

By: Representative Bain

To: Judiciary B

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 976

1 AN ACT TO AMEND SECTION 97-32-51, MISSISSIPPI CODE OF 1972,  
2 TO REVISE THE PROVISIONS OF LAW THAT REGULATE ALTERNATIVE NICOTINE  
3 PRODUCTS; TO AMEND SECTION 97-32-21, MISSISSIPPI CODE OF 1972, TO  
4 CLARIFY THE AUTHORITY OF THE ATTORNEY GENERAL TO PERFORM RANDOM  
5 CHECKS; TO AMEND SECTION 67-1-81, MISSISSIPPI CODE OF 1972, TO  
6 REQUIRE HOLDERS OF A PACKAGE RETAIL PERMIT TO HAVE AN INDEPENDENT,  
7 THIRD-PARTY AGE VERIFICATION SERVICE AVAILABLE ON THE PROPERTY OF  
8 THE LOCATION IN WHICH ALCOHOLIC BEVERAGES ARE SOLD; AND FOR  
9 RELATED PURPOSES.

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

11 **SECTION 1.** Section 97-32-51, Mississippi Code of 1972, is  
12 amended as follows:

13 97-32-51. (1) For the purposes of this chapter:

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

15 1. An electronic cigarette;

16 2. Any other product that consists of or  
17 contains nicotine that can be ingested into the body by chewing,  
18 smoking, absorbing, dissolving, inhaling or by any other means;

19 3. Any electronic device that can be used to  
20 deliver nicotine to an individual inhaling, aerosolizing or  
21 vaporizing from the device, including, but not limited to, any



22 cartridge component, liquid, capsule or powder used to refill or  
23 resupply such an electronic device; \* \* \*

24 4. An electronic cigar or cigarillo \* \* \*;

25 5. Any vapor, paper, liquid, substance or  
26 other products containing, made or derived from alternative  
27 nicotine products; or

28 6. Any vapor, paper, liquid, substance or  
29 other products that are used to or aids in the inhaling,  
30 aerosolizing or vaporizing or transformation of alternative  
31 nicotine products.

32 (ii) Alternative nicotine product does not  
33 include:

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

36 2. A product that is a drug under 21 USCS  
37 321(g) (1);

38 3. A product that is a device under 21 USCS  
39 321(h); or

40 4. A combination product described in 21 USCS  
41 353(g).

42 (b) (i) "Electronic cigarette" means an electronic  
43 product or device that produces a vapor that delivers nicotine or  
44 other substances to the person inhaling from the device to  
45 simulate smoking, and is likely to be offered to, or purchased by,



46 consumers as an electronic cigarette, electronic cigar, electronic  
47 cigarillo or electronic pipe.

48 (ii) Electronic cigarette does not include:

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

51 2. A product that is a drug under 21 USCS  
52 321(g) (1);

53 3. A product that is a device under 21 USCS  
54 321(h); or

55 4. A combination product described in 21 USCS  
56 353(g).

57 (2) No person, either directly or indirectly by an agent or  
58 employee, electronically, telephonically or by a vending machine  
59 owned or controlled by the person or located in the person's  
60 establishment, shall sell, offer for sale, give or furnish any  
61 alternative nicotine product, or any cartridge, component, liquid,  
62 capsule or powder thereof, to an individual under twenty-one (21)  
63 years of age. The penalties described in this subsection shall be  
64 treble the fines described in this section, plus any other penalty  
65 provided by law, for the sale, use, possession or furnishing of a  
66 controlled substance or other substance to a person, if the  
67 alternative nicotine product contains any controlled substance  
68 that is otherwise prohibited by law, or any other substance that  
69 causes the recipient of such to require emergency medical care as  
70 a result of using the product. \* \* \*



71 \* \* \*

72 (3) (a) Before selling, offering for sale, giving or  
73 furnishing an alternative nicotine product, or any cartridge,  
74 component, liquid, capsule, paper or powder thereof, to an  
75 individual in person, a person shall verify that the individual is  
76 at least twenty-one (21) years of age by \* \* \* examining from any  
77 individual that appears to be under twenty-seven (27) years of age  
78 a government-issued photographic identification that establishes  
79 the individual is at least twenty-one (21) years of age; or

