

2020 Regular Session

SENATE BILL NO. 403

BY SENATOR FRED MILLS

COMMERCIAL REGULATIONS. Provides relative to the minimum age for the distribution, sale, purchase, or possession of tobacco products, alternative nicotine products, or vapor products. (8/1/20)

1 AN ACT

2 To amend and reenact R.S. 14:91.6(A) and 91.8(C), (D), (E), and (F), R.S. 26:793(C)(1),
3 910, 910.1(A), 911(A), and 917(A) and (C), and R.S. 47:851(C)(2), to enact R.S.
4 26:901.1, relative to tobacco products, alternative nicotine products and vapor
5 products, paraphernalia, and devices; to provide relative to the unlawful distribution,
6 sale, and possession; to raise the minimum age of persons for sale, purchase, and
7 possession; to provide for legislative facts and findings; to require unannounced
8 compliance checks; to require identification under certain circumstances; to provide
9 regarding vending machines and self-service displays; to provide regarding
10 violations; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 14:91.6(A) and 91.8(C), (D), (E), and (F) are hereby amended and
13 reenacted to read as follows:

14 §91.6. Unlawful distribution of sample tobacco products, alternative nicotine
15 products, ~~or vapor products,~~ **or vapor paraphernalia and devices** to
16 persons under age ~~eighteen~~ **twenty-one**; penalty

17 A. No person shall distribute or cause to be distributed to persons under

1 ~~eighteen~~ **twenty-one** years of age a promotional sample of any tobacco product,
2 alternative nicotine product, or vapor product, **or vapor paraphernalia and devices.**

3 * * *

4 §91.8. Unlawful sale, ~~purchase, or possession~~ of tobacco, alternative nicotine
5 product **products**, or vapor product **products, or vapor**
6 **paraphernalia and devices**; signs required; penalties

7 * * *

8 C. It is unlawful for any manufacturer, distributor, retailer, or other person
9 ~~knowingly~~ to sell or distribute any tobacco product, alternative nicotine product, or
10 vapor product, **or vapor paraphernalia and devices** to a person under the age of
11 ~~eighteen~~ **twenty-one**. However, it shall not be unlawful for a person under the age
12 of eighteen to accept receipt of a tobacco product, alternative nicotine product, or
13 vapor product, **vapor paraphernalia and devices** from an employer when required
14 in the performance of such person's duties. At the point of ~~purchase~~ **sale**, a sign, in
15 not less than 30-point type, shall be displayed **in a manner conspicuous to both**
16 **employees and consumer, within six feet of each register and any other location**
17 **where tobacco products, alternative nicotine products, vapor products, or vapor**
18 **paraphernalia and devices are available for purchase**, that reads "LOUISIANA
19 LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS, ALTERNATIVE
20 NICOTINE PRODUCTS, ~~OR~~ VAPOR PRODUCTS, **OR VAPOR**
21 **PARAPHERNALIA AND DEVICES** TO PERSONS UNDER AGE ~~18~~ **21**". The
22 sign shall also include a notice that displays the telephone number for the Louisiana
23 Tobacco Quitline (1-800-QUIT-NOW) and the website for the Louisiana Tobacco
24 Quitline (www.quitwithusla.org), as determined by the ~~state department of health~~
25 **Louisiana Department of Health.**

26 D. It is unlawful for a vending machine operator to place in use a vending
27 machine to vend any tobacco product, alternative nicotine product, or vapor product,
28 **or vapor paraphernalia** automatically, unless the machine displays a sign or sticker
29 in not less than 22-point type on the front of the machine stating, "LOUISIANA

1 LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS, ALTERNATIVE
 2 NICOTINE PRODUCTS, ~~OR VAPOR PRODUCTS,~~ **OR VAPOR PRODUCT**
 3 **PARAPHERNALIA** TO PERSONS UNDER AGE ~~18~~ **21**". The sign shall also
 4 include a notice that displays the telephone number for the Louisiana Tobacco
 5 Quitline (1-800-QUIT-NOW) and the website for the Louisiana Tobacco Quitline
 6 (www.quitwithusla.org), as determined by the ~~state department of health~~ **Louisiana**
 7 **Department of Health**.

