

House Bill 909

By: Representatives Cooper of the 43rd and Harrell of the 106th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses,
2 so as to increase the age of individuals to which the sale or distribution of cigarettes, tobacco,
3 tobacco related objects, vapor products, and marijuana flavored products are prohibited; to
4 change certain definitions; to provide for related matters; to provide for an effective date; to
5 repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

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

11 "ARTICLE 7

12 16-12-170.

13 As used in this article, the term:

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

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

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

25 (4) 'Community service' means a public service which ~~a minor~~ an individual under the
 26 age of 21 years might appropriately be required to perform, as determined by the court,
 27 as punishment for certain offenses provided for in this article.

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

29 ~~(6)~~(5) 'Person' means any natural person or any firm, partnership, company, corporation,
 30 or other entity.

31 ~~(7)~~(6) 'Proper identification' means any document issued by a governmental agency
 32 containing a description of the person, such person's photograph, or both, and giving such
 33 person's date of birth and includes, without being limited to, a passport, military
 34 identification card, driver's license, or an identification card authorized under Code
 35 Sections 40-5-100 through 40-5-104. Proper identification shall not include a birth
 36 certificate.

37 ~~(8)~~(7) 'Tobacco product' means any cigars, little cigars, granulated, plug cut, crimp cut,
 38 ready rubbed, and other smoking tobacco; snuff or snuff powder; cavendish; plug and
 39 twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings,
 40 cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in
 41 such a manner as to be suitable for chewing or smoking in a pipe or otherwise, or both
 42 for chewing and smoking. ~~The~~ Such term ~~'tobacco product'~~ shall not include any
 43 alternative nicotine product, vapor product, or product regulated as a drug or device by
 44 the United States Food and Drug Administration under Chapter V of the Food, Drug, and
 45 Cosmetic Act.

46 ~~(9)~~(8) 'Tobacco related objects' means any papers, wrappers, or other products, devices,
 47 or substances, including cigar wraps, which are used for the purpose of making cigarettes
 48 or tobacco products in any form whatsoever.

49 ~~(10)~~(9) 'Vapor product' means any noncombustible product containing nicotine that
 50 employs a heating element, power source, electronic circuit, or other electronic, chemical,
 51 or mechanical means, regardless of shape or size, that can be used to produce vapor from
 52 nicotine in a solution or other form. ~~The~~ Such term ~~'vapor product'~~ shall include any
 53 electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar
 54 product or device and any vapor cartridge or other container of nicotine in a solution or
 55 other form that is intended to be used with or in an electronic cigarette, electronic cigar,
 56 electronic cigarillo, electronic pipe, or similar product or device. ~~The~~ Such term ~~'vapor~~
 57 ~~product'~~ shall not include any product regulated as a drug or device by the United States
 58 Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

59 16-12-171.

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

61 (A) Sell or barter, directly or indirectly, any cigarettes, tobacco products, tobacco
 62 related objects, alternative nicotine products, or vapor products to ~~a minor~~ any
 63 individual under the age of 21 years;

64 (B) Purchase any cigarettes, tobacco products, tobacco related objects, alternative
 65 nicotine products, or vapor products for any ~~minor~~ individual under the age of 21 years
 66 unless ~~the minor~~ such individual for whom the purchase is made is the child of the
 67 purchaser; or

68 (C) Advise, counsel, or compel any ~~minor~~ individual under the age of 21 years to
 69 smoke, inhale, chew, or use cigarettes, tobacco products, tobacco related objects,
 70 alternative nicotine products, or vapor products.

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

77 (B) In any case where a reasonable or prudent person could reasonably be in doubt as
 78 to whether or not the ~~person~~ individual to whom cigarettes, tobacco products, tobacco
 79 related objects, alternative nicotine products, or vapor products are to be sold or
 80 otherwise furnished is actually ~~18~~ 21 years of age or older, it shall be the duty of the
 81 person selling or otherwise furnishing such cigarettes, tobacco products, tobacco related
 82 objects, alternative nicotine products, or vapor products to request to see and to be
 83 furnished with proper identification as provided for in subsection (b) of this Code
 84 section in order to verify the age of such ~~person~~ individual. The failure to make such
 85 request and verification in any case where the ~~person~~ individual to whom the cigarettes,
 86 tobacco products, tobacco related objects, alternative nicotine products, or vapor
 87 products are sold or otherwise furnished is less than ~~18~~ 21 years of age may be
 88 considered by the trier of fact in determining whether the person selling or otherwise
 89 furnishing such cigarettes, tobacco products, tobacco related objects, alternative
 90 nicotine products, or vapor products did so knowingly.

