

Senate Bill 298

By: Senator Unterman of the 45th

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 16 and 20 of the Official Code of Georgia Annotated, relating to crimes and
2 offenses and education, respectively, so as to provide protections for and education to minors
3 regarding smoking and vaping; to revise and provide certain definitions regarding the sale
4 or distribution to, or possession by, minors of cigarettes, tobacco, tobacco related objects, and
5 vapor products to include vapor products that do not contain nicotine; to prohibit such sales
6 or distribution to individuals under the age of 21; to increase penalties related to such
7 prohibited activities; to establish the offense of selling vapor cartridges without ingredient
8 labeling and to provide for penalties; to establish the offense of advertising vapor products
9 to minors and to provide for penalties; to provide for notification to the Department of
10 Revenue if selling, bartering, or distributing vapor products and to provide for penalties; to
11 require local boards of education to prescribe mandatory instruction and a minimum course
12 of study concerning the dangers of smoking and vaping; to provide for implementation of
13 such course of study; to provide for related matters; to provide for an effective date; to repeal
14 conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 style="text-align:center">**SECTION 1.**

17 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
18 amended by revising Article 7 of Chapter 12, relating to sale or distribution to, or possession
19 by, minors of cigarettes and tobacco related objects, as follows:

20 style="text-align:center">"ARTICLE 7

21 16-12-170.

22 As used in this article, the term:

23 (1) 'Alternative nicotine product' means any noncombustible product containing nicotine
24 that is intended for human consumption, whether chewed, absorbed, dissolved, or

25 ingested by any other means. The term 'alternative nicotine product' shall not include any
26 tobacco product, vapor product, or any product regulated as a drug or device by the
27 United States Food and Drug Administration under Chapter V of the Food, Drug, and
28 Cosmetic Act.

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

32 (3) 'Cigarette' means roll for smoking made wholly or in part of tobacco when the cover
33 of the roll is paper or any substance other than tobacco.

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

37 (5) 'Minor' means any person who is under the age of ~~18~~ 21 years.

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

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

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

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

58 (10) 'Vapor cartridge' means any substance intended to be aerosolized or vaporized
59 during the use of a vapor device, regardless of whether or not the substance contains
60 nicotine. The term 'vapor cartridge' shall not include any product regulated as a drug or

61 device by the United States Food and Drug Administration under Chapter V of the Food,
 62 Drug, and Cosmetic Act.

63 (11) 'Vapor device' means any system used to deliver an aerosolized or vaporized
 64 substance to the person inhaling from the device, including, but not limited to, an
 65 electronic cigarette, electronic cigar, electronic pipe, vape pen, vape tool, hookah, or
 66 electronic hookah. The term 'vapor device' shall not include any product regulated as a
 67 drug or device by the United States Food and Drug Administration under Chapter V of
 68 the Food, Drug, and Cosmetic Act.

69 ~~(10)(12) 'Vapor product' means any noncombustible product containing nicotine that~~
 70 ~~employs a heating element, power source, electronic circuit, or other electronic, chemical,~~
 71 ~~or mechanical means, regardless of shape or size, that can be used to produce vapor from~~
 72 ~~nicotine in a solution or other form. The term 'vapor product' shall include any electronic~~
 73 ~~cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or~~
 74 ~~device and any vapor cartridge or other container of nicotine in a solution or other form~~
 75 ~~that is intended to be used with or in an electronic cigarette, electronic cigar, electronic~~
 76 ~~cigarillo, electronic pipe, or similar product or device. The term 'vapor product' shall not~~
 77 ~~include any product regulated as a drug or device by the United States Food and Drug~~
 78 ~~Administration under Chapter V of the Food, Drug, and Cosmetic Act includes any vapor~~
 79 ~~cartridge or vapor device.~~

80 16-12-171.

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

82 (A) ~~Directly Sell or barter, directly~~ or indirectly, sell, barter, or distribute any
 83 cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or
 84 vapor products to a minor;

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

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

91 (2)(A) The prohibition contained in paragraph (1) of this subsection shall not apply
 92 with respect to sale of cigarettes, tobacco products, tobacco related objects, alternative
 93 nicotine products, or vapor products by a person when such person has been furnished
 94 with proper identification showing that the person individual to whom the cigarettes,
 95 tobacco products, tobacco related objects, alternative nicotine products, or vapor
 96 products are sold is ~~18~~ 21 years of age or older.