8 E. It is unlawful for any person under the age of ~~eighteen~~ **twenty-one** to buy
 9 **be sold** any tobacco product, alternative nicotine product, ~~or vapor product,~~ **vapor**
 10 **product paraphernalia and devices**.

11 F.(1) It is unlawful for any person under the age of ~~eighteen~~ **twenty-one** to
 12 possess any tobacco product, alternative nicotine product, ~~or vapor product,~~ **vapor**
 13 **paraphernalia and devices**.

14 (2) However, it shall not be unlawful for a person under the age of ~~eighteen~~
 15 **twenty-one** to possess a tobacco product, alternative nicotine product, ~~or vapor~~
 16 ~~product,~~ **or vapor paraphernalia and devices** ~~under any of the following~~
 17 ~~circumstances:~~

18 (a) ~~When a person under eighteen years of age is accompanied by a parent,~~
 19 ~~spouse, or legal guardian twenty-one years of age or older.~~

20 (b) ~~In private residences.~~

21 (c) ~~When~~ **when** the tobacco product, alternative nicotine product, ~~or vapor~~
 22 ~~product,~~ **or vapor paraphernalia and devices** is handled during the course and
 23 scope of his employment and required in the performance of such person's duties.

24 * * *

25 Section 2. R.S. 26:793(C)(1), 910, 910.1(A), 911(A), and 917(A) and (C) are hereby
 26 amended and reenacted and R.S. 26:901.1 is hereby enacted to read as follows:

27 §793. Additional powers of the commissioner

28 * * *

29 C.(1) In order to ensure compliance with laws prohibiting the sale or service

1 of alcoholic beverages, tobacco, alternative nicotine, ~~or~~ vapor products, **or vapor**
 2 **paraphernalia and devices** to underage persons, the commissioner shall **at least**
 3 **once** annually conduct random, unannounced ~~inspections~~ **compliance checks** at
 4 locations where alcoholic beverages, tobacco, or alternative nicotine, or vapor
 5 products **or vapor paraphernalia and devices** are sold, served, or distributed.
 6 Persons ~~under~~ **over** the age of ~~eighteen~~ or **sixteen and under the age of** twenty-one
 7 ~~may~~ **shall** be enlisted by employees of the office of alcohol and tobacco control to
 8 test compliance, but such persons may be used only if the testing is conducted under
 9 the direct supervision of such employees ~~and written parental consent has been~~
 10 ~~provided if the person is under the age of eighteen~~. Any person under the age of
 11 ~~eighteen~~ or twenty-one shall either carry the person's own identification showing the
 12 person's correct date of birth or shall carry no identification. A person under the age
 13 of ~~eighteen~~ or twenty-one who carries identification shall, on request, present it to
 14 any seller or server of alcoholic beverages, tobacco, or alternative nicotine or vapor
 15 products, **or vapor paraphernalia and devices**. In addition, any person under the
 16 age of ~~eighteen~~ or twenty-one enlisted under this Subsection shall truthfully answer
 17 any questions about the person's age. Except where expressly authorized in writing
 18 by the commissioner in furtherance of the objectives of this Section, any other use
 19 of persons under the age of ~~eighteen~~ or twenty-one to test compliance with the
 20 provisions of this Section or any other prohibition of like or similar import shall be
 21 unlawful and the person or persons responsible for such use shall be subject to the
 22 penalties prescribed in this Title or R.S. 14:91.6, 91.8(H), 92, or 93.11.
 23 **Unannounced follow-up compliance checks of all noncompliant retailers are**
 24 **required within three months of any violation of this Chapter. The results of all**
 25 **compliance checks shall be made publicly available.**

26 * * *

27 **§901.1 Facts and findings**

28 **A. The federal Further Consolidated Appropriations Act of 2020 (PL**
 29 **116-94) raised the federal minimum age for sale of tobacco products from**

1 eighteen years old to twenty-one years old. The Section of that Act providing for
2 this change became known as "Tobacco 21" or "T21". The new federal
3 minimum age of sale of tobacco and tobacco products was effective immediately
4 and applies to all retail establishments and persons with no exceptions.

