**South Carolina General Assembly**

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**S. 1105**

**STATUS INFORMATION**

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Sponsors: Senator Shealy

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

Summary: Tobacco and alternative nicotine products

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/1/2022 Senate Introduced and read first time ([Senate Journal‑page 6](file:///h:\sj\20220301.docx))

3/1/2022 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 6](file:///h:\sj\20220301.docx))

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**VERSIONS OF THIS BILL**

[3/1/2022](file:///p:\pprever\2021-22\1105_20220301.docx)

**A** **BILL**

TO AMEND SECTION 16‑17‑500 OF THE 1976 CODE, AS AMENDED, RELATING TO THE SALE, PURCHASE, AND DISTRIBUTION OF TOBACCO PRODUCTS AND ALTERNATIVE NICOTINE PRODUCTS, SO AS TO PROHIBIT THE SALE, FURNISHING, OR PROVISION OF CIGARETTES OR ALTERNATIVE NICOTINE PRODUCTS TO A PERSON UNDER TWENTY‑ONE YEARS OF AGE, AND TO PROHIBIT A PERSON WHO IS UNDER TWENTY‑ONE YEARS OF AGE FROM PURCHASING, POSSESSING, ATTEMPTING TO POSSESS, OR PRESENTING A FALSE OR FRAUDULENT PROOF OF AGE FOR PURPOSES OF PURCHASING OR POSSESSING TOBACCO PRODUCTS OR ALTERNATIVE NICOTINE PRODUCTS; TO AMEND SECTION 16‑17‑502 OF THE 1976 CODE, RELATING TO THE DISTRIBUTION OF TOBACCO PRODUCT OR ALTERNATIVE NICOTINE PRODUCT SAMPLES, SO AS TO PROHIBIT THE DISTRIBUTION OF TOBACCO PRODUCT OR ALTERNATIVE NICOTINE PRODUCT SAMPLES TO A PERSON UNDER TWENTY‑ONE YEARS OF AGE; AND TO AMEND SECTION 16‑17‑503 OF THE 1976 CODE, RELATING TO ENFORCEMENT OF TOBACCO PRODUCTS AND ALTERNATIVE NICOTINE PRODUCTS PROVISIONS, SO AS TO FURTHER PROVIDE FOR THE ENFORCEMENT OF THESE PROVISIONS AND THE FURNISHING OF RELATED REPORTS.

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

SECTION 1. Section 16‑17‑500 of the 1976 Code is amended to read:

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

(B) It is unlawful 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 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~~ twenty‑one 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~~ twenty‑one 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 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 is open only to individuals who are ~~eighteen~~ twenty‑one 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 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.

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

(c) The provisions of this subsection do not apply to a ~~minor~~ person under the age of ~~eighteen~~ twenty‑one 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~~ person’s parental consent if the person is a minor.

(2) A ~~minor~~ person under the age of twenty‑one who knowingly violates a provision of item (1) in person, by agent, or in any other way 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~~ person under the age of twenty‑one 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~~ person under the age of twenty‑one 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~~ person’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~~ person does not have a driver’s license or permit, the court may delay the issuance of the ~~minor’s~~ person’s driver’s license or permit for a period of ninety days beginning from the date the ~~minor~~ person applies for a driver’s license or permit. Upon restricting or delaying the issuance of the ~~minor’s~~ person’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~~ person 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~~ person’s driving record that the restriction or delayed issuance of the ~~minor’s~~ person’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~~ person’s parent, guardian, or custodian of the restriction or delayed issuance of the ~~minor’s~~ person’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~~ person’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~~ person’s driver’s license or permit after the ninety‑day period. The restriction or delayed issuance of the ~~minor’s~~ person’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~~ person under the age of twenty‑one 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~~ person’s parent, guardian, or custodian of the ~~minor’s~~ person’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~~ person under the age of twenty‑one 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 retail establishment that distributes tobacco products or alternative nicotine products must train all retail sales employees regarding the unlawful distribution of tobacco products or alternative nicotine products to ~~minors~~ persons under the age of twenty‑one.

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

(2) A 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~~ twenty‑one years of age to enter this store, unless the ~~minor~~ person is actively supervised and accompanied by an adult. Age will be verified prior to purchase.’;

(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 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 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) 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 2. Section 16‑17‑502 of the 1976 Code is 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~~ twenty‑one 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~~ twenty‑one 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.”

SECTION 3. Section 16‑17‑503(A) of the 1976 Code is amended to read:

“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 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~~ twenty‑one 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. The department shall designate an enforcement officer to conduct the annual inspections. Penalties collected pursuant to Section 16‑17‑502 must be used to offset the costs of enforcement.”

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 5. This act takes effect upon ratification of an amendment to Section 14, Article XVII of the Constitution of this State allowing the General Assembly to restrict the sale of certain hazardous products or substances to persons under the age of twenty‑one.

SECTION 6. This act takes effect upon approval by the Governor.

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