

The House Committee on Juvenile Justice offers the following substitute to HB 251:

A BILL TO BE ENTITLED  
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

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

"16-12-170.

As used in this article, the term:

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

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

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

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

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

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

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

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

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

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

**SECTION 2.**

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

"16-12-171.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### SECTION 3.

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

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

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

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

### SECTION 4.

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

"16-12-173.

(a)(1) Any person who maintains in such person's place of business a vending machine which dispenses cigarettes, tobacco products, ~~or~~ tobacco related objects, alternative nicotine products, or vapor products shall place or cause to be placed in a conspicuous 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 ~~nontobacco~~ 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."

**SECTION 5.**

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

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

**SECTION 6.**

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

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

**SECTION 7.**

This Act shall become effective on July 1, 2014.

**SECTION 8.**

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