

Senate Bill 375

By: Senators Mullis of the 53rd, Watson of the 1st, Burke of the 11th, Kirkpatrick of the 32nd, Miller of the 49th and others

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and
 2 offenses, so as to increase the age of individuals to which the sale or distribution of
 3 cigarettes, tobacco products, tobacco related objects, alternative nicotine products, and vapor
 4 products is prohibited; to revise and provide for definitions; to provide for an additional
 5 offense of using vapor products in a school safety zone; to provide for and revise certain
 6 fines and penalties; to provide for seizure and forfeiture; to amend Title 20 of the Official
 7 Code of Georgia Annotated, relating to education, so as to require local boards of education
 8 to prescribe mandatory instruction and a minimum course of study concerning the dangers
 9 of smoking and vaping; to provide for the implementation of such course of study; to provide
 10 for related matters; to provide for an effective date; to repeal conflicting laws; and for other
 11 purposes.

12 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

13 **SECTION 1.**

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

17 **"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. Such term ~~The term 'alternative nicotine product'~~ shall not
 23 include any tobacco product, vapor product, or any product regulated as a drug or device
 24 by the United States Food and Drug Administration under Chapter V of the Food, Drug,
 25 and Cosmetic Act.

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

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

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

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

35 ~~(6)~~(5) 'Person' means any natural person or any firm, partnership, company, corporation,
 36 or other entity.

37 ~~(7)~~(6) 'Proper identification' means any document issued by a governmental agency
 38 containing a description of the ~~person~~ individual, such ~~person's~~ individual's photograph,
 39 or both, and giving such ~~person's~~ individual's date of birth and includes, without being
 40 limited to, a passport, military identification card, driver's license, or an identification
 41 card authorized under Code Sections 40-5-100 through 40-5-104. Proper identification
 42 shall not include a birth certificate.

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

52 ~~(9)~~(8) 'Tobacco related objects' means any papers, wrappers, or other products, devices,
 53 or substances, including cigar wraps, which are used for the purpose of making cigarettes
 54 or tobacco products in any form whatsoever.

55 ~~(10)~~(9) 'Vapor product' means any noncombustible product containing nicotine that
 56 employs a heating element, power source, electronic circuit, or other electronic, chemical,
 57 or mechanical means, regardless of shape or size, that can be used to produce vapor or
 58 aerosol from nicotine or other substances in a solution or other form. Such term ~~The term~~
 59 ~~'vapor product'~~ shall include, but shall not be limited to, any electronic cigarette,
 60 electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any
 61 vapor or aerosol cartridge or other container of nicotine or other substance in a solution
 62 or other form, including, but not limited to, a device component, part, or accessory of the

63 device, that is intended to be used with or in an electronic cigarette, electronic cigar,
 64 electronic cigarillo, electronic pipe, or similar product or device. Such term ~~The term~~
 65 ~~'vapor product'~~ shall not include any product regulated as a drug or device by the United
 66 States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic
 67 Act.

68 16-12-171.

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

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

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

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

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

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

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

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

101 (A) Purchase, attempt to purchase, or possess for personal use any cigarettes, tobacco
102 products, tobacco related objects, alternative nicotine products, or vapor products. ~~This~~
103 ~~subparagraph shall not apply to possession of cigarettes, tobacco products, tobacco~~
104 ~~related objects, alternative nicotine products, or vapor products by a minor when a~~
105 ~~parent or guardian of such minor gives the cigarettes, tobacco products, tobacco related~~
106 ~~objects, alternative nicotine products, or vapor products to the minor and possession is~~
107 ~~in the home of the parent or guardian and such parent or guardian is present; or~~

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

111 (2) An individual under the age of 21 years ~~A minor~~ who commits an offense provided
112 for in paragraph (1) of this subsection ~~may~~ or paragraph (1) of subsection (c) of this Code
113 section shall be punished as follows:

114 (A) By requiring the performance of community service not exceeding 20 hours that
115 may be related to the awareness of the health hazards of smoking and vaping or tobacco
116 and vapor product use;

117 (B) By requiring attendance at a publicly or privately sponsored lecture or discussion
118 on the health hazards of smoking and vaping or tobacco and vapor product use,
119 provided that such lecture or discussion is offered without charge to the ~~minor~~
120 individual under the age of 21 years;

121 (C) When an individual under the age of 21 years fails to comply with such imposed
122 community service, or for a third or subsequent violation within the same calendar year
123 as the first violation, by requiring the Department of Driver Services to withhold
124 issuance of or to suspend the driver's license or driving privilege of such individual for
125 a period of 45 consecutive days; or

126 ~~(D)~~ (D) By a combination of the punishments described in subparagraphs (A) ~~and (B)~~
127 through (C) of this paragraph.

128 (c)(1) It shall be unlawful for any individual to knowingly use a vapor product within a
129 school safety zone. As used in this subsection the term 'school safety zone' shall have the
130 same meaning as provided in Code Section 16-11-127.1.

131 (2) Any individual who is 21 years of age or older who commits the offense provided for
132 in paragraph (1) of this subsection shall be guilty of a misdemeanor; provided, however,
133 that for a conviction of a first offense, such individual shall be punished by a fine of
134 \$25.00 and for a conviction of a second offense, such individual shall be punished by a
135 fine of \$50.00. The provisions of Chapter 11 of Title 17 and any other provision of law

136 to the contrary notwithstanding, the costs of any prosecution for such first or second
 137 offense shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for
 138 such offense be assessed against an individual for conviction thereof.

