**South Carolina General Assembly**

123rd Session, 2019-2020

**H. 4798**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Bernstein, Collins, Kimmons, Finlay, Clary, Wooten, Robinson, Clyburn and D.C. Moss

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Currently residing in the House Committee on **Judiciary**

Summary: Youth Access to Tobacco Prevention Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

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12/11/2019 House Referred to Committee on **Judiciary**

1/14/2020 House Introduced and read first time ([House Journal‑page 110](file:///h:\hj\20200114.docx))

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2/26/2020 House Member(s) request name added as sponsor: D.C.Moss

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**VERSIONS OF THIS BILL**

[12/11/2019](file:///p:\pprever\2019-20\4798_20191211.docx)

**A** **BILL**

TO AMEND SECTIONS 16‑17‑500 AND 16‑17‑501, AS AMENDED, AND SECTIONS 16‑17‑502, 16‑17‑503, 16‑17‑504, AND 16‑17‑506, CODE OF LAWS OF SOUTH CAROLINA, 1976, ALL RELATING TO THE “YOUTH ACCESS TO TOBACCO PREVENTION ACT OF 2006”, SO AS TO REQUIRE TOBACCO RETAILERS TO OBTAIN A LICENSE TO SELL TOBACCO PRODUCTS AND TO ESTABLISH ASSOCIATED FEES AND PENALTIES, TO REDEFINE THE TERM “TOBACCO PRODUCTS”, TO REQUIRE THE SOUTH CAROLINA DEPARTMENT OF REVENUE TO CONDUCT AT LEAST TWO MINIMUM AGE SALES COMPLIANCE CHECKS ANNUALLY OF TOBACCO RETAIL ESTABLISHMENTS, AND FOR OTHER PURPOSES; AND TO AMEND SECTION 59‑1‑380, RELATING TO THE MANDATORY PUBLIC SCHOOL COMPREHENSIVE TOBACCO‑FREE CAMPUS POLICY, SO AS TO MAKE CONFORMING CHANGES.

Whereas, South Carolina recognizes that the use of tobacco products has devastating health and economic consequences; and

Whereas, commercial tobacco use is the foremost preventable cause of premature death in America, causing nearly half a million deaths annually and 20.8 million premature deaths in the United States since the first Surgeon General’s report on smoking in 1964; and

Whereas, tobacco product use leads to more than $300 billion in health care and lost worker productivity costs each year; and

Whereas, South Carolina further recognizes that young people are particularly susceptible to the addictive properties of tobacco products, and youth that begin using tobacco products are particularly likely to become lifelong users; and

Whereas, young brains are particularly susceptible to the addictive properties of nicotine and as a result, approximately 3 out of 4 teen smokers end up smoking into adulthood; and

Whereas, an estimated 5.6 million of today’s American youth ages 0 to 17 are projected to die prematurely from a commercial tobacco‑related illness if prevalence rates do not change; and

Whereas, data from the 2019 National Youth Tobacco Survey demonstrates that youth use of e‑cigarettes continues to increase with 27.5% of high school students reporting current e‑cigarette use; and

Whereas, the overall use rate of e‑cigarettes among youth continues to be higher than other forms of tobacco and has stymied previous progress in the reduction of the overall tobacco use rate for youth; and

Whereas, local governments have used their authority to enact tobacco control policies to protect communities from tobacco‑related harms and youth tobacco initiation. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. A. Sections 16‑17‑500 and 16‑17‑501 of the 1976 Code, as last amended by Act 25 of 2019, are further amended to read:

“Section 16‑17‑500. (A) It is unlawful for ~~an individual~~ a tobacco retail establishment to sell, furnish, give, distribute, purchase for, or provide a tobacco product ~~or an alternative nicotine product~~ to a minor under the age of eighteen years.

(B) It is unlawful for a tobacco retail establishment to sell a tobacco product ~~or an alternative nicotine product~~ to an individual who does not present upon demand proper proof of age. Failure to demand identification to verify an individual’s age is not a defense to an action initiated pursuant to this subsection. Proof that is demanded, is shown, and reasonably is relied upon for the individual’s proof of age is a defense to an action initiated pursuant to this subsection.

