**A** **BILL**

TO AMEND SECTION 16-17-501 OF THE 1976 CODE, RELATING TO DEFINITIONS FOR OFFENSES AGAINST PUBLIC POLICY, TO PROVIDE DEFINITIONS FOR NICOTINE PRODUCTS; AND TO AMEND ARTICLE 1, CHAPTER 17, TITLE 16 OF THE 1976 CODE, RELATING TO OFFENSES AGAINST PUBLIC POLICY, TO ADD SECTION 16-17-507 TO PROVIDE FOR THE FORMATION OF A VAPOR PRODUCT DISPENSARY AND TO ADD SECTION 16-17-508 TO PROHIBIT THE SALE OF FLAVORED VAPOR PRODUCTS.

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

SECTION 1. Section 16‑17‑501 of the 1976 Code is 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 16-17-507:

(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) ‘Nicotine’ means any form of the chemical nicotine, including any salt or complex, regardless of whether the chemical is naturally or synthetically derived.

~~(6)~~(7) ‘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)~~(8) ‘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)~~(9) ‘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.~~ any liquid solution or other material containing nicotine that is depleted as a vapor product is used.

~~(9)~~(10) ‘Vapor product’ means ~~a powered vaporizer that converts e‑liquid to a vapor intended for inhalation~~ any non‑combustible product containing e‑liquid that employs a heating element, power source, electronic circuit, or other electronic cigarette, electronic cigar, electronic cigarillo, electronic pope, electronic hookah, vape pen, vaporizer, or similar product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

(11) ‘Characterizing flavor’ means a distinguishable taste or aroma, other than tobacco or menthol, including, but not limited to: fruit, chocolate, vanilla, honey, candy, dessert, herb, spice, or alcoholic beverage.

(12) ‘Flavored nicotine product’ means any vapor product with a characterizing flavor.”

SECTION 2. Article 1, Chapter 17, Title 16 of the 1976 Code is amended by adding:

“Section 16‑17‑507. (A) Every manufacturer of a vapor product that is sold or intended to be sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver certification under the penalty of perjury to the Attorney General certifying that, as of the date of such attestation:

(1) the vapor product was on the United States market as of August 8, 2016, the manufacturer has applied for a marketing order for the vapor product by submitting a Premarket Tobacco Product Application (PMTA) on or before September 9, 2020, to the U.S. Food & Drug Administration, and the application remains pending with the Agency; or

(2) the manufacturer has received a marketing granted order or other authorization under the 21 U.S.C § 387j for the vapor product from the United States Food and Drug Administration.

(B) The manufacturer shall notify the Attorney General within thirty days of any material change to the certification, including if the United States Food and Drug Administration has issued a marketing granted order or other authorization, issued a marketing denial order, or has ordered the manufacturer to remove the vapor product, either temporarily or permanently, from the United States market.

(C) The Attorney General shall develop and make the directory available for public inspection on its website and shall update the directory as necessary in order to correct mistakes and to add or remove manufacturers or vapor products to keep the directory in conformity with the requirements of this section.

(D) It is unlawful for any person knowingly, directly or indirectly, to manufacture, distribute, sell, barter, or furnish in this state any vapor product that is not included in the directory.”

SECTION 3. Article 1, Chapter 17, Title 16 of the 1976 Code is amended by adding:

“Section 16‑17‑508 (A) No person shall sell, offer for sale, receive for sale, manufacture, distribute, purchase, or facilitate the sale of a flavored vapor product in this State.

(B) Subsection (A) shall not apply to any vapor product that receives a marketing order from the United States Food and Drug Administration under 21 U.S.C. §387j.

(C) Subsection (A) shall not prohibit the transportation of flavored vapor products within this State intended for sale or distribution in another state.

(D) No person shall transfer or give tobacco products that are for the purpose of consumption to a person under twenty-one years of age.

(E) A person who violates subsection (D) is guilty of a misdemeanor and, upon conviction:

(1) for a first offence, must be fined not less than two hundred dollars and not more than three hundred dollars or imprisoned not more than thirty days or both; and

(2) for a second or subsequent offense, must be fined not less than four hundred dollars, nor more than five hundred dollars or imprisoned not more than thirty days or both.

(F) The provisions of this section do not apply to a:

(1) spouse over the age of twenty-one giving a tobacco product to his spouse under the age of twenty-one in their home; and

(2) parent or guardian over the age of twenty-one giving a tobacco product to his children or wards under the age of twenty-one in their home.

(G) This section does not apply to an employee lawfully engaged in the sale or delivery of these tobacco products.

(H) Subsection (D) shall not apply to a person giving tobacco products to a person who is twenty-one years of age, if that person under twenty-one years of age is recruited and authorized by a law enforcement agency to test a person’s compliance with laws relating to the unlawful transfer or sale of tobacco products.”

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

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