**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ENACTING THE “YOUTH ACCESS TO TOBACCO PREVENTION ACT OF 2009”; BY ADDING SECTION 16‑17‑506 SO AS TO REQUIRE A PERSON ENGAGED IN THE BUSINESS OF SELLING OR DISTRIBUTING TOBACCO PRODUCTS AT RETAIL TO FILE AN APPLICATION TO ENGAGE IN THIS BUSINESS WITH THE DEPARTMENT OF REVENUE, TO PROVIDE A PROCEDURE FOR THE APPLICATION PROCESS, AND TO PROVIDE PENALTIES FOR VIOLATIONS; TO AMEND SECTION 16‑17‑500, AS AMENDED, RELATING TO THE ILLEGAL SALE OR PURCHASE OF TOBACCO PRODUCTS FOR MINORS, SO AS TO PROVIDE AN EXCEPTION TO THE REQUIREMENT OF THE DEMAND OF PROOF OF AGE UNDER CERTAIN CIRCUMSTANCES, TO PROHIBIT THE SALE OF TOBACCO PRODUCTS FROM SELF‑SERVICE DISPLAYS WITH CERTAIN DELINEATED EXCEPTIONS, AND TO PROVIDE FOR LICENSE SUSPENSION AND REVOCATION FOR SUBSEQUENT VIOLATIONS; AND TO AMEND SECTION 16‑17‑501, AS AMENDED, RELATING TO DEFINITIONS FOR PURPOSES OF THE YOUTH ACCESS TO TOBACCO PREVENTION ACT, SO AS TO DEFINE THE TERMS “SELF‑SERVICE DISPLAY”, “TOBACCO PRODUCT”, AND “TOBACCO SPECIALTY STORE”.

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

SECTION 1. This act may be cited as the “Youth Access to Tobacco Prevention Act of 2009”.

SECTION 2. Article 7, Chapter 17, Title 16 of the 1976 Code is amended by adding:

“Section 16‑17‑506. (A) A person engaged in the business of selling or distributing tobacco products at retail in this State shall file an application with the Department of Revenue for a license permitting him to engage in this business. If the business is conducted at two or more separate places, a separate license for each place of business is required. Licenses may not be issued to a minor under the age of eighteen years or to a business establishment in which a minor serves as an officer or principal.

(B) The application must be filed on a form to be furnished by the department for that purpose and shall contain a statement including the name of the individual, partnership, including the name of each individual partner, or corporation, the post office address, and the nature of the business. The application must be signed and verified by oath or affirmation by the individual owner of the business seeking the license or, if the owner is a partnership, corporation, or other business entity, by an executive officer or another person authorized to sign the application, together with written evidence of this authority. Upon receipt of an application for a license to engage in a business as provided in this section, the department shall issue to the applicant a permanent license permitting the sale and distribution of the articles designated.

(C) The license must be displayed at all times in a conspicuous place at or in the place of business where it may be easily seen by the public.

(D) The license provided for in this section must be obtained before engaging in the business in this State and is only valid for the person in whose name it is issued and only for the transaction of business at the place designated in the license.

(E) A person or retail establishment who violates a provision of this section is guilty of a misdemeanor and, upon conviction, must be:

(1) for a first offense, fined not less than one hundred dollars nor more than two hundred dollars;

(2) for a second offense, which occurs within three years of the first offense, fined not less than two hundred dollars nor more than three hundred dollars; and

(3) for a third or subsequent offense, which occurs within three years of the first offense, fined not less than three hundred dollars nor more than four hundred dollars.”

SECTION 3. Section 16‑17‑500 of the 1976 Code, as last amended by Act 231 of 2006, is further 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 to a minor under the age of eighteen years.

(B) It is unlawful to sell a tobacco product to an individual who does not present ~~upon demand~~ proper proof of age unless a reasonable person would conclude on the basis of the individual’s appearance that he appears to be twenty‑seven years of age or older. Failure to demand identification to verify an individual’s age is not a defense to an action initiated pursuant to this subsection. It is a defense to an action initiated pursuant to this subsection that at the time of the relevant sale:

(1) the individual was not a minor under the age of eighteen years; or

(2) proof ~~that is~~ was 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) It is unlawful to sell a tobacco product through a vending machine unless the vending machine is located in an establishment:

(1) which 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.

(D) It is unlawful to sell a tobacco product from a self‑service display unless it is through a:

(1) self‑service display located in a tobacco specialty store; or

(2) vending machine permitted pursuant to the provisions of subsection (C).

(E)(1) An individual who knowingly violates a provision of subsections (A), (B), ~~or~~ (C), or (D) 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 one hundred dollars nor more than two hundred dollars;

(b) for a second offense, which occurs within three years of the first offense, fined not less than two hundred dollars nor more than three hundred dollars; and

(c) for a third or subsequent offense, which occurs within three years of the first offense, fined not less than three hundred dollars nor more than four hundred dollars.

(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) In addition to another penalty prescribed by this section or another provision of law, for a:

(a) second violation pursuant to the provisions of subsection (A) within three years of the first offense, the court may order the Department of Revenue to suspend a license issued pursuant to Section 16‑17‑506 for the location where the offense occurred for a period of ninety days per offense; and

(b) for a third or subsequent violation pursuant to the provisions of subsection (A) within three years of the first offense, the court may order the Department of Revenue to revoke a license issued pursuant to Section 16‑17‑506 for the location where the offense occurred.

(4) Upon suspension or revocation of a license pursuant to the provisions of item (3), the retailer shall surrender the license to the Department of Revenue.

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

(2) A minor who knowingly violates a provision of ~~subsection (E)~~ 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 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~~ A law enforcement officer issuing a uniform traffic ticket pursuant to this subsection must immediately seize the tobacco 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.

~~(F)~~(G) This section does not apply to the possession of a tobacco 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.

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

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

~~(I)~~(J) 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 4. Section 16‑17‑501 of the 1976 Code, as last amended by Act 231 of 2006, is further amended to read:

“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 tobacco products, including tobacco 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 a United States Armed Services identification card.

(3) ‘Sample’ means a tobacco 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) ‘Self‑service display’ means a display that contains tobacco products and is located in an area openly accessible to consumers at retail, from which consumers can readily access tobacco products without the assistance of a retail sales employee. A display case that holds tobacco products behind locked doors does not constitute a self‑service display.

(6) ‘Tobacco product’ means a product that contains tobacco and is intended for human consumption.

(7) ‘Tobacco specialty store’ means a retail establishment that derives at least seventy‑five percent of its revenue from the sale of tobacco products.”

SECTION 5. This act takes effect upon approval by the Governor.

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