5 B.(1) Federal enforcement of the federal change in age is through the
6 federal block grant program for mental health and substance abuse. In 1992,
7 Congress enacted the Alcohol, Drug Abuse, and Mental Health Administration
8 Reorganization Act (PL 102-321), which included an amendment (Section 1926
9 known as the Synar Amendment) aimed at decreasing youth access to tobacco.
10 This amendment requires states to enact and enforce laws regarding tobacco
11 and tobacco product sales in compliance with federal law in order to receive
12 their full Substance Abuse Prevention and Treatment Block Grant (SABG)
13 award.

14 (2) T21 contained a transition period of three years from the date of
15 enactment before dollars may be withheld from an SABG award to a state for
16 noncompliance. The Act requires states to document and report to the secretary
17 of the federal Department of Health and Human Services efforts made to come
18 into compliance with federal law.

19 (3) T21 provides for the United States Food and Drug Administration
20 to continue to conduct random and unannounced compliance check inspections
21 on tobacco product retailers to determine a retailer's compliance with federal
22 law and regulations. While T21 did not provide for a grace period or transition
23 period for tobacco retailers, the United States Food and Drug Administration
24 has agreed to continue to use minors under the age of eighteen for undercover
25 buy inspections in its compliance check program.

26 C.(1) In addition to the federal mandate, there is a growing body of
27 evidence about health problems related to tobacco and vapor use by youth.

28 (2) In 2016, the Substance Abuse and Mental Health Service
29 Administration conducted a national survey on drug use and health which

1 showed that about ninety-five percent of adult smokers began smoking before
 2 turning twenty-one years of age and nearly eighty percent of them were daily
 3 smokers by the age of twenty-one. This is significant because in 2014 the
 4 Surgeon General released a report entitled *The Health Consequences of*
 5 *Smoking: 50 Years of Progress* which recognized that adolescence and young
 6 adulthood are critical periods of growth and exposure to nicotine can have
 7 lasting, negative consequences on brain development.

8 (3) Both the U.S. Food and Drug Administration and the U.S. Centers for
 9 Disease Control and Prevention are working to investigate the distressing
 10 incidents of severe respiratory illness and deaths associated with use of vaping
 11 products and have issued consumer warnings and alerts on the matter. The
 12 warnings and alerts include a recommendation that vaping products should
 13 never be used by youth.

14 * * *

15 §910. Vending machines

16 A. In order to prevent persons under ~~eighteen~~ twenty-one years of age from
 17 purchasing or receiving tobacco products, alternative nicotine products, ~~or~~ vapor
 18 products, and vapor paraphernalia and devices from vending machines, the sale
 19 or delivery of such products through a vending machine is prohibited unless either
 20 of the following apply:

21 (1) The machine is located in an establishment to which persons under the
 22 age of ~~eighteen~~ twenty-one are denied access.

23 (2) The machine is located in facilities where the dealer ensures that no
 24 person younger than ~~eighteen~~ twenty-one years of age is present or permitted to
 25 enter at any time and the machine is located within the unobstructed line of sight of
 26 a dealer or a dealer's agent or employee who is responsible for preventing persons
 27 younger than ~~eighteen~~ twenty-one years of age from purchasing tobacco products,
 28 alternative nicotine products, ~~or~~ vapor products, and vapor paraphernalia through
 29 that machine.

1 §910.1. Self-service displays

2 A. In order to prevent persons under ~~eighteen~~ twenty-one years of age from
3 purchasing or receiving tobacco products, alternative nicotine products, ~~or~~ vapor
4 products, **and vapor paraphernalia and devices** from self-service displays, the sale
5 or delivery of such products through a self-service display is prohibited unless the
6 machine is a vending machine as defined in R.S. 26:910 that complies with the terms
7 and provisions of that Section.