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

92 (b)(1) It shall be unlawful for any ~~minor~~ individual under the age of 21 years to:

93 (A) Purchase, attempt to purchase, or possess for personal use any cigarettes, tobacco
 94 products, tobacco related objects, alternative nicotine products, or vapor products. This
 95 subparagraph shall not apply to possession of cigarettes, tobacco products, tobacco
 96 related objects, alternative nicotine products, or vapor products by ~~a minor~~ an
 97 individual under the age of 21 years when a parent or guardian of such ~~minor~~ individual

98 gives the cigarettes, tobacco products, tobacco related objects, alternative nicotine
 99 products, or vapor products to the ~~minor~~ individual under the age of 21 years and
 100 possession is in the home of the parent or guardian and such parent or guardian is
 101 present; or

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

105 (2) An individual under the age of 21 years ~~A minor~~ who commits an offense provided
 106 for in paragraph (1) of this subsection may be punished as follows:

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

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

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

113 16-12-172.

114 (a) Any person owning or operating a place of business in which cigarettes, tobacco
 115 products, ~~or~~ tobacco related objects, alternative nicotine products, or vapor products are
 116 sold or offered for sale shall post in a conspicuous place a sign which shall contain the
 117 following statement:

118 'SALE OF CIGARETTES, TOBACCO, TOBACCO PRODUCTS, TOBACCO
 119 RELATED OBJECTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR
 120 PRODUCTS TO PERSONS UNDER ~~18~~ 21 YEARS OF AGE IS PROHIBITED BY
 121 LAW.'

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

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

125 16-12-173.

126 (a)(1) Any person who maintains in such person's place of business a vending machine
 127 which dispenses cigarettes, tobacco products, tobacco related objects, alternative nicotine
 128 products, or vapor products shall place or cause to be placed in a conspicuous place on
 129 such vending machine a sign containing the following statement:

130 'THE PURCHASE OF CIGARETTES, TOBACCO PRODUCTS, TOBACCO
 131 RELATED OBJECTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR

132 PRODUCTS FROM THIS VENDING MACHINE BY ANY PERSON UNDER ~~18~~ 21
 133 YEARS OF AGE IS PROHIBITED BY LAW.'

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

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

141 (c) It shall be a violation of subsection (a) of Code Section 16-12-171 for any person
 142 knowingly to allow ~~a minor~~ an individual under the age of 21 years to operate a vending
 143 machine which dispenses cigarettes, tobacco products, tobacco related objects, alternative
 144 nicotine products, or vapor products.

145 (d) The offenses provided for by paragraph (1) of subsection (b) of Code Section
 146 16-12-171 shall apply to the operation by ~~a minor~~ an individual under the age of 21 years
 147 of a vending machine which dispenses cigarettes, tobacco products, tobacco related objects,
 148 alternative nicotine products, or vapor products.

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

152 (A) In locations which are not readily accessible to ~~minors~~ individuals under the age
 153 of 21 years, including, but not limited to:

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

156 (ii) Places open to the general public which do not admit ~~minors~~ individuals under
 157 the age of 21 years; 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, tobacco related objects, alternative nicotine
 162 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.~~

166 16-12-174.

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

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

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

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

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

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

181 16-12-175.

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

189 (b) The state revenue commissioner, acting through special agents or enforcement officers,
190 shall annually conduct random, unannounced inspections at locations where cigarettes,
191 tobacco products, alternative nicotine products, or vapor products are sold or distributed
192 to ensure compliance with this article. Individuals ~~Persons~~ under the age of ~~18~~ 21 years
193 may be enlisted to test compliance with this article; provided, however, that such ~~persons~~
194 individuals may be used to test compliance with this article only if the testing is conducted
195 under the direct supervision of such special agents or enforcement officers and written
196 parental consent for any individual under the age of 18 years has been provided. Any other
197 use of ~~persons~~ individuals under the age of ~~18~~ 21 years to test compliance with this article
198 or any other prohibition of like or similar import shall be unlawful and the person or
199 persons responsible for such use shall be subject to the penalties prescribed in this article.
200 The state revenue commissioner shall prepare annually for submission by the Governor to
201 the secretary of the United States Department of Health and Human Services the report

202 required by section 1926 of subpart I of part B of Title XIX of the federal Public Health
 203 Service Act, 42 U.S.C. 300x-26.