80 (b) \* \* \* Before selling, offering for sale, giving or  
81 furnishing an alternative nicotine product, or any cartridge,  
82 component, liquid, capsule, paper or powder thereof, to an  
83 individual by sales made through the Internet \* \* \*, other remote  
84 sales methods, computer network, cellular application, telephonic  
85 network or any other manner in which the purchaser or seller is  
86 not in person, the person shall verify that the individual is at  
87 least twenty-one (21) years of age by performing an age  
88 verification through an independent, third-party age verification  
89 service that obtains the purchaser's full name, date of birth and  
90 residential address and compares the information available from  
91 public records to the personal information entered by the  
92 individual during the ordering process that establishes whether  
93 the \* \* \* purchaser is twenty-one (21) years of age or older. The  
94 third party verification system used shall have at least a  
95 ninety-five percent (95%) accuracy rating according to national



96 standards in order to be in compliance with the identification  
97 requirements of this section.

98 (4) Any person who sells or distributes alternative nicotine  
99 products shall be required to place warning signs in legible  
100 condition, at each point of sale where alternative nicotine products  
101 are sold to consumers. The sign shall be no smaller than eight and  
102 one-half (8-1/2) by eleven (11) inches or ninety-three (93) square  
103 inches stating: "STATE LAW PROHIBITS THE SALE OF ALTERNATIVE  
104 NICOTINE PRODUCTS TO PERSONS UNDER THE AGE OF 21 YEARS OF AGE. PROOF  
105 OF AGE REQUIRED BY GOVERNMENT-ISSUED IDENTIFICATION IS REQUIRED."

106 (5) Any person who sells or distributes alternative nicotine  
107 products shall ensure that the words "alternative nicotine" are  
108 clearly marked on the packaging.

109 (6) Any person who sells or distributes alternative nicotine  
110 products using the Internet, remote sales methods, computer  
111 network, cellular application, telephonic network or any other  
112 manner in which the purchaser or seller is not in person shall  
113 annually certify to the Attorney General that the person uses an  
114 independent, third-party age verification service as required by  
115 this section. The third party verification system used shall have  
116 at least a ninety-five percent (95%) accuracy rating according to  
117 national standards in order to be in compliance with the  
118 identification requirements of this section.

119 (7) (a) Except as otherwise provided in paragraph (b), each  
120 violation of the provisions of this section shall be treated as a



121 separate offense. A violation of this subsection is punishable as  
122 follows:

123 (i) By a fine of Two Hundred Fifty Dollars  
124 (\$250.00) for a first offense;

125 (ii) By a fine of Five Hundred Dollars (\$500.00)  
126 for a second offense; and

127 (iii) By a fine of One Thousand Dollars  
128 (\$1,000.00) for a third or subsequent offense.

129 (b) If a violation of the provisions of this section  
130 occurs within a twenty-four-month period, the violation shall be  
131 punishable as follows:

132 (i) By a fine of One Thousand Five Hundred Dollars  
133 (\$1,500.00) for a second offense;

134 (ii) By a fine of Two Thousand Five Hundred  
135 Dollars (\$2,500.00) for a third offense; and

136 (iii) By a fine of Five Thousand Dollars  
137 (\$5,000.00) plus suspension of the seller's license for at least  
138 twelve (12) months for a fourth or subsequent offense.

139 **SECTION 2.** Section 97-32-21, Mississippi Code of 1972, is  
140 amended as follows:

141 97-32-21. (1) The Office of the Attorney General or local  
142 law enforcement agencies shall at least annually conduct random,  
143 unannounced inspections at locations where alternative nicotine  
144 products, tobacco or tobacco products are sold or distributed to  
145 ensure compliance with the Mississippi Juvenile Tobacco Access



