

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

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

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

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

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

18 16-12-170.

19 As used in this article, the term:

20 ~~(1) 'Alternative nicotine product' means any noncombustible product containing nicotine~~
21 ~~that is intended for human consumption, whether chewed, absorbed, dissolved, or~~
22 ~~ingested by any other means. The term 'alternative nicotine product' shall not include any~~
23 ~~tobacco product, vapor product, or any product regulated as a drug or device by the~~

24 ~~United States Food and Drug Administration under Chapter V of the Food, Drug, and~~
 25 ~~Cosmetic Act.~~

26 ~~(2)~~(1) 'Cigar wraps' means individual cigar wrappers, known as wraps, blunt wraps, or
 27 roll your own cigar wraps, that consist in whole or in part of reconstituted tobacco leaf
 28 or flavored tobacco leaf.

29 ~~(3)~~(2) 'Cigarette' means roll for smoking made wholly or in part of tobacco when the
 30 cover of the roll is paper or any substance other than tobacco.

31 ~~(4)~~(3) 'Community service' means a public service which a minor might appropriately
 32 be required to perform, as determined by the court, as punishment for certain offenses
 33 provided for in this article.

34 (4) 'Electronic smoking product' means any device that may be used to deliver an
 35 aerosolized or vaporized substance to the individual inhaling from the device, including,
 36 but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. The term
 37 'electronic smoking product' shall include any component, part, or accessory of the device
 38 and any substance intended to be aerosolized or vaporized during the use of the device,
 39 regardless of whether or not the substance contains nicotine. The term 'electronic
 40 smoking product' shall not include any product regulated as a drug or device by the
 41 United States Food and Drug Administration under Chapter V of the Food, Drug, and
 42 Cosmetic Act.

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

45 ~~(5)~~(6) 'Minor' means any ~~person~~ individual who is under the age of ~~18~~ 21 years.

46 ~~(6)~~(7) 'Person' means any natural person or any firm, partnership, company, corporation,
 47 or other entity.

48 ~~(7)~~(8) 'Proper identification' means any document issued by a governmental agency
 49 containing a description of the ~~person~~ individual, such ~~person's~~ individual's photograph,
 50 or both, and giving such ~~person's~~ individual's date of birth and includes, without being
 51 limited to, a passport, military identification card, driver's license, or an identification
 52 card authorized under Code Sections 40-5-100 through 40-5-104. Proper identification
 53 shall not include a birth certificate.

54 (9) 'Retailer' means a person that:

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

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

59 ~~(8)~~(10) 'Tobacco product' means ~~any cigars, little cigars, granulated, plug cut, crimp cut,~~
 60 ~~ready rubbed, and other smoking tobacco, snuff or snuff powder, cavendish, plug and~~

61 ~~twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings,~~
 62 ~~cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in~~
 63 ~~such a manner as to be suitable for chewing or smoking in a pipe or otherwise, or both~~
 64 ~~for chewing and smoking:~~

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

68 (B) An electronic smoking product; or

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

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

75 ~~(9)(11) 'Tobacco related objects object'~~ means any ~~papers, wrappers, or other products,~~
 76 ~~devices, or substances, including cigar wraps paper, wrapper, or other product, device,~~
 77 ~~or substance, including, but not limited to, a cigar wrap,~~ which are used for the purpose
 78 of making cigarettes, cigars, or other tobacco products in any form whatsoever.

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

89 16-12-171.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

140 16-12-172.

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

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

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

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

154 16-12-173.

155 (a)(1) Any person ~~who~~ that maintains in such person's place of business a vending
156 machine which dispenses ~~cigarettes~~, tobacco products; or tobacco related objects;
157 ~~alternative nicotine products, or vapor products~~ shall place or cause to be placed in a
158 conspicuous place on such vending machine a sign containing the following statement:

159 'NO PERSON UNDER THE AGE OF 21 SHALL BE SOLD OR SHALL PURCHASE
160 TOBACCO PRODUCTS OR ELECTRONIC SMOKING PRODUCTS FROM THIS
161 VENDING MACHINE THE PURCHASE OF CIGARETTES, TOBACCO
162 PRODUCTS, TOBACCO RELATED OBJECTS, ALTERNATIVE NICOTINE
163 PRODUCTS, OR VAPOR PRODUCTS FROM THIS VENDING MACHINE BY
164 ANY PERSON UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW.'

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

167 (2) Any person ~~who~~ that maintains in such person's place of business a vending machine
 168 which dispenses ~~cigarettes~~, tobacco products; or tobacco related objects; ~~alternative~~
 169 ~~nicotine products, or vapor products~~ shall not dispense any other type of product, other
 170 than matches, in such vending machine.

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

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

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

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

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

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

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

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

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

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

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

198 16-12-174.

199 (a) As used in this Code section, the term 'tobacco product sample' means a ~~cigarette~~,
 200 tobacco product; ~~alternative nicotine product, or vapor product~~ or tobacco related object
 201 distributed to members of the general public at no cost for purposes of promoting the
 202 product.

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

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

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

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

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

214 16-12-175.

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

217 (b) The requirement provided for in subsection (a) of this Code section shall not apply to
 218 a sale from a vending machine in compliance with the requirements of Code Section
 219 16-12-173.

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

221 ~~16-12-175.~~ 16-12-176.

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

229 (b) The state revenue commissioner, acting through special agents or enforcement officers,
 230 shall annually conduct random, unannounced inspections at locations where ~~cigarettes,~~
 231 ~~tobacco products, alternative nicotine products, or vapor products~~ or tobacco related objects
 232 are sold or distributed to ensure compliance with this article. ~~Persons~~ Individuals under the
 233 age of ~~18~~ 21 years may be enlisted to test compliance with this article; provided, however,
 234 that such ~~persons~~ individuals may be used to test compliance with this article only if the
 235 testing is conducted under the direct supervision of such special agents or enforcement
 236 officers and written parental consent has been provided. Any other use of ~~persons~~
 237 individuals under the age of ~~18~~ 21 years to test compliance with this article or any other

238 prohibition of like or similar import shall be unlawful and the person or persons responsible
239 for such use shall be subject to the penalties prescribed in this article. The state revenue
240 commissioner shall prepare annually for submission by the Governor to the secretary of the
241 United States Department of Health and Human Services the report required by section
242 1926 of subpart I of part B of Title XIX of the federal Public Health Service Act,
243 42 U.S.C. 300x-26.

244 ~~16-12-176.~~ 16-12-177.

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

250 16-12-178.

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

254 **SECTION 2.**

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

257 **SECTION 3.**

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