MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Clark

To: Judiciary B; Public Health and Human Services

HOUSE BILL NO. 227

AN ACT TO BE KNOWN AS THE "MISSISSIPPI TOBACCO MINIMUM LEGAL SALE AGE OF 21 ACT"; TO MAKE CERTAIN LEGISLATIVE FINDINGS REGARDING THE EFFECTS OF TOBACCO USE BY MINORS; TO DEFINE CERTAIN TERMS; TO PROHIBIT THE SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 21; TO REQUIRE DISTRIBUTORS TO VERIFY THE AGE OF THE RECIPIENTS BEFORE DISTRIBUTING ANY TOBACCO PRODUCT; TO REQUIRE TOBACCO SELLERS TO POST SIGNS ABOUT THE AGE RESTRICTION ON TOBACCO SALES; TO AUTHORIZE THE STATE DEPARTMENT OF HEALTH TO CONDUCT RANDOM, UNANNOUNCED INSPECTIONS TO TEST AND ENSURE COMPLIANCE WITH THIS ACT; TO PROVIDE FOR PENALTIES FOR VIOLATIONS OF THIS ACT; TO PROVIDE FOR CERTAIN EXCEPTIONS AND DEFENSES; TO AMEND SECTIONS 97-32-5, 97-32-11, 97-32-15 AND 97-32-27, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTIONS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Short title. This act shall be known and may be cited as the "Mississippi Tobacco Minimum Legal Sale Age of 21 Act."

SECTION 2. Findings of fact and purpose. (1) The Legislature makes the following findings:

(a) The State of Mississippi recognizes that the use of tobacco products has devastating health and economic consequences;

(b) Tobacco use is the foremost preventable cause of premature death in America. It causes half a million deaths

annually and has been responsible for 20.8 million premature deaths in the United States over the past fifty (50) years since the first Surgeon General's report on smoking in 1964. This leads to more than $300 billion in health care and lost worker productivity costs each year;

(c) Young people are particularly susceptible to the addictive properties of tobacco products and are particularly likely to become lifelong users;

(d) An estimated 5.6 million youth aged zero (0) to seventeen (17) are projected to die prematurely from a tobacco-related illness if prevalence rates do not change;

(e) National data show that ninety-five percent (95%) of adult smokers begin smoking before they turn twenty-one (21). The ages of eighteen (18) to twenty-one (21) are a critical period when many smokers move from experimental smoking to regular, daily use;

(f) Young minds are particularly susceptible to the addictive properties of nicotine. Tobacco industry documents show that those who start smoking by the age of eighteen (18) are almost twice as likely to become lifetime smokers as those who start after they turn twenty-one (21);

(g) Electronic smoking device use among minors has tripled recently, and use of electronic smoking devices is associated with and may encourage the use of conventional tobacco products;

(h) Ninety percent (90%) of all adults who purchase tobacco products for minors are between the ages of eighteen (18) and twenty (20);

(i) In 2015, the Institute of Medicine concluded that raising the minimum legal sales age for tobacco products nationwide will reduce tobacco initiation, particularly among adolescents aged fifteen (15) to seventeen (17), improve health across the lifespan, and save lives, and that raising the minimum legal sales age for tobacco products nationwide to twenty-one (21) would, over time, lead to a twelve percent (12%) decrease in smoking prevalence;

(j) The Institute of Medicine also predicts that raising the minimum legal sales age for tobacco products nationwide to twenty-one (21) would result in two hundred twenty-three thousand (223,000) fewer premature deaths, fifty thousand (50,000) fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000 and 2019, and also would result in near immediate reductions in preterm birth, low birth weight, and sudden infant death syndrome;

(k) A growing number of states and local governments have enacted "Minimum Legal Sale Age of 21" (MLSA 21) laws to further restrict access to tobacco, and these regulations can be effective;

(l) Three-fourths of adults favor raising the minimum legal sale age for tobacco products to twenty-one (21), including seven (7) in ten (10) smokers;

(m) The financial impact of tobacco MLSA 21 laws on retailers is likely to be minimal, decreasing tobacco sales by only two percent (2%); and

(n) Raising the minimum age to purchase tobacco products is consistent with raising the legal drinking age to twenty-one (21), which led to reduced alcohol use and dependence among youth and contributed to the decline in drunk driving fatalities.

(2) The Legislature declares that the purpose of this act is to reduce tobacco use by keeping tobacco products out of the hands of young people.