146 Prevention Act of 1997. Persons under the age of twenty-one (21)  
147 years may be enlisted by the Office of the Attorney General or  
148 local law enforcement to test compliance with the Mississippi  
149 Juvenile Tobacco Access Prevention Act of 1997, provided that the  
150 parent or legal guardian of the person under twenty-one (21) years  
151 of age so utilized has given prior written consent for the minor's  
152 participation in unannounced inspections. The Office of the  
153 Attorney General must prepare a report of the findings, and report  
154 these findings to the Department of Health and Department of  
155 Mental Health. The Department of Mental Health shall prepare the  
156 annual report required by Section 1926, subpart 1 of Part B, Title  
157 XIX of the Federal Public Health Service Act (42 USCS 300X 26).  
158 The report shall be approved by the Governor and then promptly  
159 transmitted to the Secretary of the United States Department of  
160 Health and Human Services, the Speaker of the Mississippi House of  
161 Representatives and the Lieutenant Governor of Mississippi.

162 (2) The Office of the Attorney General shall develop a  
163 directory of all manufacturers of vapor products that deliver  
164 e-liquids, which have provided attestations that comply with  
165 Section 6 of this act.

166 **SECTION 3.** Section 67-1-81, Mississippi Code of 1972, is  
167 amended as follows:

168 67-1-81. (1) (a) Any permittee or other person who shall  
169 sell, furnish, dispose of, give, or cause to be sold, furnished,  
170 disposed of, or given, any alcoholic beverage to any person under



171 the age of twenty-one (21) years shall be guilty of a misdemeanor  
172 and shall be punished by a fine of not less than Five Hundred  
173 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00)  
174 for a first offense. For a second or subsequent offense, such  
175 permittee or other person shall be punished by a fine of not less  
176 than One Thousand Dollars (\$1,000.00) nor more than Two Thousand  
177 Dollars (\$2,000.00), or by imprisonment for not more than one (1)  
178 year, or by both such fine and imprisonment in the discretion of  
179 the court.

180 (b) (i) If a permittee, or any employee of a  
181 permittee, violates paragraph (a) of this subsection (1), then, in  
182 addition to any other penalty provided for by law, the  
183 commissioner may impose the following penalties against the  
184 permittee on whose premises the alcoholic beverages were sold,  
185 given or furnished:

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

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

191 3. For a third offense occurring on the  
192 licensed premises within a twelve-month period, suspension of the  
193 permit for not more than three (3) weeks or revocation of the  
194 permit.





195                   4. For a fourth or subsequent offense  
196 occurring on the licensed premises within a twelve-month period,  
197 revocation of the permit.

198           A violation of paragraph (a) of this subsection (1) shall be  
199 sufficient to impose the administrative penalties authorized under  
200 this paragraph (b), and any expunction of conviction shall have no  
201 effect on any administrative penalty imposed against a permittee  
202 under this paragraph (b).

203           (2) Any person under the age of twenty-one (21) years who  
204 purchases, receives, or has in his or her possession in any public  
205 place, any alcoholic beverages, shall be guilty of a misdemeanor  
206 and shall be punished by a fine of not less than Two Hundred  
207 Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00).  
208 Provided, that clearing or busing tables that have glasses or  
209 other containers that contain or did contain alcoholic beverages,  
210 or stocking, bagging or otherwise handling purchases of alcoholic  
211 beverages shall not be deemed possession of alcoholic beverages  
212 for the purposes of this section. Provided further, that a person  
213 who is at least eighteen (18) years of age but under the age of  
214 twenty-one (21) years who waits on tables by taking orders for or  
215 delivering orders of alcoholic beverages shall not be deemed to  
216 unlawfully possess or furnish alcoholic beverages if in the scope  
217 of his employment by the holder of an on-premises retailer's  
218 permit. This exception shall not authorize a person under the age  
219 of twenty-one (21) to tend bar or act in the capacity of



220 bartender. Any person under the age of twenty-one (21) who  
221 knowingly makes a false statement to the effect that he or she is  
222 twenty-one (21) years old or older or presents any document that  
223 indicates he or she is twenty-one (21) years of age or older for  
224 the purpose of purchasing alcoholic beverages from any person  
225 engaged in the sale of alcoholic beverages shall be guilty of a  
226 misdemeanor and shall be punished by a fine of not less than Two  
227 Hundred Dollars (\$200.00) nor more than Five Hundred Dollars  
228 (\$500.00), and a sentence to not more than thirty (30) days'  
229 community service.