(C) A ~~person~~ tobacco retailer or tobacco retail establishment engaged in the sale of tobacco products ~~or alternative nicotine products~~ made through the Internet or other remote sales methods shall perform an age verification through an independent, third‑party age verification service that compares information available from public records to the personal information entered by the individual during the ordering process that establishes the individual is eighteen years of age or older and shall use a method of mailing, shipping, or delivery that requires the signature of a person at least eighteen years of age before a tobacco product ~~or alternative nicotine product~~ will be released to the purchaser, unless the Internet or other remote sales methods employ the following protections to ensure age verification:

(1) the customer creates an online profile or account with personal information including, but not limited to, name, address, social security information, and a valid phone number, and that personal information is verified through publicly available records; or

(2) the customer is required to upload a copy of his ~~or her~~ government‑issued identification in addition to a current photograph of the customer; and

(3) delivery is made to the customer’s name and address.

(D) It is unlawful for a tobacco retail establishment to sell a tobacco product ~~or an alternative nicotine product~~ through a vending machine unless the vending machine is located in an establishment~~:~~

~~(1)~~ ~~which~~ that is open only to individuals who are eighteen years of age or older~~; or~~

~~(2)~~ ~~where the vending machine is under continuous control by the owner or licensee of the premises, or an employee of the owner or licensee, can be operated only upon activation by the owner, licensee, or employee before each purchase, and is not accessible to the public when the establishment is closed~~.

(E)(1) ~~An individual~~ A tobacco retailer who ~~knowingly~~ violates a provision of subsections (A), (B), (C), (D), or (J) in person, by agent, or in any other way ~~is guilty of a misdemeanor and, upon conviction~~, must be:

~~(a)~~ ~~for a first offense, fined not less than two hundred dollars and not more than three hundred dollars;~~

~~(b)~~ ~~for a second and subsequent offense, fined not less than four hundred dollars and not more than five hundred dollars, imprisoned for not more than thirty days, or both.~~

(a) for a first violation, fined not less than five hundred dollars;

(b) for a second violation within a thirty‑six‑month period, fined not less than seven hundred and fifty dollars and the tobacco retailer is prohibited from distributing tobacco products for a minimum of seven days;

(c) for a third violation within a thirty‑six‑month period, fined not less than one thousand dollars and the tobacco retailer is prohibited from distributing tobacco products for a minimum of thirty days; and

(d) for a fourth and any subsequent violation within a thirty‑six‑month period, fined not less than one thousand dollars and the tobacco retailer is prohibited from distributing tobacco products for a period of three years.

(2) ~~In lieu of the fine, the court may require an individual to successfully complete a Department of Alcohol and Other Drug Abuse Services approved merchant tobacco enforcement education program.~~

~~(3)~~ Failure ~~of an individual~~ to require identification for the purpose of verifying a person’s age is prima facie evidence of a violation of this section.

(F)(1)(a) A minor under the age of eighteen years must not ~~purchase, attempt to purchase, possess, or attempt to possess a tobacco product or an alternative nicotine product, or~~ present or offer proof of age that is false or fraudulent for the purpose of purchasing or possessing these products.

(b) A minor under the age of eighteen years is prohibited from entering a tobacco retail establishment that has as its primary purpose the sale of tobacco products, ~~alternative nicotine products, or both,~~ unless the minor is actively supervised and accompanied by an adult.

(c) The provisions of this subsection do not apply to a minor under the age of eighteen who is recruited and authorized by a law enforcement agency to test an establishment’s compliance with laws relating to the unlawful transfer of tobacco ~~or alternative nicotine~~ products. The testing must be conducted under the direct supervision of a law enforcement agency, and the law enforcement agency must have the minor’s parental consent.

(2) A minor who ~~knowingly violates a provision of item (1) in person, by agent, or in any other way~~ misrepresents his age to purchase or attempt to purchase a tobacco product commits a noncriminal offense and is subject to a civil fine of twenty‑five dollars. ~~The civil fine is subject to all applicable court costs, assessments, and surcharges.~~

(3) ~~In lieu of the civil fine,~~ The court may require a minor to successfully complete a Department of Health and Environmental Control approved smoking cessation or tobacco prevention program, or to perform not more than five hours of community service for a charitable institution.

