

By: Representative Clark

To: Judiciary B; Public  
Health and Human Services

## HOUSE BILL NO. 359

1 AN ACT TO BE KNOWN AS THE "MISSISSIPPI TOBACCO MINIMUM LEGAL  
2 SALE AGE OF 21 ACT"; TO MAKE CERTAIN LEGISLATIVE FINDINGS  
3 REGARDING THE EFFECTS OF TOBACCO USE BY MINORS; TO DEFINE CERTAIN  
4 TERMS; TO PROHIBIT THE SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO  
5 PERSONS UNDER THE AGE OF 21; TO REQUIRE DISTRIBUTORS TO VERIFY THE  
6 AGE OF THE RECIPIENTS BEFORE DISTRIBUTING ANY TOBACCO PRODUCT; TO  
7 REQUIRE TOBACCO SELLERS TO POST SIGNS ABOUT THE AGE RESTRICTION ON  
8 TOBACCO SALES; TO AUTHORIZE THE STATE DEPARTMENT OF HEALTH TO  
9 CONDUCT RANDOM, UNANNOUNCED INSPECTIONS TO TEST AND ENSURE  
10 COMPLIANCE WITH THIS ACT; TO PROVIDE FOR PENALTIES FOR VIOLATIONS  
11 OF THIS ACT; TO PROVIDE FOR CERTAIN EXCEPTIONS AND DEFENSES; TO  
12 AMEND SECTIONS 97-32-5, 97-32-11, 97-32-15 AND 97-32-27,  
13 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTIONS;  
14 AND FOR RELATED PURPOSES.

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

16 **SECTION 1.** **Short title.** This act shall be known and may be  
17 cited as the "Mississippi Tobacco Minimum Legal Sale Age of 21  
18 Act."

19 **SECTION 2.** **Findings of fact and purpose.** (1) The  
20 Legislature makes the following findings:

21 (a) The State of Mississippi recognizes that the use of  
22 tobacco products has devastating health and economic consequences;

23 (b) Tobacco use is the foremost preventable cause of  
24 premature death in America. It causes half a million deaths



25 annually and has been responsible for 20.8 million premature  
26 deaths in the United States over the past fifty (50) years since  
27 the first Surgeon General's report on smoking in 1964. This leads  
28 to more than \$300 billion in health care and lost worker  
29 productivity costs each year;

30 (c) Young people are particularly susceptible to the  
31 addictive properties of tobacco products and are particularly  
32 likely to become lifelong users;

33 (d) An estimated 5.6 million youth aged zero (0) to  
34 seventeen (17) are projected to die prematurely from a  
35 tobacco-related illness if prevalence rates do not change;

36 (e) National data show that ninety-five percent (95%)  
37 of adult smokers begin smoking before they turn twenty-one (21).  
38 The ages of eighteen (18) to twenty-one (21) are a critical period  
39 when many smokers move from experimental smoking to regular, daily  
40 use;

41 (f) Young minds are particularly susceptible to the  
42 addictive properties of nicotine. Tobacco industry documents show  
43 that those who start smoking by the age of eighteen (18) are  
44 almost twice as likely to become lifetime smokers as those who  
45 start after they turn twenty-one (21);

46 (g) Electronic smoking device use among minors has  
47 tripled recently, and use of electronic smoking devices is  
48 associated with and may encourage the use of conventional tobacco  
49 products;



50           (h)   Ninety percent (90%) of all adults who purchase  
51 tobacco products for minors are between the ages of eighteen (18)  
52 and twenty (20);

53           (i)   In 2015, the Institute of Medicine concluded that  
54 raising the minimum legal sales age for tobacco products  
55 nationwide will reduce tobacco initiation, particularly among  
56 adolescents fifteen (15) to seventeen (17) years of age, improve  
57 health across the lifespan, and save lives, and that raising the  
58 minimum legal sales age for tobacco products nationwide to  
59 twenty-one (21) would, over time, lead to a twelve percent (12%)  
60 decrease in smoking prevalence;

61           (j)   The Institute of Medicine also predicts that  
62 raising the minimum legal sales age for tobacco products  
63 nationwide to twenty-one (21) would result in two hundred  
64 twenty-three thousand (223,000) fewer premature deaths, fifty  
65 thousand (50,000) fewer deaths from lung cancer, and 4.2 million  
66 fewer years of life lost for those born between 2000 through 2019,  
67 and also would result in near immediate reductions in preterm  
68 birth, low birth weight, and sudden infant death syndrome;

