

SENATE BILL 2348

By Oliver

AN ACT to amend Tennessee Code Annotated, Title 1 and
Title 39, relative to tobacco.

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

SECTION 1. Tennessee Code Annotated, Section 39-15-413, is amended by deleting subsection (a) and substituting:

(a)

(1) It is not a violation of § 39-15-404, § 39-15-410, §§ 39-17-401 – 39-17-427, § 39-17-602, § 39-17-603, §§ 39-17-901 – 39-17-908, § 39-17-911, § 39-17-914, § 39-17-918, §§ 39-17-1003 – 39-17-1005, §§ 39-17-1501 – 39-17-1508, or any other offense providing a prohibition for use of or sales to a minor or person under twenty-one (21) years of age, for a law enforcement officer to use or send a person under twenty-one (21) years of age to purchase smoking material, smoking paraphernalia, alcohol, or illegal drugs, or to send a minor to purchase a state lottery ticket or share or any other prohibited material, for the purpose of aiding in the enforcement of laws prohibiting sales to or use of minors or persons under twenty-one (21) years of age so long as the law enforcement officer has obtained the prior written approval of the minor's parent or legal guardian or the person under twenty-one (21) years of age if that person is not a minor.

(2) It is not a violation of § 39-15-404, § 39-15-410, or §§ 39-17-1501 – 39-17-1508, or any other statute prohibiting the use, possession, or sales of alcohol, beer, lottery tickets, or smoking material or paraphernalia to a minor or a

person under twenty-one (21) years of age, for a merchant in the business of selling alcohol, beer, lottery tickets, or smoking material or paraphernalia, to use or send a minor, or in the case of alcohol, or smoking material or paraphernalia, a person under twenty-one (21) years of age, to purchase any such product for the purpose of aiding in the enforcement of laws and policies prohibiting sales by the merchant at the merchant's place of business and preventing sales of such products to or use by individuals under age from occurring.

(3) It is not a violation of § 39-17-1504 or any other statute prohibiting the use, possession, or sales of tobacco products, including smokeless tobacco, to a person who was born on or after January 1, 2007, to use or send a person who was born on or after January 1, 2007, to purchase any such product for the purpose of aiding in the enforcement of laws and policies prohibiting sales by the merchant at the merchant's place of business and preventing sales of such products to or use by individuals under age from occurring.

SECTION 2. Tennessee Code Annotated, Section 39-15-413, is amended by deleting subsection (c) and substituting:

(c) In order to use a minor, in the case of alcohol, beer, or smoking material or paraphernalia, a person under twenty-one (21) years of age, or in the case of tobacco products, including smokeless tobacco, a person who was born on or after January 1, 2007, for any of the purposes permitted by this section, the following requirements apply:

(1) The minor, person under twenty-one (21) years of age, or person born on or after January 1, 2007, shall not:

(A) Purposely disguise the person's appearance so as to misrepresent the person's actual age; and

(B) Make statements designed to trick, mislead, encourage, or confuse the employee; and

(2) The minor, person under twenty-one (21) years of age, or person born on or after January 1, 2007, shall:

(A) Be photographed, both before and after the law enforcement or merchant-initiated use of the person, for the purpose of creating a record of the person's appearance during the time of the permitted use of the person;

(B) Except only for those questions relating to the person's employment or purpose for engaging in the conduct, respond truthfully to all questions posed by the location employee, including, but not limited to, inquiries concerning the person's age; and

(C) If identification is demanded by the location employee, produce only a valid state-issued card, which indicates the person's actual date of birth.

SECTION 3. Tennessee Code Annotated, Section 39-17-1501, is amended by deleting the section and substituting:

This part is known and may be cited as the "Prevention of Access to Tobacco, Smoking Hemp, and Vapor Products Act."