(4) If a minor fails to ~~pay the civil fine,~~ successfully complete a smoking cessation or tobacco prevention program, or perform the required hours of community service as ordered by the court, the court may restrict the minor’s driving privileges to driving only to and from school, work, and church, or as the court considers appropriate for a period of ninety days beginning from the date provided by the court. ~~If the minor does not have a driver’s license or permit, the court may delay the issuance of the minor’s driver’s license or permit for a period of ninety days beginning from the date the minor applies for a driver’s license or permit.~~ Upon restricting ~~or delaying~~ the issuance of the minor’s driver’s license or permit, the court must complete and remit to the Department of Motor Vehicles any required forms or documentation. The minor is not required to submit his driver’s license or permit to the court or the Department of Motor Vehicles. The Department of Motor Vehicles must clearly indicate on the minor’s driving record that the restriction ~~or delayed issuance~~ of the minor’s driver’s license or permit is not a traffic violation or a driver’s license suspension. The Department of Motor Vehicles must notify the minor’s parent, guardian, or custodian of the restriction ~~or delayed issuance~~ of the minor’s driver’s license or permit. At the completion of the ninety‑day period, the Department of Motor Vehicles must remove the restriction ~~or allow for the issuance~~ of the minor’s license or permit. No record may be maintained by the Department of Motor Vehicles of the restriction ~~or delayed issuance~~ of the minor’s driver’s license or permit after the ninety‑day period. The restriction ~~or delayed issuance~~ of the minor’s driver’s license or permit must not be considered by any insurance company for automobile insurance purposes or result in any automobile insurance penalty, including any penalty under the Merit Rating Plan promulgated by the Department of Insurance.

(5) A violation of this subsection is not a criminal or delinquent offense and no criminal or delinquent record may be maintained. A minor may not be detained, taken into custody, arrested, placed in jail or in any other secure facility, committed to the custody of the Department of Juvenile Justice, or found to be in contempt of court for a violation of this subsection or for the failure to pay a fine, successfully complete a smoking cessation or tobacco prevention program, or perform community service.

(6) A violation of this subsection is not grounds for denying, suspending, or revoking an individual’s participation in a state college or university financial assistance program including, but not limited to, a Life Scholarship, a Palmetto Fellows Scholarship, or a need‑based grant.

(7) The uniform traffic ticket, established pursuant to Section 56‑7‑10, may be used by law enforcement officers for a violation of this subsection. A law enforcement officer issuing a uniform traffic ticket pursuant to this subsection must immediately seize the tobacco product ~~or alternative nicotine product~~. The law enforcement officer also must notify a minor’s parent, guardian, or custodian of the minor’s offense, if reasonable, within ten days of the issuance of the uniform traffic ticket.

(G) This section does not apply to the possession of a tobacco product ~~or an alternative nicotine product~~ by a minor working within the course and scope of his duties as an employee or participating within the course and scope of an authorized inspection or compliance check.

(H) Jurisdiction to hear a violation of this section is vested exclusively in the municipal court and the magistrates court. A hearing pursuant to subsection (F) must be placed on the court’s appropriate docket for traffic violations, and not on the court’s docket for civil matters.

(I) A tobacco retail establishment ~~that distributes tobacco products or alternative nicotine products~~ must train all tobacco retail sales employees regarding the unlawful distribution of tobacco products ~~or alternative nicotine products~~ to minors.

(J)(1) A tobacco retail establishment that has as its primary purpose the sale of tobacco products~~, alternative nicotine products, or both,~~ must prohibit minors under the age of eighteen years of age from entering the retail establishment, unless the minor is actively supervised and accompanied by an adult, and shall determine whether a person is at least eighteen years by requiring proper proof of age in accordance with subsection (B), prior to the ~~purchase~~ sale of a tobacco ~~or alternative nicotine~~ product.

