \* \* \*  
296 twenty-one (21) years of age or older, for the purpose of  
297 purchasing or possessing any alternative nicotine product, tobacco  
298 or tobacco product shall be penalized not less than Twenty-five  
299 Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00) or  
300 required to complete at least thirty (30) days' community service,  
301 or both.



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

304           97-32-21. The Office of the Attorney General or local law  
305 enforcement agencies shall at least annually conduct random,  
306 unannounced inspections at locations where alternative nicotine  
307 products, tobacco or tobacco products are sold or distributed to  
308 ensure compliance with the Mississippi Juvenile Tobacco \* \* \*  
309 Access Prevention Act of 1997. Persons under the age of \* \* \*  
310 twenty-one (21) years may be enlisted by the Office of the  
311 Attorney General or local law enforcement to test compliance with  
312 the Mississippi Juvenile Tobacco Access Prevention Act of 1997,  
313 provided that the parent or legal guardian of the person  
314 under \* \* \* twenty-one (21) years of age so utilized has given  
315 prior written consent for the minor's participation in unannounced  
316 inspections. The Office of the Attorney General must prepare a  
317 report of the findings, and report these findings to the  
318 Department of Health and Department of Mental Health. The  
319 Department of Mental Health shall prepare the annual report  
320 required by Section 1926, subpart 1 of Part B, Title XIX of the  
321 Federal Public Health Service Act (42 USCS 300X-26). The report  
322 shall be approved by the Governor and then promptly transmitted to  
323 the Secretary of the United States Department of Health and Human  
324 Services.

325           **SECTION 8.** Section 97-32-2, Mississippi Code of 1972, is  
326 amended as follows:



327           97-32-2. It is the intent of the Legislature that  
328 enforcement of this chapter be implemented in an equitable manner  
329 throughout the state. The provisions of Sections 97-32-5,  
330 97-32-7, 97-32-9, 97-32-11, 97-32-13, 97-32-15, 97-32-17,  
331 97-32-19 \* \* \*, 97-32-21 and 97-32-51 shall supersede any existing  
332 or subsequently enacted local law, ordinance or regulation which  
333 relates to the sale, promotion and distribution of alternative  
334 nicotine products, tobacco and tobacco products.

335           **SECTION 9.** This act shall take effect and be in force from  
336 and after its passage.

