

HOUSE BILL 2114

By Smith

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 29; Title 39, Chapter 17; Title 39, Chapter 15;
Title 43; Title 67, Chapter 4, Part 10 and Title 68,
relative to improving the health of Tennessee's
youth.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-1501, is amended by deleting the language "Vapor Products" and substituting instead the language "Electronic Smoking Devices".

SECTION 2. Tennessee Code Annotated, Section 39-17-1502, is amended by deleting the language "eighteen (18) years of age" wherever it appears in the section and substituting instead the language "twenty-one (21) years of age" and by deleting the language "vapor products" wherever it appears and substituting instead the language "electronic smoking devices".

SECTION 3. Tennessee Code Annotated, Section 39-17-1503(5), is amended by deleting the subdivision and substituting instead the following:

(5) "Person" means any natural person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation, or any officer, agent, employee, factor, or any other personal representative thereof, in any capacity;

SECTION 4. Tennessee Code Annotated, Section 39-17-1503(6), is amended by deleting the language "eighteen (18) years of age" wherever it appears in the subdivision and substituting instead the language "twenty-one (21) years of age".

SECTION 5. Tennessee Code Annotated, Section 39-17-1503(11), is amended by deleting the subdivision and substituting instead the following:

(11) "Tobacco product" means any product that is made from or derived from tobacco, or that contains any form of nicotine, that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. "Tobacco product" also means electronic smoking devices and any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, and liquids used in electronic smoking devices, whether or not they contain nicotine. "Tobacco product" does not include drugs, devices, or combination products authorized for sale by the United States food and drug administration, as those terms are defined in the Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.);

SECTION 6. Tennessee Code Annotated, Section 39-17-1503, is amended by deleting subdivision (12) and adding the following as new subdivisions:

() "Distribute" means to furnish, give, provide, or to attempt to do so, whether gratuitously or for any type of compensation;

() "Electronic smoking device" means any device that can be used to deliver aerosolized or vaporized nicotine or any other substance 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 such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. "Electronic smoking device" does not include drugs, devices, or combination products authorized for sale by the United States food and drug administration, as those terms are defined in the Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.);

SECTION 7. Tennessee Code Annotated, Section 39-17-1504, is amended by deleting the language "eighteen (18) years of age" wherever it appears in the section and substituting instead the language "twenty-one (21) years of age" and by deleting the language "tobacco,

smoking hemp, or vapor product" and "tobacco, smoking hemp, or vapor products" wherever they appear and substituting instead, as applicable, "tobacco product or smoking hemp" or "tobacco products or smoking hemp".

SECTION 8. Tennessee Code Annotated, Section 39-17-1505, is amended by deleting the section and substituting instead the following:

(a) It is unlawful for a person who has not attained twenty-one (21) years of age to possess a tobacco product or smoking hemp, to purchase or accept receipt of a tobacco product or smoking hemp, or to present or offer to any person any purported proof of age that is false, fraudulent, or not actually that person's own for the purpose of purchasing or receiving any tobacco product or smoking hemp.

(b) Any person who violates this section must not be issued a citation. However, a law enforcement officer with evidence of the violation shall seize the tobacco product or smoking hemp as contraband.

(c) A minor may cooperate with law enforcement officers in an operation designed to test the compliance of other persons with this part.

(d) As used in this section, "law enforcement officer" means an officer, employee, or agent of government who is authorized by law to investigate the commission or suspected commission of violations of Tennessee law.

(e) It is not unlawful for a person under twenty-one (21) years of age to handle or transport:

(1) Tobacco products or smoking hemp as a part of and in the course of the person's employment; provided, that the person is under the supervision of another employee who is at least twenty-one (21) years of age; or

(2) Tobacco products or smoking hemp as part of an educational project that has been developed by the person for entry and display at an agricultural fair or other agricultural competition or event.

(f) This section does not prohibit a person less than eighteen (18) years of age from handling or transporting tobacco or hemp as part of and in the course of the person's involvement in any aspect of the agricultural production or storage of tobacco or hemp, the sale of raw tobacco or hemp at market, or the transportation of raw tobacco or hemp to a processing facility.

SECTION 9. Tennessee Code Annotated, Section 39-17-1506(a), is amended by deleting the language "EIGHTEEN (18) YEARS" and substituting instead the language "TWENTY-ONE (21) YEARS" and by deleting the language "ninety-three and one-half (93½) square inches" and substituting instead the language "eleven inches (11") by fourteen inches (14)".

SECTION 10. Tennessee Code Annotated, Section 39-17-1507(a), is amended by deleting subdivision (1) and by deleting the language "eighteen (18) years of age" from subdivision (2) and substituting instead the language "twenty-one (21) years of age".

SECTION 11. Tennessee Code Annotated, Section 39-17-1509, is amended by deleting the language "eighteen (18) years of age" wherever it appears in the section and substituting instead the language "twenty-one (21) years of age"; by deleting the language "tobacco, smoking hemp, or vapor product" wherever it appears and substituting instead the language "tobacco or smoking hemp product"; by deleting the language "tobacco, smoking hemp, and vapor products" and substituting instead the language "tobacco and smoking hemp products"; and by deleting the language "twenty-six (26) years of age" and substituting instead the language "thirty (30) years of age".