8 * * *

9 §911. Acts prohibited

10 A. No person, agent, associate, employee, representative, or servant of any
11 person shall permit any of the following acts to be done on or about any premises
12 which sells or offers for sale tobacco products, alternative nicotine products, ~~or~~ vapor
13 products, **or vapor paraphernalia and devices**:

14 (1) Sell or serve tobacco products, alternative nicotine products, ~~or~~ vapor
15 products, **or vapor paraphernalia and devices** over-the-counter in a retail
16 establishment to any person under the age of ~~eighteen~~ unless such person submits
17 **twenty-one. All persons engaging in the retail sale of tobacco products,**
18 **alternative nicotine products, vapor products, or vapor paraphernalia and**
19 **devices shall check the identification of tobacco purchasers to establish the age**
20 **of the purchaser if the person appears to be under the age of thirty. A person**
21 **shall verify age by submitting** a driver's license, selective service card, or other
22 lawful identification which on its face establishes the age of the person as ~~eighteen~~
23 **twenty-one** years or older and there is no reason to doubt the authenticity or
24 correctness of the identification.

25 (2) Violate the terms and provisions of R.S. 14:91.6 relative to the unlawful
26 distribution of tobacco products, alternative nicotine products, ~~or~~ vapor products, **or**
27 **vapor paraphernalia and devices.**

28 (3) Violate the terms and provisions of the "Prevention of Youth Access to
29 Tobacco Law" under R.S. 14:91.8.

1 (4) Violate the terms and provisions of this Chapter or any rules or
2 regulations promulgated by the office pursuant to this Chapter.

3 (5) Accept Supplemental Nutrition Assistance Program "SNAP" electronic
4 benefit transfer cards as payment for tobacco products in violation of the provisions
5 of 7 U.S.C. 2011 et seq., and any federal regulation issued pursuant thereto.

6 (6) Illegally sell, offer for sale, possess, or permit the consumption on or
7 about the licensee's premises of any kind or type of controlled dangerous substance.

8 * * *

9 §917. Violations by employee; employer liability

10 A. Sale of tobacco products, alternative nicotine products, ~~or~~ vapor products,
11 **or vapor paraphernalia and devices** to a ~~minor~~ **person under twenty-one years**
12 **of age** by a retail dealer's agent, associate, employee, representative, or servant shall
13 be considered an act of the retail dealer for purposes of suspension, revocation, or
14 assessment of civil penalties ~~unless all of the following conditions exist:~~

15 ~~(1) The employer requires employees to attend a commissioner-approved~~
16 ~~seller training program.~~

17 ~~(2) The employee actually attends the training program.~~

18 ~~(3) The employer does not directly or indirectly encourage the employee to~~
19 ~~violate the prohibited sales provisions of this Chapter.~~

20 * * *

21 C. The provisions of Subsection A of this Section shall not apply if a retail
22 dealer, or lawful retailer of alternative nicotine products, ~~or~~ vapor products, **or vapor**
23 **paraphernalia and devices**, as applicable, within one hundred eighty days from the
24 hiring of an agent, associate, employee, representative, or servant can prove that he
25 has made application to have the employee attend a training program or the retail
26 dealer or lawful retailer, as applicable, has received an extension of time in which
27 to comply from the commissioner because of unavailability of a training program.

28 Section 3. R.S. 47:851(C)(2) is hereby amended and reenacted to read as follows:

29 §851. Monthly reports required; dealers receiving unstamped cigarettes, cigars, and

1 smoking tobaccos; dealers receiving certain items for which taxes are
2 not paid; vending machine restrictions

3 * * *

4 C. Vending machine operators.

5 * * *

6 (2) In accordance with R.S. 14:91.8(D), vending machine operators shall
7 affix a sign or sticker in not less than 22-point type on the front of each machine
8 stating, "LOUISIANA LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS,
9 ALTERNATIVE NICOTINE PRODUCTS, ~~OR~~ VAPOR PRODUCTS, **OR VAPOR**
10 **PARAPHERNALIA AND DEVICES** TO PERSONS UNDER AGE ~~18~~ **21**".

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Dawn Romero Watson.

DIGEST

SB 403 Original

2020 Regular Session

Fred Mills

Present law prohibits the distribution of promotional samples of any tobacco product, alternative nicotine product, or vapor product to persons under the age of 18.