97 (B) In any case where a reasonable or prudent person could reasonably be in doubt as
 98 to whether or not the ~~person~~ individual to whom cigarettes, tobacco products, tobacco
 99 related objects, alternative nicotine products, or vapor products are to be sold or
 100 otherwise furnished is actually ~~18~~ 21 years of age or older, it shall be the duty of the
 101 person selling or otherwise furnishing such cigarettes, tobacco products, tobacco related
 102 objects, alternative nicotine products, or vapor products to request to see and to be
 103 furnished with proper identification as provided for in subsection (b) of this Code
 104 section in order to verify the age of such ~~person~~ individual. The failure to make such
 105 request and verification in any case where the ~~person~~ individual to whom the cigarettes,
 106 tobacco products, tobacco related objects, alternative nicotine products, or vapor
 107 products are sold or otherwise furnished is less than ~~18~~ 21 years of age may be
 108 considered by the trier of fact in determining whether the person selling or otherwise
 109 furnishing such cigarettes, tobacco products, tobacco related objects, alternative
 110 nicotine products, or vapor products did so knowingly.

111 (3) Any person who violates this subsection:

112 (A) For a first offense, shall be guilty of a misdemeanor;

113 (B) For a second offense, shall be guilty of a misdemeanor of a high and aggravated
 114 nature; and

115 (C) For a third or subsequent offense, shall be guilty of a felony and, upon conviction
 116 thereof, shall be punished by imprisonment for not less than one nor more than ten
 117 years.

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

119 (A) Purchase, attempt to purchase, or possess for personal use any cigarettes, tobacco
 120 products, tobacco related objects, alternative nicotine products, or vapor products. This
 121 subparagraph shall not apply to possession of cigarettes, tobacco products, tobacco
 122 related objects, alternative nicotine products, or vapor products by a minor when a
 123 parent or guardian of such minor gives the cigarettes, tobacco products, tobacco related
 124 objects, alternative nicotine products, or vapor products to the minor and possession is
 125 in the home of the parent or guardian and such parent or guardian is present; or

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

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

131 (A) Performing ~~By requiring the performance of~~ community service not exceeding 20
 132 hours;

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

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

138 16-12-172.

139 (a) It shall be unlawful for any person to knowingly sell, barter, or transfer possession,
 140 directly or indirectly, any vapor cartridge in this state unless such vapor cartridge or its
 141 packaging is accompanied by a label bearing clearly labeled ingredients, including the
 142 common or usual name of each such ingredient used in the manufacture of such product,
 143 listed in descending order of predominance.

144 (b) Any person who violates this Code section:

145 (1) For a first offense, shall be guilty of a misdemeanor;

146 (2) For a second offense, shall be guilty of a misdemeanor of a high and aggravated
 147 nature; and

148 (3) For a third or subsequent offense, shall be guilty of a felony and, upon conviction
 149 thereof, shall be punished by imprisonment for not less than one nor more than ten years.

150 16-12-173.

151 (a) It shall be unlawful to sell, offer for sale, or distribute, directly or indirectly, any vapor
 152 product with labeling or packaging made to be attractive to minors. The labeling or
 153 packaging of a vapor product is attractive to a minor if such labeling or packaging does any
 154 of the following:

155 (1) Contains false or misleading statements;

156 (2) Promotes overconsumption of vapor products;

157 (3) Depicts the actual consumption of vapor products;

158 (4) Depicts a minor consuming vapor products;

159 (5) Makes any health, medicinal, or therapeutic claims about vapor products;

160 (6) Includes images of vapor products;

161 (7) Depicts images designed or likely to appeal to minors, including cartoons, toys,
 162 superheroes, or children, or any other likeness to images, characters, or phrases, such as
 163 'unicorn,' that are designed in any manner to be appealing to or encourage consumption
 164 by minors;

165 (8) Imitates or mimics trademark or trade dress of food products such as candies,
 166 cookies, juice boxes, soft drinks, or celebrity images that are or have been primarily
 167 marketed to minors;

- 168 (9) Contains images of food products primarily targeted to minors, such as juice boxes,
 169 soft drinks, cereals, candies, or desserts; or
- 170 (10) Contains the terms 'candy' or 'candies' or variants in spelling, such as 'kandy' or
 171 'kandeez,' 'bubble gum,' 'cotton candy,' 'gummy bear,' 'cupcake,' or 'milkshake.'
- 172 (b) Any person who violates this Code section:
- 173 (1) For a first offense, shall be guilty of a misdemeanor;
- 174 (2) For a second offense, shall be guilty of a misdemeanor of a high and aggravated
 175 nature; and
- 176 (3) For a third or subsequent offense, shall be guilty of a felony and, upon conviction
 177 thereof, shall be punished by imprisonment for not less than one nor more than ten years.

178 16-12-174.

