**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16‑17‑507 SO AS TO PROHIBIT THE MANUFACTURE, SALE, POSSESSION, OR DISTRIBUTION OF VAPOR PRODUCTS IN THE STATE OF SOUTH CAROLINA, TO DEFINE CERTAIN TERMS, TO ESTABLISH CRIMINAL PENALTIES, AND FOR OTHER PURPOSES; TO AMEND SECTION 16‑17‑501, AS AMENDED, RELATING TO TERMS DEFINED IN THE “YOUTH ACCESS TO TOBACCO PREVENTION ACT OF 2006”, SO AS TO MAKE CONFORMING CHANGES; AND TO REPEAL SECTION 16‑17‑506 RELATING TO E‑LIQUID CONTAINERS.

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

SECTION 1. Article 7, Chapter 17, Title 16 of the 1976 Code is amended by adding:

“Section 16‑17‑507. (A)(1) It is unlawful for an individual to manufacture, possess, sell, offer to sell, furnish, give, distribute, transport for delivery, or provide, or to possess with the intent to sell, furnish, give, distribute, transport for delivery, or provide, a vapor product in the State of South Carolina.

(2) For an individual engaged in the sale of vapor products through the Internet or other remote sales method, prima facie evidence of a violation of this section is established if the vapor product sold is shipped to a mailing address in the State of South Carolina.

(B)(1) An individual who knowingly violates a provision of this section 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) Violations of this section are calculated on a per‑item and per‑transaction basis, and may be punished cumulatively.

(C) Jurisdiction to hear a violation of this section is vested exclusively in the municipal court or the magistrates court.

(D) For purposes of this section:

(1) ‘E‑liquid’ means the liquid solution atomized by a heating element in an electronic smoking device or other vapor product, which may or may not contain nicotine, propylene glycol, vegetable glycerin, flavorings, additives, contaminants, or other ingredients, and which may or may not be toxic or carcinogenic.

(2) ‘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, or e‑hookah. ‘Electronic smoking device’ includes any component, part, or accessory of the device, and any container of e‑liquid or other substance to be aerosolized or vaporized. ‘Electronic smoking device’ does not include a product that is a drug pursuant to 21 U.S.C. Section 321(g)(1), a device pursuant to 21 U.S.C. Section 321(h), or a combination product described in 21 U.S.C. Section 353(g).

(3) ‘Vapor product’ means a noncombustible product that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from an e‑liquid, and the use or inhalation of which simulates smoking. ‘Vapor product’ includes any electronic smoking device and a vapor cartridge or other container of e‑liquid that is intended to be used with or in an electronic smoking device. ‘Vapor product’ does not include a product that is a drug pursuant to 21 U.S.C. Section 321(g)(1), a device pursuant to 21 U.S.C. Section 321(h), or a combination product described in 21 U.S.C. Section 353(g) and does not include a tobacco product or alternative nicotine product, as those terms are defined in Section 16‑17‑501.”

SECTION 2. Section 16‑17‑501 of the 1976 Code, as last amended by Act 25 of 2019, 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:

(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.

(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.~~ a noncombustible product containing nicotine that is intended for human consumption, whether by chewing, smoking, absorbing, dissolving, inhaling, or ingesting 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 tobacco product, as defined in this section, or a vapor product, as defined in Section 16‑17‑507;

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

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

~~(d)~~(e) a combination product described in 21 U.S.C. Section 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.~~

~~(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. Section 16‑17‑506 of the 1976 Code, as added by Act 25 of 2019, is repealed.

SECTION 4. This act takes effect upon approval by the Governor.

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