SECTION 12. Tennessee Code Annotated, Section 39-17-1509, is amended by deleting subsection (a) and substituting instead the following:

(a) The department shall enforce this part in a manner that may reasonably be expected to reduce the extent to which tobacco and smoking hemp products are sold or distributed to persons under twenty-one (21) years of age, and shall conduct at least two (2) random, unannounced inspections each year at each location where tobacco and smoking hemp products are sold or distributed to ensure compliance with this part. If a location is found to be in violation of this part, the department shall make an unannounced inspection within six (6) months of the violation.

SECTION 13. Tennessee Code Annotated, Section 39-17-1509, is amended by deleting the first three sentences of subsection (b) and substituting instead the following:

A person who violates § 39-17-1504, § 39-17-1506, § 39-17-1507, or § 39-17-1508 is subject to a civil penalty of not more than two hundred fifty dollars (\$250) for the person's first violation, not more than five hundred dollars (\$500) for the person's second violation, and not more than one thousand dollars (\$1,000) for the person's third or subsequent violation. For purposes of determining whether a violation is the person's first, second, third, or subsequent violation, the commissioner shall count only those violations that occurred within the previous five (5) years. The commissioner may suspend a person's retail tobacco license for a period of not less than thirty (30) days and not more than ninety (90) days if the person violates § 39-17-1504 or §§ 39-17-1506 - 39-17-1508 three (3) or more times within a three-year period and may revoke a person's retail tobacco license for any subsequent violations.

SECTION 14. Tennessee Code Annotated, Section 39-17-1509(b)(1), is amended by deleting the subdivision and substituting instead the following:

(1) The commissioner shall issue the assessment of civil penalty only against the retailer, as defined in § 43-19-401, responsible for the violation;

SECTION 15. Tennessee Code Annotated, Section 39-17-1512, is amended by deleting the language "a vapor product" wherever it appears and substituting instead "an electronic smoking device".

SECTION 16. Tennessee Code Annotated, Section 39-17-1513, is amended by deleting the language "eighteen (18) years of age" and substituting instead the language "twenty-one (21) years of age" and by deleting the language "vapor products" and substituting instead "electronic smoking devices".

SECTION 17. Tennessee Code Annotated, Section 39-15-407(3), is amended by deleting the language "eighteen (18) years of age or, in the case of alcoholic beverages, any person under".

SECTION 18. Tennessee Code Annotated, Section 39-15-413(a)(1), is amended by deleting the language ", or in the case of alcohol a person under twenty-one (21) years of age,".

SECTION 19. Tennessee Code Annotated, Section 39-15-413(a)(2), is amended by deleting the language "or a person under twenty-one (21) years of age," and by deleting the language ", or in the case of alcohol or beer, a person under twenty-one (21) years of age,".

SECTION 20. Tennessee Code Annotated, Section 39-15-413(c), is amended by deleting the language ", or in the case of alcohol or beer, a person under twenty-one (21) years of age," and by deleting the language "or person under twenty-one (21) years of age".

SECTION 21. Tennessee Code Annotated, Title 43, Chapter 19, is amended by adding the following as a new part:

43-19-401. Definitions.

As used in this part:

(1) "Commissioner" means the commissioner of agriculture;

(2) "Department" means the department of agriculture;

(3) "Person" means any natural person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation, or any officer, agent, employee, factor, or any other personal representative thereof, in any capacity;

(4) "Retailer" means a person who operates a business in which tobacco products are sold at retail; and

(5) "Tobacco product" has the same meaning as the term is defined in § 39-17-1503.

43-19-402. Licensing of tobacco retailers.

(a) A retailer shall obtain an annual retail tobacco license from the department before engaging in the retail sale of tobacco products.

(b) The commissioner shall promulgate rules to establish the qualifications for the issuance of a retail tobacco license. The rules promulgated pursuant to this section must establish the fee for a retail tobacco license, which must be at a level to ensure the department's enforcement and licensing activities are fully funded.

43-19-403. Enforcement.

(a) The commissioner shall enforce this part and title 39, chapter 17, part 15, using the revenue generated from the issuance of retail tobacco licenses.

(b) Licenses may be suspended or revoked by the commissioner pursuant to § 39-17-1509(b).

43-19-404. Unlicensed sales – Penalties.

(a) A person shall not sell any tobacco products without first obtaining a retail tobacco license under this part.

(b) A retailer whose retail tobacco license has been suspended or revoked shall not sell any tobacco products.

(c) A violation of subsection (a) or (b) is a Class B misdemeanor.

SECTION 22. Tennessee Code Annotated, Section 67-4-1001(23), is amended by deleting the language "cigars, cigarettes, manufactured tobacco and snuff" and substituting instead the language "cigars, cigarettes, manufactured tobacco, snuff, and electronic smoking devices".

SECTION 23. Tennessee Code Annotated, Section 67-4-1001, is amended by adding the following as a new subdivision:

() "Electronic smoking device" means any device that can be used to deliver aerosolized or vaporized nicotine 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 such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. "Electronic smoking device" does not include drugs, devices, or combination products authorized for sale by the United States food and drug administration, as those terms are defined in the Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.);

SECTION 24. Tennessee Code Annotated, Section 67-4-1005, is amended by designating the existing language as subsection (a) and adding the following as a new subsection (b):

(b) The tax rate levied on cartridges used in electronic smoking devices is sixty-two cents (\$0.62) per cartridge.

SECTION 25. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code

Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 26. For purposes of promulgating rules and issuing licenses, this act shall take effect upon becoming law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2021, the public welfare requiring it.