

By: Senator(s) Bryan

To: Public Health and
Welfare

SENATE BILL NO. 2691

1 AN ACT TO AMEND SECTIONS 97-32-5, 97-32-11 AND 97-32-15,
2 MISSISSIPPI CODE OF 1972, TO PROHIBIT THE SALE OF TOBACCO OR
3 TOBACCO PRODUCTS TO THOSE UNDER 21 YEARS OF AGE; TO AMEND SECTION
4 97-32-23, MISSISSIPPI CODE OF 1972, TO CONFORM WITH THE PROVISIONS
5 OF THIS ACT; AND FOR RELATED PURPOSES.

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

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

9 97-32-5. It shall be unlawful for any person, or retailer,
10 to sell, barter, deliver or give tobacco products to any
11 individual under * * * twenty-one (21) years of age unless the
12 individual under * * * twenty-one (21) years of age holds a
13 retailer's license to sell tobacco under Section 27-69-1 et
14 seq. * * *

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



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

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

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

43 Any person found in violation of this section shall be issued
44 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 retailer, or retailer's designee, shall be required to enroll in and complete a "Retailer Tobacco Education Program."

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

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

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



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

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

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

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

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



94 97-32-11. Point of sale warning signs are required, and each
95 seller shall place and maintain in legible condition, at each
96 point of sale of tobacco products to consumers, a sign no smaller
97 than eight and one-half (8-1/2) by eleven (11) inches or
98 ninety-three (93) square inches stating: "STATE LAW PROHIBITS THE
99 SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF * * * 21
100 YEARS. PROOF OF AGE REQUIRED."

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

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

105 97-32-15. It shall be unlawful for any person to sell
106 tobacco products through a vending machine, unless the vending
107 machine is located in an establishment to which individuals under
108 the age of * * * twenty-one (21) years are denied access or are
109 required to be accompanied by an adult. A person who violates
110 this section shall be punished by a penalty of not more than Two
111 Hundred Fifty Dollars (\$250.00).

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

114 97-32-23. It shall be unlawful to publish the name or
115 identity of any person under the age of * * * twenty-one (21)
116 years who is convicted or adjudicated of any violation of this
117 article.



118 **SECTION 5.** This act shall take effect and be in force from
119 and after its passage.