69           (k)   A growing number of states and local governments  
70 have enacted "Minimum Legal Sale Age of 21" (MLSA 21) laws to  
71 further restrict access to tobacco, and these regulations can be  
72 effective;



(l) Three-fourths of adults favor raising the minimum legal sale age for tobacco products to twenty-one (21) years of age, including seven (7) in ten (10) smokers;

(m) The financial impact of tobacco MLSA 21 laws on retailers is likely to be minimal, decreasing tobacco sales by only two percent (2%); and

(n) Raising the minimum age to purchase tobacco products is consistent with raising the legal drinking age to twenty-one (21), which led to reduced alcohol use and dependence among youth and contributed to the decline in drunk driving fatalities.

(2) The Legislature declares that the purpose of this act is to reduce tobacco use by keeping tobacco products out of the hands of young people.

**SECTION 3. Definitions.** As used in Sections 1 through 9 of this act, the following words and phrases have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Distribute" or "distribution" means to furnish, give, provide, or to attempt to do so, whether gratuitously or for any type of compensation.

(b) "Distributor" means a person who distributes a tobacco product.

(c) "Electronic smoking device" means any device that can be used to deliver aerosolized or vaporized nicotine to the



98 person inhaling from the device, including, but not limited to, an  
99 e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. "Electronic  
100 smoking device" includes any component, part, or accessory of such  
101 a device, whether or not sold separately, and includes any  
102 substance intended to be aerosolized or vaporized during the use  
103 of the device. "Electronic smoking device" does not include  
104 drugs, devices, or combination products authorized for sale by the  
105 U.S. Food and Drug Administration, as those terms are defined in  
106 the Federal Food, Drug and Cosmetic Act.

107 (d) "Person" means any natural person, partnership,  
108 joint venture, society, club, trustee, trust, association,  
109 organization, or corporation, or any officer, agent, employee,  
110 factor, or any other personal representative thereof, in any  
111 capacity.

112 (e) "Recipient" means any person who obtains or  
113 attempts to obtain a tobacco product.

114 (f) "Tobacco product" means any product that is made  
115 from or derived from tobacco which is intended for human  
116 consumption or is likely to be consumed, whether smoked, heated,  
117 chewed, absorbed, dissolved, inhaled or ingested by any other  
118 means, including, but not limited to, a cigarette, a cigar, pipe  
119 tobacco, chewing tobacco, snuff, snus, or an electronic smoking  
120 device. The term includes any component or accessory used in the  
121 consumption of a tobacco product, such as filters, rolling papers,  
122 pipes, or liquids used in electronic smoking devices. "Tobacco



product" does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

**SECTION 4. Minimum legal sales age for tobacco products.**

The sale or distribution of any tobacco product to a person under the age of twenty-one (21) is prohibited.

**SECTION 5. Age verification.** Before distributing any

tobacco product, the distributor must verify that the recipient is at least twenty-one (21) years of age. Each distributor shall examine the recipient's government-issued photographic identification. No such verification is required for a person over the age of thirty (30). The fact that a recipient appeared to be thirty (30) years of age or older does not constitute a defense to a violation of this section.

**SECTION 6. Signage.** A person may not sell or permit the

sale of tobacco products in the State of Mississippi unless a clearly visible notice is posted at the location where tobacco products are available for purchase, which notice must state "No person under the age of twenty-one (21) may purchase tobacco products," legibly printed in letters at least one-half ( $\frac{1}{2}$ ) inch high.

**SECTION 7. Enforcement.** The State Department of Health or

its authorized designee may conduct random, unannounced



inspections at locations where tobacco products are distributed to test and ensure compliance with this act.

**SECTION 8. Penalties.** (1) In general. Except as otherwise provided in subsection (2) of this section, any person who violates this act shall be fined not less than Three Hundred Dollars (\$300.00) for the first offense, not less than Six Hundred Dollars (\$600.00) for the second offense, and not less than One Thousand Dollars (\$1,000.00) for each offense thereafter. Each violation, and every day in which a violation occurs, constitutes a separate violation.

