

By: Representative Scoggin

To: Judiciary B

HOUSE BILL NO. 1153

1 AN ACT TO AMEND SECTIONS 97-32-5, 97-32-11, 97-32-15, AND
 2 97-32-23, MISSISSIPPI CODE OF 1972, TO PROHIBIT THE SALE OF
 3 TOBACCO TO ANY PERSON UNDER THE AGE OF 21 YEARS; TO BRING FORWARD
 4 SECTIONS 97-32-27 AND 97-32-29, MISSISSIPPI CODE OF 1972, WHICH
 5 REGULATE TOBACCO ON EDUCATIONAL PROPERTY, FOR PURPOSES OF
 6 AMENDMENT; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 97-32-5, Mississippi Code of 1972, is
 9 amended as follows:

10 97-32-5. It shall be unlawful for any person, or retailer,
 11 to sell, barter, deliver or give tobacco products to any
 12 individual under * * * twenty-one (21) years of age unless the
 13 individual under * * * twenty-one (21) years of age holds a
 14 retailer's license to sell tobacco under Section 27-69-1 et seq.,
 15 Mississippi Code of 1972.

16 It shall be an absolute affirmative defense that the person
 17 selling, bartering, delivering or giving tobacco products over the
 18 counter in a retail establishment to an individual under * * *
 19 twenty-one (21) years of age in violation of this article had
 20 requested and examined a government-issued photographic



21 identification from such person establishing his age as at
22 least * * * twenty-one (21) years prior to selling such person a
23 tobacco product. The failure of a seller, barterer, deliverer or
24 giver of tobacco products over the counter in a retail
25 establishment to request and examine photographic identification
26 from a person under * * * twenty-one (21) years of age prior to
27 the sale of a tobacco product to such person if the individual is
28 not known to the seller, barterer, deliverer or giver of the
29 tobacco product to be over the age of * * * twenty-one (21) years,
30 shall be construed against the seller, barterer, deliverer or
31 giver and form a conclusive basis for the seller's violation of
32 this section.

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

39 Any person who violates this section shall be liable as
40 follows: For a first conviction, a fine of Fifty Dollars
41 (\$50.00); for a second conviction, a fine of Seventy-five Dollars
42 (\$75.00); and for all subsequent convictions, a fine of One
43 Hundred Fifty Dollars (\$150.00) shall be imposed.

44 Any person found in violation of this section shall be issued
45 a citation and the holder of the retailer permit shall be sent



46 notification of this citation by registered mail by the law
47 enforcement agency issuing the citation. Notification shall
48 include the opportunity for hearing before the appropriate court.
49 For a first conviction, the retailer shall be sent a warning
50 letter informing him of the retailer's responsibility in the
51 selling of tobacco products. For a second conviction, the
52 retailer, or retailer's designee, shall be required to enroll in
53 and complete a "Retailer Tobacco Education Program."

54 For a third or subsequent violation of this section by any
55 retailer, within one (1) year of the two (2) prior violations, any
56 retailer's permit issued pursuant to Section 27-69-1 et seq.,
57 Mississippi Code of 1972, may be revoked or suspended for a period
58 of at least one (1) year after notice and opportunity for hearing.
59 If said permit is revoked by the Department of Revenue, the
60 retailer may not reapply for a permit to sell tobacco for a period
61 of six (6) months. For the purposes of this section, "subsequent
62 violations" are those committed at the same place of business.

63 It is the responsibility of all law enforcement officers and
64 law enforcement agencies of this state to ensure that the
65 provisions of this article are enforced.

66 It shall not be considered a violation of this section on the
67 part of any law enforcement officer or person under * * *
68 twenty-one (21) years of age for any law enforcement officer of
69 this state to use persons under * * * twenty-one (21) years of age
70 to purchase or attempt to purchase tobacco products for the



71 purpose of monitoring compliance with this section, as long as
72 those persons are supervised by duly authorized law enforcement
73 agency officials.

