~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

March 27, 2019

**H. 3420**

Introduced by Reps. Bernstein, Finlay, Thayer, West, Clemmons and Simmons

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Read the first time February 6, 2019.

**A** **BILL**

TO AMEND SECTION 16‑17‑500, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE “YOUTH ACCESS TO TOBACCO PREVENTION ACT OF 2006”, SO AS TO PROHIBIT MINORS FROM ENTERING RETAIL ESTABLISHMENTS THAT PRIMARILY SELL TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, OR BOTH; AND TO AMEND SECTION 16‑17‑501, RELATING IN PART TO THE DEFINITION OF “ALTERNATIVE NICOTINE PRODUCT”, SO AS TO CHANGE THE DEFINITION.

Amend Title To Conform

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

SECTION 1. Section 16‑17‑500(C), (E)(1), (F)(1), and (J) of the 1976 Code is amended to read:

“(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 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.

(E)(1) An individual who knowingly violates a provision of subsections (A), (B), (C), ~~or~~ (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 ~~one hundred dollars nor more than two hundred dollars~~ two hundred dollars and not more than three hundred dollars;

(b) for a second and subsequent offense, ~~which occurs within three years of the first offense,~~ fined not less than ~~two~~ four hundred dollars ~~nor~~ and not more than ~~three~~ five hundred dollars, imprisoned for not more than thirty days, or both~~;~~

~~(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~~.

(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 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) It is unlawful for a person under the age of eighteen to purchase, attempt to purchase, smoke, chew, sniff, consume, or knowingly possess tobacco products or alternative nicotine products. A person who violates the provisions of this subitem is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars and not more than two hundred dollars.

(d) It is unlawful for a minor under the age of eighteen years to attempt to purchase tobacco or alternative nicotine products by knowingly providing false information concerning the minor’s age. A person who violates the provisions of this subitem, upon conviction, must be fined not less than one hundred dollars and not more than two hundred dollars.

(e) 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.

(J)(1) A 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 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 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.’

(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. A. The undesignated clause in Section 16‑17‑501 of the 1976 Code is amended to read:

“As used in this section and Sections 16‑17‑500, 16‑17‑502, 16‑17‑503, and 16‑17‑504:”

B. Section 16‑17‑501(6) of the 1976 Code is amended to read:

“(6) ‘Alternative nicotine product’ means ~~a~~ any vaping product, whether or not it includes nicotine, including ~~electronic cigarettes~~ electronic smoking devices, ~~that consists of or contains nicotine~~ 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).”

C. Section 16-17-501(7) of the 1976 Code is amended to read:

“~~(7)~~ ~~“Electronic cigarette” means an electronic product or device that produces a vapor that delivers nicotine or other substances to the person inhaling from the device to simulate smoking, and is likely to be offered to, or purchased by, consumers as an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe. “Electronic cigarette” 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).~~

(7) ‘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.”

D. Section 16-17-501 of the 1976 Code is amended by adding the following new subsections to read:

“(8) ‘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.”

SECTION 3. Article 5, Chapter 1, Title 59 of the 1976 Code is amended by adding:

“Section 59‑1‑380. (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.

(C) Disciplinary actions for violating the policy may include, but not be limited to:

(1) for students: administrator and parent or legal guardian conference, mandatory enrollment in tobacco prevention education or cessation programs, community service, in‑school suspension, suspension for extracurricular activities, or out‑of‑school suspension.

(2) for staff: verbal reprimand, written notification in personnel file, mandatory enrollment in tobacco prevention education, voluntary enrollment in cessation programs, or suspension;

(3) for contract or other workers: verbal reprimand, notification to contract employer, or removal from district property; and

(4) for visitors: verbal request to leave district property or prosecution for disorderly conduct for repeated offenses.

(D) The local school district shall collaborate with the Department of Health and Environmental Control, the Department of Alcohol and Other Drug Abuse Services, and the South Carolina Department of Education, as appropriate, to implement the policy, including as part of tobacco education and cessation programs and substance use prevention efforts.

(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 4. Section 44‑95‑20(1) of the 1976 Code is amended to read:

“(1) public schools and preschools ~~where routine or regular kindergarten, elementary, or secondary educational classes are held including libraries. Private offices and teacher lounges which are not adjacent to classrooms or libraries are excluded. However, this exclusion does not apply if the offices and lounges are included specifically in a directive by the local school board. This section does not prohibit school district boards of trustees from providing for a smoke‑free campus~~;”

SECTION 5. Article 7, Chapter 17, Title 16 of the 1976 Code is amended by adding:

“Section 16-17-506. (1) 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) It is unlawful to sell, hold for sale, or distribute a container of e-liquid unless:

(a) the container satisfies the requirements of the 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) 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) the container complies with federal trademark or copyright laws.

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

(4) 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 6. Section 16-17-500(E) of the 1976 Code is amended by adding an appropriately numbered new item to read:

“( ) 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.”

SECTION 7. This act takes effect upon approval by the Governor.

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