(2) Violations by minors. Any person under the age of twenty-one (21) who violates Section 5 of this act shall be fined Ten Dollars (\$10.00) for the first offense, and Fifty Dollars (\$50.00) for each offense thereafter, no part of which may be suspended, or the person may be required to perform not less than forty-eight (48) hours nor more than seventy-two (72) hours of community service during the hours when the person is not employed and is not attending school.

**SECTION 9. Exceptions and defenses.** (1) The penalties in this act do not apply to a person younger than twenty-one (21) years of age who purchases or attempts to purchase tobacco products while under the direct supervision of employees of a state agency for training, education, research, or enforcement purposes.



(2) This act does not prohibit a person under the age of twenty-one (21) from handling tobacco products in the course of lawful employment.

(3) It is an affirmative defense to a violation of this act for a person to have reasonably relied on proof of age as described by state law.

**SECTION 10.** Section 97-32-5, Mississippi Code of 1972, is amended as follows:

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

It shall be an absolute affirmative defense that the person selling, bartering, delivering or giving tobacco products over the counter in a retail establishment to an individual under \* \* \* twenty-one (21) years of age in violation of this article had requested and examined a government-issued photographic identification from such person establishing his age as at least \* \* \* twenty-one (21) years prior to selling such person a tobacco product. The failure of a seller, barterer, deliverer or giver of tobacco products over the counter in a retail establishment to request and examine photographic identification from a person under \* \* \* twenty-one (21) years of age prior to





the sale of a tobacco product to such person if the individual is not known to the seller, barterer, deliverer or giver of the tobacco product to be over the age of \* \* \* twenty-one (21) years, shall be construed against the seller, barterer, deliverer or giver and form a conclusive basis for the seller's violation of this section.

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

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

Any person found in violation of this section shall be issued a citation and the holder of the retailer permit shall be sent notification of this citation by registered mail by the law enforcement agency issuing the citation. Notification shall include the opportunity for hearing before the appropriate court. For a first conviction, the retailer shall be sent a warning letter informing him of the retailer's responsibility in the selling of tobacco products. For a second conviction, the



221 retailer, or retailer's designee, shall be required to enroll in  
222 and complete a "Retailer Tobacco Education Program."

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

232 It is the responsibility of all law enforcement officers and  
233 law enforcement agencies of this state to ensure that the  
234 provisions of this article are enforced.

235 It shall not be considered a violation of this section on the  
236 part of any law enforcement officer or person under \* \* \*  
237 twenty-one (21) years of age for any law enforcement officer of  
238 this state to use persons under \* \* \* twenty-one (21) years of age  
239 to purchase or attempt to purchase tobacco products for the  
240 purpose of monitoring compliance with this section, as long as  
241 those persons are supervised by duly authorized law enforcement  
242 agency officials.

243 Any law enforcement agency conducting enforcement efforts  
244 undertaken pursuant to this article shall prepare a report as  
245 prescribed by the Attorney General which includes the number of



unannounced inspections conducted by the agency, a summary of enforcement actions taken pursuant to this article, the name and permit number of the retailer pursuant to Section 27-69-1 et seq., Mississippi Code of 1972, and final judicial disposition on all enforcement actions. Reports shall be forwarded to the Office of the Attorney General within twenty (20) working days of the final judicial disposition.

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

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

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

97-32-11. Point of sale warning signs are required, and each seller shall place and maintain in legible condition, at each point of sale of tobacco products to consumers, a sign 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 TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF \* \* \* 21 YEARS. PROOF OF AGE REQUIRED."



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

**SECTION 12.** Section 97-32-15, Mississippi Code of 1972, is amended as follows:

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

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

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

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

(3) "Person" means any natural person.

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

(5) "Educational property" means any public school building or bus, public school campus, grounds, recreational area, athletic field or other property owned, used or operated by any local school board, school or directors for the administration of any



296 public educational institution or during a school-related  
297 activity; provided, however, that the term "educational property"  
298 shall not include any sixteenth section school land or lieu land  
299 on which is not located a public school building, public school  
300 campus, public school recreational area or public school athletic  
301 field. Educational property shall not include property owned or  
302 operated by the state institutions of higher learning, the public  
303 community and junior colleges, or vocational-technical complexes  
304 where only adult students are in attendance.

305       **SECTION 14.** This act shall take effect and be in force from  
306 and after July 1, 2025.

