

House Bill 251 (AS PASSED HOUSE AND SENATE)

By: Representative Powell of the 32nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 7 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated,
2 relating to sale or distribution to, or possession by, minors of cigarettes and tobacco related
3 objects, so as to provide definitions; to provide for the regulation of alternative nicotine
4 products and vapor products; to provide for related matters; to provide an effective date; to
5 repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 7 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to sale
9 or distribution to, or possession by, minors of cigarettes and tobacco related objects, is
10 amended by revising Code Section 16-12-170, relating to definitions, as follows:

11 "16-12-170.

12 As used in this article, the term:

13 (1) 'Alternative nicotine product' means any noncombustible product containing nicotine
14 that is intended for human consumption, whether chewed, absorbed, dissolved, or
15 ingested by any other means. The term 'alternative nicotine product' shall not include any
16 tobacco product, vapor product, or any product regulated as a drug or device by the
17 United States Food and Drug Administration under Chapter V of the Food, Drug, and
18 Cosmetic Act.

19 ~~(1)~~(2) 'Cigar wraps' means individual cigar wrappers, known as wraps, blunt wraps, or
20 roll your own cigar wraps, that consist in whole or in part of reconstituted tobacco leaf
21 or flavored tobacco leaf.

22 ~~(2)~~(3) 'Cigarette' means roll for smoking made wholly or in part of tobacco when the
23 cover of the roll is paper or any substance other than tobacco ~~'Cigarettes' means any type~~
24 ~~of tobacco or tobacco product.~~

25 ~~(3)~~(4) 'Community service' means a public service which a minor might appropriately
26 be required to perform, as determined by the court, as punishment for certain offenses
27 provided for in this article.

28 ~~(4)~~(5) 'Minor' means any person who is under the age of 18 years.

29 ~~(5)~~(6) 'Person' means any natural person or any firm, partnership, company, corporation,
30 or other entity.

31 ~~(6)~~(7) 'Proper identification' means any document issued by a governmental agency
32 containing a description of the person, such person's photograph, or both, and giving such
33 person's date of birth and includes, without being limited to, a passport, military
34 identification card, driver's license, or an identification card authorized under Code
35 Sections 40-5-100 through 40-5-104. 'Proper identification' shall not include a birth
36 certificate.

37 (8) 'Tobacco product' means any cigars, little cigars, granulated, plug cut, crimp cut,
38 ready rubbed, and other smoking tobacco; snuff or snuff powder; cavendish; plug and
39 twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings,
40 cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in
41 such a manner as to be suitable for chewing or smoking in a pipe or otherwise, or both
42 for chewing and smoking. The term 'tobacco product' shall not include any alternative
43 nicotine product, vapor product, or product regulated as a drug or device by the United
44 States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic
45 Act.

46 ~~(7)~~(9) 'Tobacco related objects' means any papers, wrappers, or other products, devices,
47 or substances, including cigar wraps, which are used for the purpose of making cigarettes
48 or tobacco products in any form whatsoever.

49 (10) 'Vapor product' means any noncombustible product containing nicotine that
50 employs a heating element, power source, electronic circuit, or other electronic, chemical,
51 or mechanical means, regardless of shape or size, that can be used to produce vapor from
52 nicotine in a solution or other form. The term 'vapor product' shall include any electronic
53 cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or
54 device and any vapor cartridge or other container of nicotine in a solution or other form
55 that is intended to be used with or in an electronic cigarette, electronic cigar, electronic
56 cigarillo, electronic pipe, or similar product or device. The term 'vapor product' shall not
57 include any product regulated as a drug or device by the United States Food and Drug
58 Administration under Chapter V of the Food, Drug, and Cosmetic Act."

59 **SECTION 2.**

60 Said article is further amended by revising Code Section 16-12-171, relating to prohibited
61 acts, as follows:

62 "16-12-171.

63 (a)(1) It shall be unlawful for any person knowingly to:

64 (A) Sell or barter, directly or indirectly, any cigarettes, tobacco products, ~~or~~ tobacco
65 related objects, alternative nicotine products, or vapor products to a minor;

66 (B) Purchase any cigarettes, tobacco products, ~~or~~ tobacco related objects, alternative
67 nicotine products, or vapor products for any minor unless the minor for whom the
68 purchase is made is the child of the purchaser; or

69 (C) Advise, counsel, or compel any minor to smoke, inhale, chew, or use cigarettes,
70 tobacco products, ~~or~~ tobacco related objects, alternative nicotine products, or vapor
71 products.