(2) A tobacco retail establishment described in item (1) must conspicuously post on all entrances to the establishment the following:

(a) a sign in boldface type that states ‘NOTICE: It is unlawful for a person under eighteen years of age to enter this store, unless the minor is actively supervised and accompanied by an adult. Age will be verified prior to ~~purchase~~ sale.’;

(b) a sign printed in letters and numbers at least one‑half inch high that displays a toll free number for assistance to callers in quitting smoking, as determined by the Department of Health and Environmental Control.

(3) For purposes of this section, whether a tobacco retail establishment has as its primary purpose the sale of tobacco products~~, alternative nicotine products, or both,~~ must be based on the totality of the circumstances. Facts that must be considered, but not be limited to, are the tobacco retail establishment’s business filings, business name and signage, marketing and other advertisements, and the percentage of revenue and inventory directly related to the sale of tobacco ~~and alternative nicotine~~ products.

(K)(1) Each tobacco retailer engaging in the distribution of tobacco products, at each location in South Carolina, shall secure, and display at all times, a tobacco retail sales license from the Department of Revenue before engaging or continuing to engage in such business. No tobacco retailer may distribute tobacco products without a valid tobacco retail sales license. Any business or tobacco retailer selling or attempting to sell tobacco products without a license must be fined one thousand dollars and is ineligible to receive a tobacco retail license for a period of three years.

(2) The fee for a tobacco retail sales license must be set at three hundred dollars annually and must be used to cover the administrative costs for licensing administration, education and training, retail inspections, and unannounced compliance checks. The tobacco retail sales license fee should not exceed the costs of the regulatory program authorized beyond the provisions of this act. A tobacco retail sales license may not be renewed if the tobacco retailer has outstanding fines pursuant to this section, Section 16‑17‑502, or Section 16‑17‑506.

(3) No tobacco retail sales license may be issued to or renewed by a tobacco retail sales licensee unless the tobacco retailer signs a form stating that the tobacco retailer has read the provisions of this act and has provided training to all employees on the sale of tobacco products. Such training must include information that the sale of tobacco products to persons under eighteen years of age is illegal, the types of identification legally acceptable for proof of age, and that the sale of a tobacco product to a person under eighteen years of age subjects the tobacco retailer to penalties.

(L) Notwithstanding any other provision of law, a violation of this section does not violate the terms and conditions of an establishment’s beer and wine permit and is not grounds for revocation or suspension of a beer and wine permit.

Section 16‑17‑501. As used in this section and Sections 16‑17‑500, 16‑17‑502, 16‑17‑503, ~~and~~ 16‑17‑504, and 16‑17‑506:

(1) ‘Distribute’ means to sell, furnish, give, ~~or~~ provide, or attempt to do so, whether gratuitously or for any type of compensation, tobacco products ~~and alternative nicotine products~~, including tobacco product samples ~~and alternative nicotine product samples~~, cigarette paper, or a substitute for them, to the ultimate consumer.

(2) ‘Proof of age’ means a driver’s license or identification card issued by this State or any other state or a United States Armed Services identification card.

(3) ‘Sample’ means a tobacco product ~~or an alternative nicotine product~~ distributed to members of the general public at no cost for the purpose of promoting the products.

(4) ‘Sampling’ means the distribution of samples to members of the general public in a public place.

(5) ‘Tobacco product’ means ~~a product that contains tobacco and is intended for human consumption. ‘Tobacco product’ does not include an alternative nicotine product~~

(a) any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;

(b) any electronic smoking device as defined in this section and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or

(c) any component, part, or accessory of item (1) or (2), whether or not any of these contains tobacco or nicotine including, but not limited to, filters, rolling papers, blunt or hemp wraps, and pipes. 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.