Proposed law raises the minimum age from 18 to 21 years and includes vapor paraphernalia and devices.

Present law prohibits manufacturers, distributors, retailers, or other persons from selling or distributing any tobacco product, alternative nicotine product, or vapor product to persons under the age of 18.

Proposed law raises the minimum age from 18 to 21 years and removes the requirement for knowledge in the sale or distribution of any tobacco product, alternative nicotine product, or vapor product to persons under the age of 21 and includes vapor paraphernalia and devices.

Proposed law includes facts and findings.

Present law further requires signs at points of sale and on vending machines for tobacco products stating, "LOUISIANA LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 18".

Proposed law requires signs at the point of sale to be placed in a manner conspicuous to both employees and consumers, within six feet of each register and any other location where tobacco products, alternative nicotine products, vapor products or vapor paraphernalia and devices are available for purchase.

Present law prohibits any person under the age of 18 from buying any tobacco product, alternative nicotine product, or vapor product.

Proposed law changes present law by prohibiting the sale of any tobacco product, alternative nicotine product, vapor product, vapor paraphernalia and devices to persons under the age

of 21.

Present law prohibits any person under the age of 18 from possessing any tobacco product, alternative nicotine product, or vapor product, unless accompanied by a parent, spouse, or legal guardian who is over 21 years old, or in a private residence, or when the product is handled in the course and scope of employment and required in the performance of such person's duties.

Proposed law changes the age to 21 and adds possession of vapor paraphernalia and devices. Proposed law deletes all exceptions in present law for underage persons except for underage persons handling product in the course and scope of employment.

Proposed law includes facts and findings.

Present law requires the commissioner of alcohol and tobacco control to annually conduct random, unannounced inspections at locations where tobacco products are sold and distributed. The office of alcohol and tobacco control may enlist persons under the age of 18 to test compliance if the testing is under the direct supervision of employees of the office of alcohol and tobacco control and written parental consent has been provided.

Proposed law changes present law by requiring compliance checks, instead of inspections, and requires that they take place at least once annually. Also, allows persons between the age of 16 and 21 shall be enlisted to test compliance. Further requires unannounced follow-up compliance checks of all noncompliant retailers within three months of any violation of proposed law. The results of compliance checks are required to be made publicly available.

Present law allows for the purchase of tobacco products from vending machines by persons 18 years of age or older.

Proposed law changes present law by raising the minimum age from 18 to 21 years of age and adds vapor paraphernalia and devices.

Present law allows for the purchase of tobacco products from self-service displays by persons 18 years of age or older.

Proposed law amends present law by raising the minimum age from 18 to 21 years of age for persons who can purchase or receive tobacco products, alternative nicotine products, or vapor products from self-service displays.

Present law prohibits the sale of tobacco products to anyone under the age of 18.

Proposed law amends present law by raising the minimum age from 18 to 21 years of age for persons who may be sold tobacco products. Proposed law adds to present law by requiring that all persons engaging in the sale of tobacco products check the identification of any person attempting to purchase such product who appears under the age of 30.

Present law allows a retail dealer to meet certain conditions that would mitigate the consequences suffered if that retailer is found to be in violation of present law. Present law also requires the commissioner to establish by administrative rules the minimum requirements for an approved seller training program. Present law also exempts a retailer agent from the penalties of a violation if, within 180 days from the hiring of an agent, the retailer can prove that he has made an application to have the employee attend a training program.

Proposed law repeals present law.

Present law requires that signs at points of sale and on vending machines for tobacco products reflect "LOUISIANA LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS

TO PERSONS UNDER AGE 18".

Proposed law updates the wording on signs required to be posted on vending machines to reflect the minimum age change from 18 to 21.

Effective August 1, 2020.

(Amends R.S. 14:91.6(A) and 91.8(C), (D), (E), and (F), R.S. 26:793(C)(1), 901.1, 910, 910.1(A), 911(A), and 917(A) and (C), and R.S. 47:851(C)(2); adds R.S. 26:901.1)