SECTION 3. Definitions. As used in Sections 1 through 9 of this act, the following words and phrases have the meanings ascribed in this section unless the context clearly indicates otherwise:

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

(b) "Distributor" means a person who distributes a tobacco product.

(c) "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 U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(d) "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.

(e) "Recipient" means any person who obtains or attempts to obtain a tobacco product.

(f) "Tobacco product" means any product that is made from or derived from tobacco which 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, snus, or an electronic smoking device. The term includes any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, or liquids used in electronic smoking devices. "Tobacco

product" 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.

SECTION 4. Minimum legal sales age for tobacco products. The sale or distribution of any tobacco product to a person under the age of twenty-one (21) is prohibited.

SECTION 5. Age verification. Before distributing any tobacco product, the distributor must verify that the recipient is at least twenty-one (21) years of age. Each distributor shall examine the recipient's government-issued photographic identification. No such verification is required for a person over the age of thirty (30). The fact that a recipient appeared to be thirty (30) years of age or older does not constitute a defense to a violation of this section.

SECTION 6. Signage. A person may not sell or permit the sale of tobacco products in the State of Mississippi unless a clearly visible notice is posted at the location where tobacco products are available for purchase, which notice must state "No person under the age of twenty-one (21) may purchase tobacco products," legibly printed in letters at least one-half ($^1/_2$) inch high.

SECTION 7. Enforcement. The State Department of Health or its authorized designee may conduct random, unannounced

inspections at locations where tobacco products are distributed to test and ensure compliance with this act.

SECTION 8. Penalties. (1) In general. Except as otherwise provided in subsection (2) of this section, any person who violates this act must be fined not less than Three Hundred Dollars ($300.00) for the first offense, not less than Six Hundred Dollars ($600.00) for the second offense, and not less than One Thousand Dollars ($1,000.00) for each offense thereafter. Each violation, and every day in which a violation occurs, constitutes a separate violation.

(2) Violations by minors. Any person under the age of twenty-one (21) who violates Section 5 of this act must be fined Ten Dollars ($10.00) for the first offense, and Fifty Dollars ($50.00) for each offense thereafter, no part of which may be suspended, or the person may be required to perform not less than forty-eight (48) hours nor more than seventy-two (72) hours of community service during the hours when the person is not employed and is not attending school.

SECTION 9. Exceptions and defenses. (1) The penalties in this act do not apply to a person younger than twenty-one (21) years old who purchases or attempts to purchase tobacco products while under the direct supervision of employees of a state agency for training, education, research, or enforcement purposes.

(2) This act does not prohibit a person under the age of twenty-one (21) from handling tobacco products in the course of lawful employment.

(3) It is an affirmative defense to a violation of this act for a person to have reasonably relied on proof of age as described by state law.

SECTION 10. Section 97-32-5, Mississippi Code of 1972, is amended as follows:

97-32-5. It shall be unlawful for any person, or retailer, to sell, barter, deliver or give tobacco products to any individual under * * * twenty-one (21) years of age unless the individual under * * * twenty-one (21) years of age holds a retailer's license to sell tobacco under Section 27-69-1 et seq., Mississippi Code of 1972.

It shall be an absolute affirmative defense that the person selling, bartering, delivering or giving tobacco products over the counter in a retail establishment to an individual under * * * twenty-one (21) years of age in violation of this article had requested and examined a government-issued photographic identification from such person establishing his age as at least * * * twenty-one (21) years prior to selling such person a tobacco product. The failure of a seller, barterer, deliverer or giver of tobacco products over the counter in a retail establishment to request and examine photographic identification from a person under * * * twenty-one (21) years of age prior to

the sale of a tobacco product to such person if the individual is not known to the seller, barterer, deliverer or giver of the tobacco product to be over the age of * * * twenty-one (21) years, shall be construed against the seller, barterer, deliverer or giver and form a conclusive basis for the seller's violation of this section.

It shall be an absolute affirmative defense that the person or entity giving tobacco products through the mail to an individual under * * * twenty-one (21) years of age in violation of this article had requested and received documentary or written evidence from such person purportedly establishing his age to be at least * * * twenty-one (21) years of age.

Any person who violates this section shall be liable as follows: For a first conviction, a fine of Fifty Dollars ($50.00); for a second conviction, a fine of Seventy-five Dollars ($75.00); and for all subsequent convictions, a fine of One Hundred Fifty Dollars ($150.00) shall be imposed.

