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Indicates New Matter

AMENDED

March 4, 2020

**H. 4710**

Introduced by Reps. Bernstein, Finlay, Clary, Collins, Wooten, G.R. Smith, Clyburn, Hosey and Rose

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Read the first time January 14, 2020.

**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 MAKE TECHNICAL CORRECTIONS; TO AMEND SECTION 44‑95‑20, AS AMENDED, RELATING TO CERTAIN PUBLIC INDOOR AREAS WHERE SMOKING IS PROHIBITED IN SOUTH CAROLINA, SO AS TO APPLY ALSO TO THE USE OF VAPOR PRODUCTS; AND TO AMEND SECTION 59‑1‑380, RELATING TO THE MANDATORY PUBLIC SCHOOL COMPREHENSIVE TOBACCO‑FREE CAMPUS POLICY, SO AS TO MAKE TECHNICAL CORRECTIONS.

Amend Title To Conform

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 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 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 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 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 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.

(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) 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 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 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.

(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 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 ~~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 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).~~

~~(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 container of e‑liquid or other 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)~~(7) ‘E‑liquid’ means a substance that:

(a) may or may not contain nicotine;

(b) is intended to be aerosolized or 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.~~

(8) ‘Nicotine’ means naturally occurring nicotine that is derived from the tobacco plant or synthetic nicotine that is tobacco free.”

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.

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. 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.

(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 laws, ordinances, or rules enacted pertaining to tobacco products ~~or alternative nicotine products~~ may not supersede 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. Section 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. Section 1700.15(b)(1) when tested in accordance with the requirements of 16 C.F.R. Section 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 any provision 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 44‑95‑20 of the 1976 Code, as last amended by Act 25 of 2019, is further amended to read:

“Section 44‑95‑20. (A) It is unlawful for a person to smoke or possess lighted smoking material in any form in the following public indoor areas except where a smoking area is designated as provided for in this chapter:

(1) public schools and preschools;

(2) all other indoor facilities providing children’s services to the extent that smoking is prohibited in the facility by federal law and all other childcare facilities, as defined in Section 63‑13‑20, which are licensed pursuant to Chapter 13, Title 63;

(3) health care facilities as defined in Section 44‑7‑130, except where smoking areas are designated in employee break areas. However, nothing in this chapter prohibits or precludes a health care facility from being smoke free;

(4) government buildings, except health care facilities as provided for in this section, except that smoking may be allowed in enclosed private offices and designated areas of employee break areas. However, smoking policies in the State Capitol and Legislative Office Buildings must be determined by the office of government having control over its respective area of the buildings. ‘Government buildings’ means buildings or portions of buildings which are leased or operated under the control of the State or any of its political subdivisions, except those buildings or portions of buildings which are leased to other organizations or corporations;

(5) elevators;

(6) public transportation vehicles, except for taxicabs;

(7) arenas and auditoriums of public theaters or public performing art centers. However, smoking areas may be designated in foyers, lobbies, or other common areas, and smoking is permitted as part of a legitimate theatrical performance; and

(8) buildings, or portions of buildings, and the outside areas immediately contiguous to these buildings owned, leased, operated, or maintained by a public institution of higher learning, as defined in Section 59‑103‑5, that the governing board of the institution has designated as nonsmoking.

(B) For purposes of this chapter:

(1) ‘Cigarette’ has the same meaning as defined in Section 12‑21‑620.

(2) ‘Lighted smoking material’ means any lighted or heated cigarette, cigar, pipe, or any other lighted or heated tobacco product, intended for inhalation.

(3) ‘Smoke’ means to inhale, exhale, burn, or carry any lighted smoking material intended for inhalation. ‘Smoke’ also means to inhale or exhale any tobacco product.

(4) ‘Smoking’ means the inhaling, exhaling, burning, or carrying of any lighted smoking material intended for inhalation. ‘Smoking’ also means the inhaling or exhaling of any tobacco product.

(5) ‘Tobacco product’ has the same meaning as defined in Sections 12-21-800 and 16-17-501.”

SECTION 3. Section 59‑1‑380(A), (B), (E), and (F) of the 1976 Code, as added by Act 25 of 2019, is amended to read:

“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.

(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. This act takes effect upon approval by the Governor.

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