

By: Representative Clark

To: Judiciary B; Public Health and Human Services

HOUSE BILL NO. 287

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;



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

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

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

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

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

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

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

96 (c) "Electronic smoking device" means any device that  
97 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



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

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

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

130 **SECTION 5. Age verification.** Before distributing any  
131 tobacco product, the distributor must verify that the recipient is  
132 at least twenty-one (21) years of age. Each distributor shall  
133 examine the recipient's government-issued photographic  
134 identification. No such verification is required for a person  
135 over the age of thirty (30). The fact that a recipient appeared  
136 to be thirty (30) years of age or older does not constitute a  
137 defense to a violation of this section.

138 **SECTION 6. Signage.** A person may not sell or permit the  
139 sale of tobacco products in the State of Mississippi unless a  
140 clearly visible notice is posted at the location where tobacco  
141 products are available for purchase, which notice must state "No  
142 person under the age of twenty-one (21) may purchase tobacco  
143 products," legibly printed in letters at least one-half ( $\frac{1}{2}$ ) inch  
144 high.

145 **SECTION 7. Enforcement.** The State Department of Health or  
146 its authorized designee may conduct random, unannounced



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

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

157 (2) Violations by minors. Any person under the age of  
158 twenty-one (21) who violates Section 5 of this act shall be fined  
159 Ten Dollars (\$10.00) for the first offense, and Fifty Dollars  
160 (\$50.00) for each offense thereafter, no part of which may be  
161 suspended, or the person may be required to perform not less than  
162 forty-eight (48) hours nor more than seventy-two (72) hours of  
163 community service during the hours when the person is not employed  
164 and is not attending school.

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



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

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

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

179 97-32-5. It shall be unlawful for any person, or retailer,  
180 to sell, barter, deliver or give tobacco products to any  
181 individual under \* \* \* twenty-one (21) years of age unless the  
182 individual under \* \* \* twenty-one (21) years of age holds a  
183 retailer's license to sell tobacco under Section 27-69-1 et seq.,  
184 Mississippi Code of 1972.

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





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

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

208 Any person who violates this section shall be liable as  
209 follows: For a first conviction, a fine of Fifty Dollars  
210 (\$50.00); for a second conviction, a fine of Seventy-five Dollars  
211 (\$75.00); and for all subsequent convictions, a fine of One  
212 Hundred Fifty Dollars (\$150.00) shall be imposed.

213 Any person found in violation of this section shall be issued  
214 a citation and the holder of the retailer permit shall be sent  
215 notification of this citation by registered mail by the law  
216 enforcement agency issuing the citation. Notification shall  
217 include the opportunity for hearing before the appropriate court.  
218 For a first conviction, the retailer shall be sent a warning  
219 letter informing him of the retailer's responsibility in the  
220 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



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

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

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

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

264 97-32-11. Point of sale warning signs are required, and each  
265 seller shall place and maintain in legible condition, at each  
266 point of sale of tobacco products to consumers, a sign no smaller  
267 than eight and one-half (8-1/2) by eleven (11) inches or  
268 ninety-three (93) square inches stating: "STATE LAW PROHIBITS THE  
269 SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF \* \* \* 21  
270 YEARS. PROOF OF AGE REQUIRED."



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

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

275 97-32-15. It shall be unlawful for any person to sell  
276 tobacco products through a vending machine, unless the vending  
277 machine is located in an establishment to which individuals under  
278 the age of \* \* \* twenty-one (21) years are denied access or are  
279 required to be accompanied by an adult. A person who violates  
280 this section shall be punished by a penalty of not more than Two  
281 Hundred Fifty Dollars (\$250.00).

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

284 97-32-27. (1) "Adult" means any natural person at  
285 least \* \* \* twenty-one (21) years old.

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

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

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

292 (5) "Educational property" means any public school building  
293 or bus, public school campus, grounds, recreational area, athletic  
294 field or other property owned, used or operated by any local  
295 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, 2024.

