House Bill 809
By: Representatives Kausche of the 50th, McLaurin of the 51st, Robichaux of the 48th, and Clark of the 108th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against public health and morals, so as to revise and provide for definitions regarding sale or distribution to, or possession by, minors of tobacco products and tobacco related objects; to prohibit the sale of tobacco products and tobacco related objects to persons under 21 years of age; to place additional prohibitions on the ability to sell such products to a minor; to provide for conforming changes; to require certain signage; to prohibit the sale of tobacco products and tobacco related objects in transactions that are not face-to-face exchanges; to provide for a penalty; to allow for the enactment of more restrictive prohibitions on activities related to tobacco products and tobacco related objects; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.
Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against public health and morals, is amended by revising Article 7, relating to sale or distribution to, or possession by, minors of cigarettes and tobacco related objects, as follows:

"ARTICLE 7

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

(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.

(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.

(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) 'Electronic smoking product' means any device that may be used to deliver an aerosolized or vaporized substance to the individual inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. The term 'electronic smoking product' shall include any component, part, or accessory of the device and any substance intended to be aerosolized or vaporized during the use of the device, regardless of whether or not the substance contains nicotine. The term 'electronic smoking 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.

(5) 'Face-to-face exchange' means a transaction made in person between an individual and a retailer or a retailer's employee.

(6) 'Minor' means any person individual who is under the age of 21 years.

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

(8) 'Proper identification' means any document issued by a governmental agency containing a description of the person individual, such person individual's photograph, or both, and giving such person individual'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.

(9) 'Retailer' means a person that:

(A) Sells any tobacco product or tobacco related object to an individual for personal consumption; or

(B) Operates a facility with a vending machine that sells any tobacco product or tobacco related object.

(10) '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:

(A) Any substance containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed whether absorbed, chewed, dissolved, ingested, or inhaled by any other means;

(B) An electronic smoking product; or

(C) Any component, part, or accessory of a product or substance provided for in subparagraphs (A) and (B) of this paragraph, including, but not limited to, tobacco related objects, filters, rolling papers, blunt or hemp wraps, and pipes.

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

'Tobacco related objects' means any papers, wrappers, or other products, devices, or substances, including cigar wraps, paper, wrapper, or other product, device, or substance, including, but not limited to, a cigar wrap, which are used for the purpose of making cigarettes, cigars, or other tobacco products in any form whatsoever.

'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.

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 individual to whom the cigarettes, such tobacco products, or tobacco related objects, alternative nicotine products, or vapor products are sold is not 21 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 individual 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 or 21 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 individual. The failure to make such request and verification in any case where the person individual 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 or 21 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.

16-12-172.

(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:

‘NO PERSON UNDER THE AGE OF 21 SHALL BE SOLD OR SHALL PURCHASE TOBACCO PRODUCTS OR ELECTRONIC SMOKING PRODUCTS. SALE OF CIGARETTES, TOBACCO, TOBACCO PRODUCTS, TOBACCO RELATED OBJECTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW.’

Such sign shall be at least 14 inches by 11 inches in size with the words thereon legibly printed in a high-contrast red color with capitalized letters of at least one-half inch in height.

(b) Any person who fails to comply with the requirements of subsection (a) of this Code section shall be guilty of a misdemeanor.

16-12-173.

(a)(1) Any person that 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:

‘NO PERSON UNDER THE AGE OF 21 SHALL BE SOLD OR SHALL PURCHASE TOBACCO PRODUCTS OR ELECTRONIC SMOKING PRODUCTS FROM THIS VENDING MACHINE. THE PURCHASE OF CIGARETTES, TOBACCO PRODUCTS, TOBACCO RELATED OBJECTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR PRODUCTS FROM THIS VENDING MACHINE BY ANY PERSON UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW.’

Such sign shall be at least 14 inches by 11 inches in size with the words thereon legibly printed in a high-contrast red color with capitalized letters of at least one inch in height.
(2) 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 not dispense any other type of product, other than matches, in such vending machine.

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

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

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

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

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

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

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

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

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

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

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

16-12-174.

(a) As used in this Code section, the term 'tobacco product sample' means a cigarette, tobacco product, alternative nicotine product, or vapor product or tobacco related object distributed to members of the general public at no cost for purposes of promoting the product.
(b) It shall be unlawful for any person to distribute any tobacco product sample to any person individual under the age of 18 years.

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

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

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

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

16-12-175.

(a) Except as provided for in subsection (b) of this Code section, a retailer shall only sell a tobacco product or tobacco related object in a face-to-face exchange.

(b) The requirement provided for in subsection (a) of this Code section shall not apply to a sale from a vending machine in compliance with the requirements of Code Section 16-12-173.

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

16-12-175. 16-12-176.

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

(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 or tobacco related objects are sold or distributed to ensure compliance with this article. Persons Individuals under the age of 18 years may be enlisted to test compliance with this article; provided, however, that such persons individuals 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 individuals 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.

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

This article shall be cumulative to and shall not prohibit the enactment of any other general and local laws, rules and regulations of state and local authorities or agencies, and local ordinances prohibiting such activities which are more restrictive than this article.

SECTION 2.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to offenses which occur on or after that date.

SECTION 3.

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