- 179 (a) It shall be unlawful to sell, barter, or distribute, directly or indirectly, vapor products
 180 in this state or to a person located within this state without providing notification to the
 181 Department of Revenue.
- 182 (b) The notification requirement under subsection (a) of this Code section shall include the
 183 name and sales tax number of the person selling, bartering, or distributing vapor products
 184 and the address at which such products are being sold, bartered, or distributed. The
 185 Department of Revenue shall provide information and a form for such notification on its
 186 website.
- 187 (c) Violation of this Code section shall be punished as a misdemeanor.

188 ~~16-12-172~~ 16-12-175.

- 189 (a) Any person owning or operating a place of business in which cigarettes, tobacco
 190 products, or tobacco related objects are sold or offered for sale shall post in a conspicuous
 191 place a sign which shall contain the following statement:
- 192 'SALE OF CIGARETTES, TOBACCO, TOBACCO PRODUCTS, TOBACCO
 193 RELATED OBJECTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR
 194 PRODUCTS TO PERSONS UNDER ~~18~~ 21 YEARS OF AGE IS PROHIBITED BY
 195 LAW.'
- 196 Such sign shall be printed in letters of at least one-half inch in height.
- 197 (b) Any person who fails to comply with the requirements of subsection (a) of this Code
 198 section shall be guilty of a misdemeanor.

199 ~~16-12-173~~ 16-12-176.

- 200 (a)(1) Any person who maintains in such person's place of business a vending machine
 201 which dispenses cigarettes, tobacco products, tobacco related objects, alternative nicotine

202 products, or vapor products shall place or cause to be placed in a conspicuous place on
 203 such vending machine a sign containing the following statement:

204 'THE PURCHASE OF CIGARETTES, TOBACCO PRODUCTS, TOBACCO
 205 RELATED OBJECTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR
 206 PRODUCTS FROM THIS VENDING MACHINE BY ANY PERSON UNDER ~~18~~ 21
 207 YEARS OF AGE IS PROHIBITED BY LAW.'

208 (2) Any person who maintains in such person's place of business a vending machine
 209 which dispenses cigarettes, tobacco products, tobacco related objects, alternative nicotine
 210 products, or vapor products shall not dispense any other type of product, other than
 211 matches, in such vending machine.

212 (b) Any person who fails to comply with the requirements of subsection (a) of this Code
 213 section shall be guilty of a misdemeanor; provided, however, for a first offense, the
 214 sentence shall be a fine not to exceed \$300.00.

215 (c) It shall be a violation of subsection (a) of Code Section 16-12-171 for any person
 216 knowingly to allow a minor to operate a vending machine which dispenses cigarettes,
 217 tobacco products, tobacco related objects, alternative nicotine products, or vapor products.

218 (d) The offenses provided for by paragraph (1) of subsection (b) of Code Section
 219 16-12-171 shall apply to the operation by a minor of a vending machine which dispenses
 220 cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor
 221 products.

222 (e)(1) The sale or offering for sale of cigarettes, tobacco products, tobacco related
 223 objects, alternative nicotine products, or vapor products from vending machines shall not
 224 be permitted except:

225 (A) In locations which are not readily accessible to minors, including, but not limited
 226 to:

227 (i) Factories, businesses, offices, and other places which are not open to the general
 228 public;

229 (ii) Places open to the general public which do not admit minors; and

230 (iii) Places where alcoholic beverages are offered for sale;

231 (B) In areas which are in the immediate vicinity, plain view, and under the continuous
 232 supervision of the proprietor of the establishment or an employee who will observe the
 233 purchase of cigarettes, tobacco products, tobacco related objects, alternative nicotine
 234 products, and vapor products from the vending machine; and

235 (C) In rest areas adjacent to roads and highways of the state.

236 (2) Violation of this subsection shall be punished as provided in subsection (b) of this
 237 Code section ~~for violation of subsection (a) of this Code section.~~

238 ~~16-12-174~~ 16-12-177.

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

242 (b) It shall be unlawful for any person to distribute any tobacco product sample to any
243 ~~person~~ individual under the age of ~~18~~ 21 years.

244 (c) A person distributing tobacco product samples shall require proof of age from a
245 prospective recipient if an ordinary person would conclude on the basis of appearance that
246 such prospective recipient may be under the age of ~~18~~ 21 years.

247 (d) It shall be unlawful for any ~~person~~ individual who has not attained the age of ~~18~~ 21
248 years to receive or attempt to receive any tobacco product sample.

249 (e) No person shall distribute tobacco product samples on any public street, sidewalk, or
250 park within 500 feet of any school or playground when those facilities are being used
251 primarily by ~~persons~~ individuals under the age of ~~18~~ 21 years.

252 (f) Violation of this Code section shall be punished as a misdemeanor.

253 ~~16-12-175~~ 16-12-178.