SECTION 4. Tennessee Code Annotated, Section 39-17-1502, is amended by deleting the section and substituting:

(a) The purpose of this part is to reduce the access of persons under twenty-one (21) years of age or born on or after January 1, 2007, to tobacco products by strengthening existing prohibitions:

(1) Against the sale and distribution of tobacco products and prohibiting the purchase or receipt of tobacco products by such persons, unless:

(A) The tobacco products are purchased and consumed within a hookah lounge, cigar bar, or a similar entity that sells tobacco products for the consumption of such products only on site to a person twenty-one (21) years of age or older; or

(B) An establishment sells a shisha tobacco product, vapor product that contains tobacco, or cigar that contains tobacco to a person twenty-one (21) years of age or older;

(2) Prohibiting the sale of tobacco products through vending machines;

(3) Restricting the distribution of tobacco product samples;

(4) Prohibiting the sale of cigarettes or smokeless tobacco products other than in unopened packages; and

(5) Random, unannounced inspections of locations where tobacco products are sold or distributed, providing for the report required to be submitted to the United States department of health and human services pursuant to Section 1926 of the Public Health Service Act (42 U.S.C. § 300x-26), and ensuring uniform regulations with respect to tobacco products within this state.

(b) The purpose of this part is also to prohibit the sale or distribution of vapor products to, or purchase of vapor products on behalf of, persons under twenty-one (21) years of age.

(c) The purpose of this part is also to prohibit the sale or distribution of smoking hemp products to, or purchase of smoking hemp products on behalf of, persons under twenty-one (21) years of age.

(d) The purpose of this part is also to prohibit the sale or distribution of smokeless nicotine products to, or purchase of smokeless nicotine products on behalf of, persons under twenty-one (21) years of age.

(e) It is the intent of the general assembly that this part be equitably enforced so as to ensure the eligibility for and receipt of any federal funds or grants that this state now receives or may receive relating to this part.

SECTION 5. Tennessee Code Annotated, Section 39-17-1503, is amended by adding the following as appropriately designated subdivisions:

() "Hookah" means a type of waterpipe, used to smoke shisha or other tobacco products, with a long flexible tube for drawing aerosol through water. Components of a hookah may include heads, stems, bowls, and hoses;

() "Hookah lounge" means an establishment where a person shares shisha tobacco products from a communal hookah or from one placed at each table or a bar;

() "Shisha tobacco product":

(A) Means a tobacco product, including one that contains a constituent that imparts a characterizing flavor, smoked or intended to be smoked in a hookah;

(B) Includes, and may be referred to as, hookah tobacco, waterpipe tobacco, maassel, narghile, and argileh; and

(C) Does not include any electronic devices, such as an electronic hookah, electronic cigarette, or electronic tobacco product;

SECTION 6. Tennessee Code Annotated, Section 39-17-1504, is amended by deleting the section and substituting:

(a) It is unlawful for a person to sell or distribute any smoking hemp, vapor product, or smokeless nicotine product to another person who has not attained twenty-

one (21) years of age or to purchase smoking hemp, vapor product, or smokeless nicotine product on behalf of such person under twenty-one (21) years of age.

(b) It is unlawful for a person to sell or distribute a tobacco product to another person who has not attained twenty-one (21) years of age or who was born on or after January 1, 2007, unless:

(1) The tobacco products are sold and consumed within a hookah lounge, cigar bar, or similar entity that sells tobacco products for the consumption of such products only on site to a person twenty-one (21) years of age or older; or

(2) An establishment sells a shisha tobacco product, vapor product that contains tobacco, or cigar to a person twenty-one (21) years of age or older.

(c) It is unlawful for a person to persuade, entice, send, or assist a person who has not attained twenty-one (21) years of age to purchase, acquire, receive, or attempt to purchase, acquire, or receive smoking hemp, vapor product, or smokeless nicotine product. This section and § 39-17-1505 do not preclude law enforcement efforts involving:

(1) The use of a minor if the minor's parent or legal guardian has consented to this action; or

(2) The use of an individual under twenty-one (21) years of age who is not a minor if the individual has consented to this action.

(d) It is unlawful for a person to persuade, entice, send, or assist a person under twenty-one (21) years of age or who was born on or after January 1, 2007, to purchase, acquire, receive, or attempt to purchase, acquire, or receive a tobacco product, unless § 39-17-1504(b)(1) or (b)(2) is applicable.

(e) A person shall not distribute smoking hemp, vapor product, smokeless nicotine product, or tobacco samples in or on any public street, sidewalk, or park.