(6) ~~‘Alternative nicotine product’ means any vaping product, whether or not it includes nicotine, including electronic smoking devices, that can be ingested into the body by chewing, smoking, absorbing, dissolving, inhaling, or by any other means. ‘Alternative nicotine product’ does not include:~~

~~(a)~~ ~~a cigarette, as defined in Section 12‑21‑620, or other tobacco products, as defined in Section 12‑21‑800;~~

~~(b)~~ ~~a product that is a drug pursuant to 21 U.S.C. 321(g)(1);~~

~~(c)~~ ~~a device pursuant to 21 U.S.C. 321(h); or~~

~~(d)~~ ~~a combination product described in 21 U.S.C. 353(g)~~ ‘Tobacco retail establishment’ means any place of business where tobacco products are available for sale to the general public. The term includes, but is not limited to, grocery stores, tobacco product shops, kiosks, convenience stores, gasoline service stations, bars, and restaurants.

(7) ‘Tobacco retailer’ means any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation who owns, operates, or manages any tobacco retail establishment. Tobacco retailer does not mean the nonmanagement employees of any tobacco retail establishment.

(8) ‘Electronic smoking device’ means any device that may be used to deliver any aerosolized or vaporized substance, including e‑liquid, to the person inhaling from the device, including, but not limited to, an e‑cigarette, e‑cigar, e‑pipe, vape pen, vapor product, or e‑hookah. ‘Electronic smoking device’ includes any component, part or accessory of the device, and also includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance includes nicotine. ‘Electronic smoking device’ 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.

~~(8)~~(9) ‘E‑liquid’ means a substance that:

(a) may or may not contain nicotine;

(b) is intended to be vaporized and inhaled using a vapor product; and

(c) is a legal substance under the laws of this State and the laws of the United States;

E‑liquid does not include cannabis or CBD as defined under the laws of this State and the laws of the United States.

~~(9)~~ ~~‘Vapor product’ means a powered vaporizer that converts e‑liquid to a vapor intended for inhalation.~~

(10) ‘Distribution’ means the act of selling, furnishing, giving, providing, or attempting to do so, whether gratuitously or for any type of compensation, tobacco products, including tobacco product samples, cigarette paper, or a substitute for them, to the ultimate consumer.”

B. Sections 16‑17‑502, 16‑17‑503, and 16‑17‑504 of the 1976 Code are amended to read:

“Section 16‑17‑502. (A) It is unlawful for a person to distribute a tobacco product ~~or an alternative nicotine product~~ sample to a person under the age of eighteen years.

(B) A person engaged in sampling shall demand proof of age from a prospective recipient if an ordinary person would conclude on the basis of appearance that the prospective recipient may be under the age of eighteen years.

(C) A person violating this section is subject to ~~a civil penalty~~ ~~of not more than twenty‑five dollars for a first violation, not more than fifty dollars for a second violation, and not less than one hundred dollars for a third or subsequent violation. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age is a defense to an action brought pursuant to this section~~ the penalties set forth in Section 16‑17‑500(E).

Section 16‑17‑503. (A) Except as otherwise provided by law, the Director of the Department of Revenue shall provide for the enforcement of Sections 16‑17‑500, ~~and~~ 16‑17‑502, and 16‑17‑506 in a manner that reasonably may be expected to reduce the extent to which tobacco products ~~or alternative nicotine products~~ are sold or distributed to persons under the age of eighteen years and ~~annually shall conduct random, unannounced inspections at locations where tobacco products or alternative nicotine products are sold or distributed to ensure compliance with the section~~ shall conduct a minimum of two unannounced compliance checks for violations of minimum age of sales laws per tobacco retail license per year. Compliance checks must engage persons between the ages of sixteen and eighteen years to enter the tobacco retail establishment to attempt to purchase tobacco products. Unannounced follow‑up compliance checks of noncompliant tobacco retail establishments are required within three to six months of any violation of this act. The results of all compliance checks must be published by the Department of Revenue and Department of Alcohol and Other Drug Abuse Services at least annually and made available to the public upon request. The Department of Revenue shall work with the State Law Enforcement Division to designate ~~an~~ enforcement ~~officer~~ officers to conduct the annual inspections. Penalties collected pursuant to ~~Section~~ Sections 16‑17‑500, 16‑17‑502, and 16‑17‑506 must be used to offset the costs of enforcement.