72 (2)(A) The prohibition contained in paragraph (1) of this subsection shall not apply
73 with respect to sale of cigarettes, tobacco products, ~~or~~ tobacco related objects,
74 alternative nicotine products, or vapor products by a person when such person has been
75 furnished with proper identification showing that the person to whom the cigarettes,
76 tobacco products, ~~or~~ tobacco related objects, alternative nicotine products, or vapor
77 products are sold is 18 years of age or older.

78 (B) In any case where a reasonable or prudent person could reasonably be in doubt as
79 to whether or not the person to whom cigarettes, tobacco products, ~~or~~ tobacco related
80 objects, alternative nicotine products, or vapor products are to be sold or otherwise
81 furnished is actually 18 years of age or older, it shall be the duty of the person selling
82 or otherwise furnishing such cigarettes, tobacco products, ~~or~~ tobacco related objects,
83 alternative nicotine products, or vapor products to request to see and to be furnished
84 with proper identification as provided for in subsection (b) of this Code section in order
85 to verify the age of such person. The failure to make such request and verification in
86 any case where the person to whom the cigarettes, tobacco products, ~~or~~ tobacco related
87 objects, alternative nicotine products, or vapor products are sold or otherwise furnished
88 is less than 18 years of age may be considered by the trier of fact in determining
89 whether the person selling or otherwise furnishing such cigarettes, tobacco products,
90 ~~or~~ tobacco related objects, alternative nicotine products, or vapor products did so
91 knowingly.

92 (3) Any person who violates this subsection shall be guilty of a misdemeanor.

93 (b)(1) It shall be unlawful for any minor to:

94 (A) Purchase, attempt to purchase, or possess for personal use any cigarettes, tobacco
95 products, ~~or~~ tobacco related objects, alternative nicotine products, or vapor products.

96 This subparagraph shall not apply to possession of cigarettes, tobacco products, ~~or~~
 97 tobacco related objects, alternative nicotine products, or vapor products by a minor
 98 when a parent or guardian of such minor gives the cigarettes, tobacco products, ~~or~~
 99 tobacco related objects, alternative nicotine products, or vapor products to the minor
 100 and possession is in the home of the parent or guardian and such parent or guardian is
 101 present; or

102 (B) Misrepresent such minor's identity or age or use any false identification for the
 103 purpose of purchasing or procuring any cigarettes, tobacco products, ~~or~~ tobacco related
 104 objects, alternative nicotine products, or vapor products.

105 (2) A minor who commits an offense provided for in paragraph (1) of this subsection
 106 may be punished as follows:

107 (A) By requiring the performance of community service not exceeding 20 hours;

108 (B) By requiring attendance at a publicly or privately sponsored lecture or discussion
 109 on the health hazards of smoking or tobacco use, provided such lecture or discussion
 110 is offered without charge to the minor; or

111 (C) By a combination of the punishments described in subparagraphs (A) and (B) of
 112 this paragraph."

113 SECTION 3.

114 Said article is further amended by revising subsection (a) of Code Section 16-12-172, relating
 115 to posting signs in places of business, as follows:

116 "(a) Any person owning or operating a place of business in which cigarettes, tobacco
 117 products, or tobacco related objects are sold or offered for sale shall post in a conspicuous
 118 place a sign which shall contain the following statement:

119 'SALE OF CIGARETTES, TOBACCO, TOBACCO PRODUCTS, ~~OR~~ TOBACCO
 120 RELATED OBJECTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR
 121 PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW.'

122 Such sign shall be printed in letters of at least one-half inch in height."

123 SECTION 4.

124 Said article is further amended by revising Code Section 16-12-173, relating to sales from
 125 vending machines, as follows:

126 "16-12-173.