204 16-12-176.

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

210 **SECTION 2.**

211 Said title is further amended by revising Code Section 16-13-30.6, relating to prohibition on
 212 purchase and sale of marijuana flavored products, as follows:

213 "16-13-30.6.

214 (a) As used in this Code section, the term:

215 (1) 'Marijuana flavored product' means any product, including lollipops, gumdrops, or
 216 other candy, which is flavored to taste like marijuana or hemp. The term shall include,
 217 but is not limited to, 'Chronic Candy,' 'Kronic Kandy,' or 'Pot Suckers.'

218 ~~(2) 'Minor' means any person under the age of 18 years.~~

219 ~~(3)~~(2) 'Person' means any natural person, individual, corporation, unincorporated
 220 association, proprietorship, firm, partnership, limited liability company, joint venture,
 221 joint stock association, or other entity or business organization of any kind.

222 (b) The General Assembly finds and determines that:

223 (1) According to the '2004 Monitoring the Future Study' conducted by the University of
 224 Michigan, 16.3 percent of eighth graders, 35.1 percent of tenth graders, and 45.7 percent
 225 of twelfth graders reported using marijuana at least once during their lifetimes;

226 (2) According to a 2002 Substance Abuse and Mental Health Service Administration
 227 report, 'Initiation of Marijuana Use: Trends, Patterns and Implications,' the younger
 228 children are when they first use marijuana, the more likely they are to use cocaine and
 229 heroin and become drug dependent as adults;

230 (3) Marijuana abuse is associated with many negative health effects, including frequent
 231 respiratory infections, impaired memory and learning, increased heart rate, anxiety, and
 232 panic attacks;

233 (4) Marijuana users have many of the same respiratory problems that are associated with
 234 tobacco use;

235 (5) According to the '2001 National Household Survey on Drug Abuse,' marijuana is the
 236 nation's most commonly used illicit drug, and more than 83,000,000 Americans aged 12
 237 and older have tried marijuana at least once;

238 (6) Use of marijuana has been shown to lower test scores among high school students,
 239 and workers who smoke marijuana are more likely to have problems on their jobs;

240 (7) Federal, state, and local governments spend millions of dollars annually on programs
 241 educating people about the hazards of drugs, and the marketing of marijuana flavored
 242 substances would have an adverse impact upon these programs;

243 (8) The sale of marijuana flavored products, including lollipops and gum drops, which
 244 claim 'every lick is like taking a hit' is a marketing ploy that perpetuates an unhealthy
 245 culture and should not be permitted in the State of Georgia;

246 (9) Marijuana flavored products are a threat to minors individuals under the age of 21
 247 years in the State of Georgia because such products give the false impression that
 248 marijuana is fun and safe;

249 (10) Marijuana flavored products packaged as candy or lollipops falling into the hands
 250 of unsuspecting minors individuals under the age of 21 years may serve as a gateway to
 251 future use of marijuana and other drugs; and

252 (11) Merchants who sell marijuana flavored products are promoting marijuana use and
 253 creating new customers for drug dealers in the State of Georgia.

254 Therefore, the purpose of this Code section is to prohibit the purchase and sale of
 255 marijuana flavored products to minors individuals under the age of 21 years in the State of
 256 Georgia.

257 (c) It shall be unlawful for any person knowingly to sell, deliver, distribute, or provide to
 258 ~~a minor~~ any individual under the age of 21 years or knowingly possess with intent to sell,
 259 deliver, distribute, or provide to ~~a minor~~ any individual under the age of 21 years any
 260 marijuana flavored product in the State of Georgia.

261 (d) It shall be unlawful for any ~~minor~~ individual under the age of 21 years falsely to
 262 represent to any person that such ~~minor individual~~ is 18 21 years of age or older with the
 263 intent to purchase or otherwise obtain any marijuana flavored product.

264 (e) Any person who violates subsection (c) of this Code section shall be guilty of a
 265 misdemeanor and shall be subject to a fine of \$500.00 for each offense. Each sale in
 266 violation of this Code section shall constitute a separate offense."

267 **SECTION 3.**

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

270

SECTION 4.

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