(B) The director shall provide for the preparation of and submission annually to the Secretary of the United States Department of Health and Human Services the report required by Section 1926 of the federal Public Health Service Act (42 U.S.C. Section 300x‑26) and otherwise is responsible for ensuring the state’s compliance with that provision of federal law and implementing regulations promulgated by the United States Department of Health and Human Services.”

Section 16‑17‑504. (A) Sections 16‑17‑500, 16‑17‑502, ~~and~~ 16‑17‑503, and 16‑17‑506, must be ~~implemented in an equitable and uniform manner throughout the State and~~ enforced to ensure the eligibility for and receipt of federal funds or grants the State receives or may receive relating to the sections. Any local laws, ordinances, or rules enacted pertaining to tobacco products ~~or alternative nicotine products~~ may ~~not supersede~~ only be stricter than state law or regulation. Nothing in this section affects the right of any person having ownership or otherwise controlling private property to allow or prohibit the use of tobacco products ~~or alternative nicotine products~~ on the property.

(B) Smoking ordinances in effect before the effective date of this act are exempt from the requirements of subsection (A).”

C. Section 16‑17‑506 of the 1976 Code, as added by Act 25 of 2019, is amended to read:

“Section 16‑17‑506. ~~(1)~~(A) For purposes of this section, "container" means a bottle or other container of any kind that contains e‑liquid and is offered for sale, sold, or otherwise distributed, or intended for distribution to consumers, but that does not include a cartridge that is prefilled and sealed by the manufacturer and not intended to be opened by the customer.

~~(2)~~(B) It is unlawful to sell, hold for sale, or distribute a container of e‑liquid unless:

~~(a)~~(1) the container satisfies the requirements of 21 C.F.R. 1143.3, if applicable, for the placement of labels, warnings, or any other information upon a package of e‑liquid that is to be sold within the United States;

~~(b)~~(2) the container complies with child‑resistant effectiveness standards under 16 C.F.R. 1700.15(b)(1) when tested in accordance with the requirements of 16 C.F.R. 1700.20; and

~~(c)~~(3) the container complies with federal trademark or copyright laws.

~~(3)~~(C) A person who knowingly sells, holds for sale, or distributes e‑liquid containers in violation of subsection ~~(2)~~(B) is guilty of a misdemeanor and, upon conviction, ~~shall~~ must be imprisoned for not more than three years or fined not more than one thousand dollars, or both.

~~(4)~~(D) In addition to the other penalties provided by law, law enforcement may seize and destroy or sell to the manufacturer, for export only, any containers in violation of this section.”

SECTION 2. Section 59‑1‑380 (A), (B), (E), and (F) of the 1976 Code, as added by Act 25 of 2019, is amended to read:

“(A) ~~By August 1, 2019,~~ Every local school district in the State shall ~~adopt,~~ implement~~,~~ and enforce a written policy prohibiting at all times the use of any tobacco product ~~or alternative nicotine product~~ by any person in school buildings, in school facilities, on school campuses, and in or on any other school property owned or operated by the local school administrative unit. The policy also must prohibit the use of any tobacco product ~~or alternative nicotine product~~ by persons attending a school‑sponsored event at a location not listed in this subsection when in the presence of students or school personnel or in an area where smoking or other tobacco use is otherwise prohibited by law.

(B) The policy must include at least all of the following elements:

(1) adequate notice to students, parents or guardians, the public, and school personnel of the policy;

(2) posting of signs prohibiting at all times the use of tobacco products ~~or alternative nicotine products~~ by any person in and on school property; and

(3) requirements that school personnel enforce the policy, including appropriate disciplinary action.

(E) The policy may permit tobacco products ~~or alternative nicotine products~~ to be included in instructional or research activities in public school buildings if the activity is conducted or supervised by the faculty member overseeing the instruction or research and the activity does not include smoking, chewing, inhaling, or otherwise ingesting the tobacco product ~~or alternative nicotine product~~.

(F) For purposes of this section~~:~~,

~~(1)~~ ‘tobacco product’ has the same meaning as defined in Section 16‑17‑501.

~~(2)~~ ~~‘Alternative nicotine product’ has the same meaning as defined in Section 16‑17‑501.~~”

SECTION 3. This act takes effect upon approval by the Governor.

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