Any person found in violation of this section shall be issued a citation and the holder of the retailer permit shall be sent notification of this citation by registered mail by the law enforcement agency issuing the citation. Notification shall include the opportunity for hearing before the appropriate court. For a first conviction, the retailer shall be sent a warning letter informing him of the retailer's responsibility in the selling of tobacco products. For a second conviction, the

retailer, or retailer's designee, shall be required to enroll in and complete a "Retailer Tobacco Education Program."

For a third or subsequent violation of this section by any retailer, within one (1) year of the two (2) prior violations, any retailer's permit issued pursuant to Section 27-69-1 et seq., Mississippi Code of 1972, may be revoked or suspended for a period of at least one (1) year after notice and opportunity for hearing. If said permit is revoked by the Department of Revenue, the retailer may not reapply for a permit to sell tobacco for a period of six (6) months. For the purposes of this section, "subsequent violations" are those committed at the same place of business.

It is the responsibility of all law enforcement officers and law enforcement agencies of this state to ensure that the provisions of this article are enforced.

It shall not be considered a violation of this section on the part of any law enforcement officer or person under * * * twenty-one (21) years of age for any law enforcement officer of this state to use persons under * * * twenty-one (21) years of age to purchase or attempt to purchase tobacco products for the purpose of monitoring compliance with this section, as long as those persons are supervised by duly authorized law enforcement agency officials.

Any law enforcement agency conducting enforcement efforts undertaken pursuant to this article shall prepare a report as prescribed by the Attorney General which includes the number of

unannounced inspections conducted by the agency, a summary of enforcement actions taken pursuant to this article, the name and permit number of the retailer pursuant to Section 27-69-1 et seq., Mississippi Code of 1972, and final judicial disposition on all enforcement actions. Reports shall be forwarded to the Office of the Attorney General within twenty (20) working days of the final judicial disposition.

On notification from local law enforcement that a retailer has violated this article so as to warrant a revocation of the retailer's permit, the Attorney General shall notify in writing the Department of Revenue within twenty (20) working days.

In accordance with the procedures of Section 27-69-9, Mississippi Code of 1972, the Department of Revenue shall initiate revocation procedures of the retailer's permit. The Office of the Attorney General shall provide legal assistance in revocation procedures when requested by the Department of Revenue.

SECTION 11. Section 97-32-11, Mississippi Code of 1972, is amended as follows:

97-32-11. Point of sale warning signs are required, and each seller shall place and maintain in legible condition, at each point of sale of tobacco products to consumers, a sign no smaller than eight and one-half (8-1/2) by eleven (11) inches or ninety-three (93) square inches stating: "STATE LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF *** * *** 21 YEARS. PROOF OF AGE REQUIRED."

Any person who violates this section shall be punished by a penalty of not more than One Hundred Dollars ($100.00).

SECTION 12. Section 97-32-15, Mississippi Code of 1972, is amended as follows:

97-32-15. It shall be unlawful for any person to sell tobacco products through a vending machine, unless the vending machine is located in an establishment to which individuals under the age of *** * *** twenty-one (21) years are denied access or are required to be accompanied by an adult. A person who violates this section shall be punished by a penalty of not more than Two Hundred Fifty Dollars ($250.00).

SECTION 13. Section 97-32-27, Mississippi Code of 1972, is amended as follows:

97-32-27. (1) "Adult" means any natural person at least *** * *** twenty-one (21) years old.

(2) "Minor" means any natural person under the age of *** * *** twenty-one (21) years.

(3) "Person" means any natural person.

(4) "Tobacco product" means any substance that contains tobacco, including, but not limited to, cigarettes, cigars, pipes, snuff, smoking tobacco or smokeless tobacco.

(5) "Educational property" means any public school building or bus, public school campus, grounds, recreational area, athletic field or other property owned, used or operated by any local school board, school or directors for the administration of any

public educational institution or during a school-related activity; provided, however, that the term "educational property" shall not include any sixteenth section school land or lieu land on which is not located a public school building, public school campus, public school recreational area or public school athletic field. Educational property shall not include property owned or operated by the state institutions of higher learning, the public community and junior colleges, or vocational-technical complexes where only adult students are in attendance.

SECTION 14. This act shall take effect and be in force from and after July 1, 2021.