(f)

(1) A person engaged in the sale or distribution of smoking hemp, vapor product, or smokeless nicotine product shall demand proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser or recipient may be under thirty (30) years of age. In the case of distribution by mail, the distributor of smoking hemp, vapor product, or smokeless nicotine product shall obtain from the addressee an affirmative statement that the person is twenty-one (21) years of age or older, and shall inform the recipient that the person is strictly prohibited from distributing any smoking hemp, vapor product, or smokeless nicotine product, as defined by this part, to a person under twenty-one (21) years of age; and

(2) A person engaged in the sale or distribution of tobacco shall demand proof of age from a prospective purchaser or recipient. In the case of distribution by mail, the distributor of tobacco shall obtain from the addressee an affirmative statement that the person is twenty-one (21) years of age or older or was born on or after January 1, 2007, except as provided in subdivisions (b)(1) and (b)(2), and shall inform the recipient that the person is strictly prohibited from distributing any tobacco to a person under twenty-one (21) years of age or who was born on or after January 1, 2007.

SECTION 7. Tennessee Code Annotated, Section 39-17-1505, is amended by deleting subsection (a) and substituting:

(a)

(1) It is unlawful for a person who has not attained twenty-one (21) years of age to possess either smoking hemp, vapor product, or smokeless nicotine product, to purchase or accept receipt of either product, or to present or offer to a 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 smoking hemp, vapor product, or smokeless nicotine product.

(2) It is unlawful for a person who has not attained twenty-one (21) years of age or who was born on or after January 1, 2007, to possess a tobacco product, to purchase or accept receipt of either product, or to present or offer to a 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, except as provided in § 39-17-1504(b).

SECTION 8. Tennessee Code Annotated, Section 39-17-1505, is amended by deleting subsection (f) and substituting:

(f)

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

(A) Smoking hemp, vapor products, or smokeless nicotine products 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

(B) Smoking hemp, vapor products, or smokeless nicotine products 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.

(2) It is not unlawful for a person under twenty-one (21) years of age or who was born on or after January 1, 2007, to handle or transport:

(A) Tobacco or tobacco products 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

(B) Tobacco or tobacco products 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.

SECTION 9. Tennessee Code Annotated, Section 39-17-1505, is amended by deleting subsection (g) and substituting:

(g) This section does not prohibit a person under twenty-one (21) years of age from handling or transporting hemp or a person born before January 1, 2007, from handling or transporting tobacco as part of and in the course of the person's involvement in any aspect of the agricultural production or storage of hemp or tobacco, the sale of hemp or raw tobacco at market, or the transportation of hemp or raw tobacco to a processing facility.

SECTION 10. Tennessee Code Annotated, Section 39-17-1506, is amended by deleting the section and substituting:

(a) Every person who sells smoking hemp, vapor products, or smokeless nicotine products at retail shall post conspicuously and keep so posted at the place of business a sign, no smaller than ninety-three and one-half (93 1/2) square inches, to ensure that it is likely to be read at each point of sale, stating the following:

STATE LAW STRICTLY PROHIBITS THE SALE OF VAPOR PRODUCTS,
SMOKELESS NICOTINE PRODUCTS, OR SMOKING PARAPHERNALIA TO
PERSONS UNDER THE AGE OF TWENTY-ONE (21) YEARS.
PROOF OF AGE MAY BE REQUIRED.

(b) Every person who sells tobacco at retail shall post conspicuously and keep so posted at the place of business a sign, no smaller than ninety-three and one-half (93 1/2) square inches, to ensure that it is likely to be read at each point of sale, stating the following:

STATE LAW STRICTLY PROHIBITS THE SALE OF TOBACCO PRODUCTS TO
PERSONS UNDER THE AGE OF TWENTY-ONE (21) YEARS OR BORN ON OR
AFTER JANUARY 1, 2007.
PROOF OF AGE MAY BE REQUIRED.

(c) Unless another notice is required by federal law, the notice required by this section and the notice required by § 39-15-411 is the only notice regarding smoking hemp, vapor products, smokeless nicotine products, or tobacco required to be posted or maintained in any store that sells smoking hemp, vapor products, smokeless nicotine products, or tobacco at retail.