139 (3) Any vapor product used in violation of paragraph (1) of this subsection is declared
 140 to be contraband, and no person shall have a property right in it. In addition to persons
 141 authorized to seize property pursuant to Code Section 9-16-6, property which is subject
 142 to forfeiture under this subsection may be seized by any special agent or enforcement
 143 officer of the state revenue commissioner. Any property which is subject to forfeiture
 144 under this subsection shall be forfeited in accordance with the procedures set forth in
 145 Chapter 16 of Title 9.

146 16-12-172.

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

151 'SALE OF CIGARETTES, TOBACCO, TOBACCO PRODUCTS, TOBACCO
 152 RELATED OBJECTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR
 153 PRODUCTS TO ~~PERSONS~~ INDIVIDUALS UNDER ~~18~~ 21 YEARS OF AGE IS
 154 PROHIBITED BY LAW.'

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

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

158 16-12-173.

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

163 'THE PURCHASE OF CIGARETTES, TOBACCO PRODUCTS, TOBACCO
 164 RELATED OBJECTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR
 165 PRODUCTS FROM THIS VENDING MACHINE BY ANY ~~PERSON~~ INDIVIDUAL
 166 UNDER ~~18~~ 21 YEARS OF AGE IS PROHIBITED BY LAW.'

167 (2) Any person ~~who~~ that maintains in such person's place of business a vending machine
 168 which dispenses cigarettes, tobacco products, tobacco related objects, alternative nicotine
 169 products, or vapor products shall not dispense any other type of product, other than
 170 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~~ an individual under the age of 21 years to operate a vending
 176 machine which dispenses cigarettes, tobacco products, tobacco related objects, alternative
 177 nicotine products, or vapor products.

178 (d) The offenses provided for by paragraph (1) of subsection (b) of Code Section
 179 16-12-171 shall apply to the operation by ~~a minor~~ an individual under the age of 21 years
 180 of a vending machine which dispenses cigarettes, tobacco products, tobacco related objects,
 181 alternative nicotine products, or vapor products.

182 (e)(1) The sale or offering for sale of cigarettes, tobacco products, 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~~ individuals under the age
 186 of 21 years, including, but not limited 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~~ individuals under
 190 the age of 21 years; and

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

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

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

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

199 16-12-174.

200 (a) As used in this Code section, the term 'tobacco product sample' means a cigarette,
 201 tobacco product, alternative nicotine product, or vapor product distributed to members of
 202 the general public at no cost for purposes of promoting the 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) ~~A violation of subsection (b), (c), or (e)~~ Violation of this Code section shall be punished
 214 as a misdemeanor. A violation of subsection (d) of this Code section shall be punished as
 215 provided for in paragraph (2) of subsection (b) of Code Section 16-12-171.

216 16-12-175.

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

224 (b) The state revenue commissioner, acting through special agents or enforcement officers,
 225 shall annually conduct random, unannounced inspections at locations where cigarettes,
 226 tobacco products, alternative nicotine products, or vapor products are sold or distributed
 227 to ensure compliance with this article. Individuals ~~Persons~~ under the age of ~~18~~ 21 years
 228 may be enlisted to test compliance with this article; provided, however, that such ~~persons~~
 229 individuals may be used to test compliance with this article only if the testing is conducted
 230 under the direct supervision of such special agents or enforcement officers and written
 231 parental consent for any individual under the age of 18 years has been provided. Any other
 232 use of ~~persons~~ individuals under the age of ~~18~~ 21 years to test compliance with this article
 233 or any other prohibition of like or similar import shall be unlawful, and the person or
 234 persons responsible for such use shall be subject to the penalties prescribed in this article.
 235 The state revenue commissioner shall prepare annually for submission by the Governor to
 236 the secretary of the United States Department of Health and Human Services the report
 237 required by ~~section 1926 of subpart I of part~~ Section 1926 of Subpart I of Part B of Title
 238 XIX of the federal Public Health Service Act, 42 U.S.C. 300x-26.

239 16-12-176.
 240 The state revenue commissioner shall administer and enforce this article and may make
 241 reasonable rules and regulations for its administration and enforcement. The state revenue
 242 commissioner may designate employees of the Department of Revenue for the purpose of
 243 administering and enforcing this article and may delegate to employees of such department
 244 any of the duties required of the state revenue commissioner pursuant to this article."

245 **SECTION 2.**

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

249 "20-2-144.

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

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

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

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

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

272 (4) Detailed information and warnings from the Surgeon General and the Department of
 273 Human Services concerning the dangers of vaping and smoking; and

274 ~~(4)~~(5) Detailed instruction on the need for, and role of, lawful authority and law-abiding
 275 behavior, which instruction may include interacting and working with members of the
 276 legal and justice professions.

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

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

288 (e) The State Board of Education and the local boards of education shall supplement the
 289 instruction required under this Code section by making resource information and materials
 290 available to student clubs, organizations, and peer-to-peer programs."

291 **SECTION 3.**

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

294 **SECTION 4.**

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