74 Any law enforcement agency conducting enforcement efforts
75 undertaken pursuant to this article shall prepare a report as
76 prescribed by the Attorney General which includes the number of
77 unannounced inspections conducted by the agency, a summary of
78 enforcement actions taken pursuant to this article, the name and
79 permit number of the retailer pursuant to Section 27-69-1 et seq.,
80 Mississippi Code of 1972, and final judicial disposition on all
81 enforcement actions. Reports shall be forwarded to the Office of
82 the Attorney General within twenty (20) working days of the final
83 judicial disposition.

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

88 In accordance with the procedures of Section 27-69-9,
89 Mississippi Code of 1972, the Department of Revenue shall initiate
90 revocation procedures of the retailer's permit. The Office of the
91 Attorney General shall provide legal assistance in revocation
92 procedures when requested by the Department of Revenue.

93 **SECTION 2.** Section 97-32-11, Mississippi Code of 1972, is
94 amended as follows:



95 97-32-11. Point of sale warning signs are required, and each
96 seller shall place and maintain in legible condition, at each
97 point of sale of tobacco products to consumers, a sign no smaller
98 than eight and one-half (8-1/2) by eleven (11) inches or
99 ninety-three (93) square inches stating: "STATE LAW PROHIBITS THE
100 SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF * * * 21
101 YEARS. PROOF OF AGE REQUIRED."

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

104 **SECTION 3.** Section 97-32-15, Mississippi Code of 1972, is
105 amended as follows:

106 97-32-15. It shall be unlawful for any person to sell
107 tobacco products through a vending machine, unless the vending
108 machine is located in an establishment to which individuals under
109 the age of * * * twenty-one (21) years are denied access or are
110 required to be accompanied by an adult. A person who violates
111 this section shall be punished by a penalty of not more than Two
112 Hundred Fifty Dollars (\$250.00).

113 **SECTION 4.** Section 97-32-23, Mississippi Code of 1972, is
114 amended as follows:

115 97-32-23. It shall be unlawful to publish the name or
116 identity of any person under the age of * * * twenty-one (21)
117 years who is convicted or adjudicated of any violation of this
118 article.



119 **SECTION 5.** Section 97-32-27, Mississippi Code of 1972, is
120 brought forward as follows:

121 97-32-27. (1) "Adult" means any natural person at least
122 eighteen (18) years old.

123 (2) "Minor" means any natural person under the age of
124 eighteen (18) years.

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

126 (4) "Tobacco product" means any substance that contains
127 tobacco, including, but not limited to, cigarettes, cigars, pipes,
128 snuff, smoking tobacco or smokeless tobacco.

129 (5) "Educational property" means any public school building
130 or bus, public school campus, grounds, recreational area, athletic
131 field or other property owned, used or operated by any local
132 school board, school or directors for the administration of any
133 public educational institution or during a school-related
134 activity; provided, however, that the term "educational property"
135 shall not include any sixteenth section school land or lieu land
136 on which is not located a public school building, public school
137 campus, public school recreational area or public school athletic
138 field. Educational property shall not include property owned or
139 operated by the state institutions of higher learning, the public
140 community and junior colleges, or vocational-technical complexes
141 where only adult students are in attendance.

142 **SECTION 6.** Section 97-32-29, Mississippi Code of 1972, is
143 brought forward as follows:



144 97-32-29. No person shall use any tobacco product on any
145 educational property as defined in Section 97-32-27. Any adult
146 who violates this section shall be subject to a fine and shall be
147 liable as follows: (a) for a first conviction, a warning; (b) for
148 a second conviction, a fine of Seventy-five Dollars (\$75.00); and
149 (c) for all subsequent convictions, a fine not to exceed One
150 Hundred Fifty Dollars (\$150.00) shall be imposed.

151 Any adult found in violation of this section shall be issued
152 a citation by a law enforcement officer, which citation shall
153 include notice of the date, time and location for hearing before
154 the justice court having jurisdiction where the violation is
155 alleged to have occurred. For the purposes of this section,
156 "subsequent convictions" are for violations committed on any
157 educational property within the State of Mississippi.

158 Anyone convicted under this article shall be recorded as
159 being fined for a civil violation of this article and not for
160 violating a criminal statute.

161 It is the responsibility of all law enforcement officers and
162 law enforcement agencies of this state to ensure that the
163 provisions of this article are enforced.

164 **SECTION 7.** This act shall take effect and be in force from
165 and after July 1, 2024.