127 (a)(1) Any person who maintains in such person's place of business a vending machine
 128 which dispenses cigarettes, tobacco products, ~~or~~ tobacco related objects, alternative
 129 nicotine products, or vapor products shall place or cause to be placed in a conspicuous
 130 place on such vending machine a sign containing the following statement:

131 'THE PURCHASE OF CIGARETTES, TOBACCO PRODUCTS, ~~OR~~ TOBACCO
 132 RELATED OBJECTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR
 133 PRODUCTS FROM THIS VENDING MACHINE BY ANY PERSON UNDER 18
 134 YEARS OF AGE IS PROHIBITED BY LAW.'

135 (2) Any person who maintains in such person's place of business a vending machine
 136 which dispenses cigarettes, tobacco products, ~~or~~ tobacco related objects, alternative
 137 nicotine products, or vapor products shall not dispense any ~~non~~~~tobacco~~ other type of
 138 product, other than matches, in such vending machine.

139 (b) Any person who fails to comply with the requirements of subsection (a) of this Code
 140 section shall be guilty of a misdemeanor; provided, however, for a first offense, the
 141 sentence shall be a fine not to exceed \$300.00.

142 (c) It shall be a violation of subsection (a) of Code Section 16-12-171 for any person
 143 knowingly to allow a minor to operate a vending machine which dispenses cigarettes,
 144 tobacco products, or tobacco related objects, alternative nicotine products, or vapor
 145 products.

146 (d) The offenses provided for by paragraph (1) of subsection (b) of Code
 147 Section 16-12-171 shall apply to the operation by a minor of a vending machine which
 148 dispenses cigarettes, tobacco products, or tobacco related objects, alternative nicotine
 149 products, or vapor products.

150 (e)(1) The sale or offering for sale of cigarettes, tobacco products, or tobacco related
 151 objects, alternative nicotine products, or vapor products from vending machines shall not
 152 be permitted except:

153 (A) In locations which are not readily accessible to minors, including but not limited
 154 to:

155 (i) Factories, businesses, offices, and other places which are not open to the general
 156 public;

157 (ii) Places open to the general public which do not admit minors; and

158 (iii) Places where alcoholic beverages are offered for sale;

159 (B) In areas which are in the immediate vicinity, plain view, and under the continuous
 160 supervision of the proprietor of the establishment or an employee who will observe the
 161 purchase of cigarettes, tobacco products, ~~and~~ tobacco related objects, alternative
 162 nicotine products, and vapor products from the vending machine; and

163 (C) In rest areas adjacent to roads and highways of the state.

164 (2) Violation of this subsection shall be punished as provided in subsection (b) of this
 165 Code section for violation of subsection (a) of this Code section."

166

SECTION 5.

167 Said article is further amended by revising subsection (a) of Code Section 16-12-174, relating
168 to distribution of tobacco product samples, as follows:

169 "(a) As used in this Code section, the term 'tobacco product sample' means a cigarette,
170 tobacco product, alternative nicotine product, or vapor product distributed to members of
171 the general public at no cost for purposes of promoting the product."

172

SECTION 6.

173 Said article is further amended by revising subsection (b) of Code Section 16-12-175,
174 relating to enforcement actions, collection and report of fines, inspections by law
175 enforcement agencies, and annual report, as follows:

176 "(b) The state revenue commissioner, acting through special agents or enforcement
177 officers, shall annually conduct random, unannounced inspections at locations where
178 cigarettes, tobacco products, alternative nicotine products, or vapor products are sold or
179 distributed to ensure compliance with this article. Persons under the age of 18 years may
180 be enlisted to test compliance with this article; provided, however, that such persons may
181 be used to test compliance with this article only if the testing is conducted under the direct
182 supervision of such special agents or enforcement officers and written parental consent has
183 been provided. Any other use of persons under the age of 18 years to test compliance with
184 this article or any other prohibition of like or similar import shall be unlawful and the
185 person or persons responsible for such use shall be subject to the penalties prescribed in
186 this article. The state revenue commissioner shall prepare annually for submission by the
187 Governor to the secretary of the United States Department of Health and Human Services
188 the report required by section 1926 of subpart I of part B of Title XIX of the federal Public
189 Health Service Act, 42 U.S.C. 300x-26."

190

SECTION 7.

191 This Act shall become effective on July 1, 2014.

192

SECTION 8.

193 All laws and parts of laws in conflict with this Act are repealed.