

By: Representatives Bain, Stamps

To: Judiciary B

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,



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, electronically, telephonically or by a vending machine owned or controlled 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. * * *



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.

94 (4) Any person who sells or distributes alternative nicotine
95 products shall be required to place warning signs in legible



condition, at each point of sale where alternative nicotine products are sold to consumers. The sign shall be no smaller than eight and one-half (8-1/2) by eleven (11) inches or ninety-three (93) square inches stating: "STATE LAW PROHIBITS THE SALE OF ALTERNATIVE NICOTINE PRODUCTS TO PERSONS UNDER THE AGE OF 21 YEARS OF AGE. PROOF OF AGE REQUIRED BY GOVERNMENT-ISSUED IDENTIFICATION IS REQUIRED."

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

(6) Any person who sells or distributes alternative nicotine products using the Internet, remote sales methods, computer network, cellular application, telephonic network or any other manner in which the purchaser or seller is not in person shall annually certify to the Attorney General that the person uses an independent, third-party age verification service as required by this section.

(7) (a) Except as otherwise provided in paragraph (b), each violation of the provisions of this section shall be treated as a separate offense. A violation of this subsection is punishable as follows:

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

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



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

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

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

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

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

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

97-32-21. The Office of the Attorney General or local law
enforcement agencies shall at least annually conduct random,
unannounced inspections at locations where alternative nicotine
products, tobacco or tobacco products are sold or distributed to
ensure compliance with the Mississippi Juvenile Tobacco Access
Prevention Act of 1997. Persons under the age of twenty-one (21)
years may be enlisted by the Office of the Attorney General or
local law enforcement to test compliance with the Mississippi
Juvenile Tobacco Access Prevention Act of 1997, provided that the
parent or legal guardian of the person under twenty-one (21) years
of age so utilized has given prior written consent for the minor's



participation in unannounced inspections. The Office of the Attorney General must prepare a report of the findings, and report these findings to the Department of Health and Department of Mental Health. The Department of Mental Health shall prepare the annual report required by Section 1926, subpart 1 of Part B, Title XIX of the Federal Public Health Service Act (42 USCS 300X 26). The report shall be approved by the Governor and then promptly transmitted to the Secretary of the United States Department of Health and Human Services, the Speaker of the Mississippi House of Representatives and the Lieutenant Governor of Mississippi.

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

67-1-81. (1) (a) Any permittee or other person who shall sell, furnish, dispose of, give, or cause to be sold, furnished, disposed of, or given, any alcoholic beverage to any person under the age of twenty-one (21) years shall be guilty of a misdemeanor and shall be punished by a fine of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00) for a first offense. For a second or subsequent offense, such permittee or other person shall be punished by a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Two Thousand Dollars (\$2,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment in the discretion of the court.



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

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

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

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

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

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

(2) Any person under the age of twenty-one (21) years who purchases, receives, or has in his or her possession in any public



194 place, any alcoholic beverages, shall be guilty of a misdemeanor
195 and shall be punished by a fine of not less than Two Hundred
196 Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00).
197 Provided, that clearing or busing tables that have glasses or
198 other containers that contain or did contain alcoholic beverages,
199 or stocking, bagging or otherwise handling purchases of alcoholic
200 beverages shall not be deemed possession of alcoholic beverages
201 for the purposes of this section. Provided further, that a person
202 who is at least eighteen (18) years of age but under the age of
203 twenty-one (21) years who waits on tables by taking orders for or
204 delivering orders of alcoholic beverages shall not be deemed to
205 unlawfully possess or furnish alcoholic beverages if in the scope
206 of his employment by the holder of an on-premises retailer's
207 permit. This exception shall not authorize a person under the age
208 of twenty-one (21) to tend bar or act in the capacity of
209 bartender. Any person under the age of twenty-one (21) who
210 knowingly makes a false statement to the effect that he or she is
211 twenty-one (21) years old or older or presents any document that
212 indicates he or she is twenty-one (21) years of age or older for
213 the purpose of purchasing alcoholic beverages from any person
214 engaged in the sale of alcoholic beverages shall be guilty of a
215 misdemeanor and shall be punished by a fine of not less than Two
216 Hundred Dollars (\$200.00) nor more than Five Hundred Dollars
217 (\$500.00), and a sentence to not more than thirty (30) days'
218 community service.



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

223 (4) If a person under the age of twenty-one (21) years is
224 convicted or enters a plea of guilty of purchasing, receiving or
225 having in his or her possession in any public place any alcoholic
226 beverages in violation of subsection (2) of this section, the
227 trial judge, in lieu of the penalties otherwise provided under
228 subsection (2) of this section, shall suspend the minor's driver's
229 license by taking and keeping it in the custody of the court for a
230 period of time not to exceed ninety (90) days. The judge so
231 ordering the suspension shall enter upon his docket "DEFENDANT'S
232 DRIVER'S LICENSE SUSPENDED FOR ____ DAYS IN LIEU OF CONVICTION"
233 and such action by the trial judge shall not constitute a
234 conviction. During the period that the minor's driver's license
235 is suspended, the trial judge shall suspend the imposition of any
236 fines or penalties that may be imposed under subsection (2) of
237 this section and may place the minor on probation subject to such
238 conditions as the judge deems appropriate. If the minor violates
239 any of the conditions of probation, then the trial judge shall
240 return the driver's license to the minor and impose the fines,
241 penalties or both, that he would have otherwise imposed, and such
242 action shall constitute a conviction.



243 (5) Any holder of a package retailer's permit shall have an
244 independent, third-party age verification service available on the
245 premises in which alcoholic beverages are sold for the purpose of
246 obtaining the purchaser's full name and date of birth and
247 comparing the information available from public records to the
248 personal information entered by the package retailer that can
249 establish whether the purchaser is twenty-one (21) years of age or
250 older.

251 **SECTION 4.** This act shall take effect and be in force from
252 and after July 1, 2022.

