

By: Senator(s) Suber

To: Public Health and Welfare

SENATE BILL NO. 2871

1 AN ACT TO AMEND SECTION 97-32-5, MISSISSIPPI CODE OF 1972, TO
2 PROHIBIT THE SALE OF TOBACCO OR TOBACCO PRODUCTS TO PERSONS UNDER
3 21 YEARS OF AGE; TO PROVIDE A CONSISTENT REFERENCE TO THE AGE IN
4 THE MISSISSIPPI JUVENILE TOBACCO ACCESS PREVENTION ACT OF 1997; TO
5 AMEND SECTIONS 97-32-9, 97-32-11, 97-32-15, 97-32-21 AND 97-32-23,
6 MISSISSIPPI CODE OF 1972, TO CONFORM; 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 97-32-9, Mississippi Code of 1972, is
94 amended as follows:



95 97-32-9. No person under twenty-one (21) years of age shall
96 purchase any tobacco or alternative nicotine product. No student
97 of any high school, junior high school or elementary school shall
98 possess tobacco or alternative nicotine on any educational
99 property as defined in Section 97-37-17.

100 (a) If a person under twenty-one (21) years of age is
101 found by a court to be in violation of any other statute and is
102 also found to be in possession of a tobacco or alternative
103 nicotine product, the court shall punish the * * * person as
104 follows:

105 (i) For a first offense, pay a fine of One Hundred
106 Dollars (\$100.00), and perform no more than fifteen (15) hours of
107 community service;

108 (ii) For a second offense, a fine of Three Hundred
109 Dollars (\$300.00), and no more than twenty-five (25) hours of
110 community service;

111 (iii) For a third offense or subsequent offense, a
112 fine of Five Hundred Dollars (\$500.00), and no more than forty
113 (40) hours of community service.

114 (b) A violation under this section is not to be
115 recorded on the criminal history of the minor and, upon proof of
116 satisfaction of the court's order, the record shall be expunged
117 from any records other than youth court records.

118 **SECTION 3.** Section 97-32-11, Mississippi Code of 1972, is
119 amended as follows:



120 97-32-11. Point of sale warning signs are required, and each
121 seller shall place and maintain in legible condition, at each
122 point of sale of tobacco products to consumers, a sign no smaller
123 than eight and one-half (8-1/2) by eleven (11) inches or
124 ninety-three (93) square inches stating: "STATE LAW PROHIBITS THE
125 SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF * * * 21
126 YEARS. PROOF OF AGE REQUIRED."

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

129 **SECTION 4.** Section 97-32-15, Mississippi Code of 1972, is
130 amended as follows:

131 97-32-15. It shall be unlawful for any person to sell
132 tobacco products through a vending machine, unless the vending
133 machine is located in an establishment to which individuals under
134 the age of * * * twenty-one (21) years are denied access or are
135 required to be accompanied by an adult. A person who violates
136 this section shall be punished by a penalty of not more than Two
137 Hundred Fifty Dollars (\$250.00).

138 **SECTION 5.** Section 97-32-21, Mississippi Code of 1972, is
139 amended as follows:

140 97-32-21. The Office of the Attorney General or local law
141 enforcement agencies shall at least annually conduct random,
142 unannounced inspections at locations where alternative nicotine
143 products, tobacco or tobacco products are sold or distributed to
144 ensure compliance with the Mississippi Juvenile Tobacco Access



145 Prevention Act of 1997. Persons under the age of twenty-one (21)
146 years may be enlisted by the Office of the Attorney General or
147 local law enforcement to test compliance with the Mississippi
148 Juvenile Tobacco Access Prevention Act of 1997, provided that the
149 parent or legal guardian of the person under twenty-one (21) years
150 of age so utilized has given prior written consent for the * * *
151 person's participation in unannounced inspections. The Office of
152 the Attorney General must prepare a report of the findings, and
153 report these findings to the Department of Health and Department
154 of Mental Health. The Department of Mental Health shall prepare
155 the annual report required by Section 1926, subpart 1 of Part B,
156 Title XIX of the Federal Public Health Service Act (42 USCS
157 300X-26). The report shall be approved by the Governor and then
158 promptly transmitted to the Secretary of the United States
159 Department of Health and Human Services.

160 **SECTION 6.** Section 97-32-23, Mississippi Code of 1972, is
161 amended as follows:

162 97-32-23. It shall be unlawful to publish the name or
163 identity of any person under the age of * * * twenty-one (21)
164 years who is convicted or adjudicated of any violation of this
165 article.

166 **SECTION 7.** This act shall take effect and be in force from
167 and after its passage.