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

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



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

254 (5) Any holder of a package retailer's permit shall have an  
255 independent, third-party age verification service available on the  
256 premises in which alcoholic beverages are sold for the purpose of  
257 obtaining the purchaser's full name and date of birth and  
258 comparing the information available from public records to the  
259 personal information entered by the package retailer that can  
260 establish whether the purchaser is twenty-one (21) years of age or  
261 older. The third party verification system used shall have at  
262 least a ninety-five percent (95%) accuracy rating according to  
263 national standards in order to be in compliance with the  
264 identification requirements of this section.

265 **SECTION 4.** As used in this act, the following terms shall  
266 have the meaning ascribed in this section, unless context of use  
267 clearly requires otherwise:



268 (a) "Attorney General" means the chief legal officer  
269 and advisor for the State of Mississippi, for both civil and  
270 criminal matters of litigation.

271 (b) "Directory" means the Attorney General's list of  
272 all manufacturers that have provided attestations that comply with  
273 Section 2 of this act and all vapor products that are listed in  
274 such certifications.

275 (c) "E-liquid" means a liquid that may contain  
276 nicotine, which may include flavorings or other ingredients that  
277 are intended for use in a vapor product.

278 (d) "Manufacturer" means an entity that manufactures  
279 vapor products, anywhere in the world, which are intended for sale  
280 in the United States, either directly or through an importer.

281 (e) "Person" means any natural person, partnership,  
282 company, corporation or other entity.

283 (f) "Vapor products" means an electronic device that  
284 delivers nicotine through e-liquid, as defined in this paragraph  
285 (c), in aerosol form into the mouth and lungs when inhaled. "Vapor  
286 product" includes, but is not limited to:

- 287 (i) An electronic cigarette;
- 288 (ii) An electronic cigar;
- 289 (iii) An electronic cigarillo;
- 290 (iv) An electronic pipe;
- 291 (v) An electronic hookah;
- 292 (vi) A vape pen or vapor product; and



293 (vii) Any related device and any cartridge or  
294 other component of such device, including e-liquid.

295 "Vapor product" does not include any tobacco or marijuana  
296 product or any product that is regulated by the United States Food  
297 and Drug Administration under Chapter V of the Federal Food, Drug,  
298 and Cosmetic Act (21 USCS Section 351 et seq.).

299 **SECTION 5.** (1) Beginning July 1, 2022, every manufacturer  
300 of a vapor product that is sold or intended to be sold in this  
301 state, whether directly or through a distributor, retailer or  
302 similar intermediary or intermediaries, shall execute and deliver  
303 an attestation, under the penalty of perjury to the Attorney  
304 General certifying that, as of the date of such attestation:

305 (a) The vapor product was on the United States market  
306 as of August 8, 2016, and the manufacturer has applied for a  
307 marketing order for the vapor product by submitting a Premarket  
308 Tobacco Product Application on or before September 9, 2020, to the  
309 United States Food and Drug Administration; or

310 (b) The manufacturer has received a marketing order or  
311 other authorization under the 21 USCS Section 387j for the vapor  
312 product from the United States Food and Drug Administration.

313 (2) The manufacturer shall notify the Attorney General  
314 within thirty (30) days of any material change to the attestation,  
315 including if the United States Food and Drug Administration has  
316 issued a market order or other authorization, issued a no  
317 marketing order or has ordered the manufacturer to remove the



318 vapor product, either temporarily or permanently, from the United  
319 States market.

320 (3) The Attorney General shall develop a directory, as  
321 defined in subsection (1) of this section, and:

322 (a) On or before September 15, 2022, the Attorney  
323 General shall make the directory available for public inspection  
324 on its website; and

325 (b) Shall update the directory as necessary in order to  
326 correct mistakes and to add or remove manufacturers or vapor  
327 products to keep the directory in conformity with the requirements  
328 of this section.

329 (4) It shall be unlawful for any person knowingly, directly  
330 or indirectly, to manufacture, distribute, sell, barter, or  
331 furnish in this state any vapor product that is not included in  
332 the directory.

333 **SECTION 6.** This act shall take effect and be in force from  
334 and after July 1, 2022.