SECTION 11. Tennessee Code Annotated, Section 39-17-1507, is amended by deleting subsection (a) and substituting:

(a)

(1) It is unlawful for a person to sell smoking hemp, vapor products, or smokeless nicotine products through a vending machine unless the vending machine is located in any of the following locations:

(A) In areas of factories, businesses, offices, or other places that are not open to the public;

(B) In places that are open to the public but to which persons under twenty-one (21) years of age are denied access;

(C) In places where alcoholic beverages are sold for consumption on the premises, but only if the vending machine is under the continuous supervision of the owner or lessee of the premises or an employee of the owner or lessee of the premises, and is inaccessible to the public when the establishment is closed; and

(D) In other places, but only if the machine is under the continuous supervision of the owner or lessee of the premises or an employee of the owner or lessee of the premises, or the machine can be operated only by the use of a token purchased from the owner or lessee of the premises or an employee of the owner or lessee of the premises prior to each purchase, and is inaccessible to the public when the establishment is closed.

(2) It is unlawful for a person to sell tobacco products through a vending machine.

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

(a) The department shall enforce this part in a manner that may reasonably be expected to reduce the extent to which smoking hemp, vapor products, or smokeless nicotine products are sold or distributed to persons under twenty-one (21) years of age and the extent to which tobacco products are sold or distributed to persons under twenty-one (21) years of age or born on or after January 1, 2007, and shall conduct random, unannounced inspections at locations where smoking hemp, vapor products,

smokeless nicotine products, or tobacco are sold or distributed to ensure compliance with this part.

SECTION 13. Tennessee Code Annotated, Section 39-17-1509, is amended by deleting subsection (c) and substituting:

(c) A person who demanded, was shown, and reasonably relied upon proof of age is not liable for a civil penalty for a violation of § 39-17-1504 or § 39-17-1507. In the case of distribution of any smoking hemp, vapor product, or smokeless nicotine product by mail, a person who obtained a statement from the addressee that the addressee is at least twenty-one (21) years of age is not liable for a civil penalty so long as that distributor of the smoking hemp, vapor product, or smokeless nicotine product informed the addressee that § 39-17-1504 prohibits the distribution of smoking hemp, vapor products, and smokeless nicotine products to a person under twenty-one (21) years of age. In the case of distribution of any tobacco product by mail, a person who obtained a statement from the addressee that the addressee is at least twenty-one (21) years of age and was born before January 1, 2007, is not liable for a civil penalty so long as that distributor of the tobacco product informed the addressee that § 39-17-1504 prohibits the distribution of tobacco products to a person under twenty-one (21) years of age or born on or after January 1, 2007.

SECTION 14. Tennessee Code Annotated, Section 39-17-1509(d), is amended by deleting "in which a vending machine selling tobacco, smoking hemp, vapor products, or smokeless nicotine products is located" and substituting "in which a vending machine selling smoking hemp, vapor products, or smokeless nicotine products is located".

SECTION 15. Tennessee Code Annotated, Section 39-17-1509(e), is amended by deleting subdivision (1) and substituting:

(1) The owner or manager of a store that sells smoking hemp, vapor products, smokeless nicotine products, or tobacco at retail shall provide training to the store's employees concerning the provisions of this part. As a part of this training, each employee shall, prior to selling smoking hemp, vapor products, smokeless nicotine products, or tobacco at retail, sign a statement containing substantially the following words:

I understand that state law prohibits the sale of smoking hemp, vapor products, or smokeless nicotine products to persons under twenty-one (21) years of age and that state law requires me to obtain proof of age from a prospective purchaser of smoking hemp, vapor products, or smokeless nicotine products who, based on appearance, might be as old as twenty-nine (29) years of age. I understand that state law prohibits the sale of tobacco to persons under twenty-one (21) years of age or who were born on or after January 1, 2007, except as provided under § 39-17-1504(b). I promise to obey this law, and I understand that monetary or criminal penalties may be imposed on me if I violate this law.

SECTION 16. This act takes effect January 1, 2025, the public welfare requiring it.