254 (a) The provisions of this article, inclusive, shall be enforced through actions brought in
255 any court of competent jurisdiction by the prosecuting attorney for the county in which the
256 alleged violation occurred as well as through administrative citations issued by special
257 agents or enforcement officers of the state revenue commissioner. Any fine collected for
258 a violation of said provision shall be paid to the clerk of the court of the jurisdiction in
259 which the violation occurred. Upon receipt of a fine for any violation of said provision, the
260 clerk shall promptly notify the state revenue commissioner of the violation.

261 (b) The state revenue commissioner, acting through special agents or enforcement officers,
262 shall annually conduct random, unannounced inspections at locations where cigarettes,
263 tobacco products, alternative nicotine products, or vapor products are sold or distributed
264 to ensure compliance with this article. Individuals ~~Persons~~ under the age of ~~18~~ 21 years
265 may be enlisted to test compliance with this article; provided, however, that such ~~persons~~
266 individuals may be used to test compliance with this article only if the testing is conducted
267 under the direct supervision of such special agents or enforcement officers and written
268 parental consent has been provided. Any other use of ~~persons~~ individuals under the age of
269 ~~18~~ 21 years to test compliance with this article or any other prohibition of like or similar
270 import shall be unlawful and the person or persons responsible for such use shall be subject
271 to the penalties prescribed in this article. The state revenue commissioner shall prepare
272 annually for submission by the Governor to the secretary of the United States Department

273 of Health and Human Services the report required by section 1926 of subpart I of part B
 274 of Title XIX of the federal Public Health Service Act, 42 U.S.C. 300x-26.

275 ~~16-12-176~~ 160-12-179.

276 The state revenue commissioner shall administer and enforce this article and may make
 277 reasonable rules and regulations for its administration and enforcement. The state revenue
 278 commissioner may designate employees of the Department of Revenue for the purpose of
 279 administering and enforcing this article and may delegate to employees of such department
 280 any of the duties required of the state revenue commissioner pursuant to this article."

281 **SECTION 2.**

282 Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by
 283 revising Code Section 20-2-144, relating to mandatory instruction concerning alcohol and
 284 drug use, as follows:

285 "20-2-144.

286 (a) Each local board of education shall prescribe mandatory instruction concerning vaping,
 287 smoking, and alcohol and other drug use in every year in every grade from kindergarten
 288 through grade 12 as shall be determined by the State Board of Education. Such course of
 289 study shall implement the minimum course of study provided for in subsection (b) of this
 290 Code section or its equivalent, as approved by the State Board of Education. Each local
 291 board of education may supplement the exact approach of content areas of such minimum
 292 course of study with such curriculum standards as it may deem appropriate. Such standards
 293 shall include instruction which discourages vaping and the use of alcohol, tobacco, and
 294 controlled substances and communicates that the use of illicit drugs and improper use of
 295 legally obtained drugs and other substances is wrong and dangerous.

296 (b) The State Board of Education shall prescribe a minimum course of study of vaping,
 297 smoking, and alcohol and other drug use which may be included as a part of a course of
 298 study in comprehensive health education where offered and where appropriate. Instruction
 299 also shall be integrated into other curriculum requirements as determined by the State
 300 Board of Education. The course shall be age appropriate, shall be sequential in method of
 301 study, and shall include the following elements where appropriate in the instruction:

302 (1) Detailed, factual information regarding physiological, psychological, sociological,
 303 and legal aspects of substance abuse;

304 (2) Detailed information concerning the availability of help and assistance for persons
 305 with chemical dependency problems;

306 (3) Skills needed to evaluate advertisements for, and media portrayals of, alcohol,
 307 tobacco, vapor products, and controlled substances; ~~and~~

308 (4) Detailed information and warnings from the Surgeon General and the Department of
 309 Human Services concerning the dangers of vaping and smoking; and
 310 ~~(4)~~(5) Detailed instruction on the need for, and role of, lawful authority and law-abiding
 311 behavior, which instruction may include interacting and working with members of the
 312 legal and justice professions.

313 (c) A manual setting out the details of such course of study shall be prepared by or
 314 approved by the State School Superintendent in cooperation with the Department of Public
 315 Health, the State Board of Education, the Department of Public Safety, and such expert
 316 advisers as they may choose.

317 (d) The minimum course of study to be prescribed by the State Board of Education
 318 pursuant to subsection (b) of this Code section shall be ready for implementation not later
 319 than ~~July 1, 1990~~ September 1, 2020. Each local board shall implement either such
 320 minimum course of study or its equivalent not later than December 31, ~~1990~~ 2020. Any
 321 local board of education which fails to comply with this subsection shall not be eligible to
 322 receive any state funding under this article until such minimum course of study or its
 323 equivalent has been implemented."

324 **SECTION 3.**

325 This Act shall become effective upon its approval by the Governor or upon its becoming law
 326 without such approval.

327 **SECTION 4.**

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