

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

A BILL TO BE ENTITLED
AN ACT

To amend Article 7 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to sale or distribution to, or possession by, minors of cigarettes and tobacco related products, so as to provide for additional penalties regarding any person under 21 years of age and vapor products; to revise the definition of vapor product; to provide for seizure by law enforcement of any cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products sold to and in the possession of any person under 21 years of age; to provide for fine and penalties; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 7 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to sale or distribution to, or possession by, minors of cigarettes and tobacco related products, is amended by revising paragraph (10) of subsection (a) of Code Section 16-12-170, relating to definitions, as follows:

"(10) 'Vapor product' means any noncombustible product containing nicotine or other substances 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 or other substances in a solution or other form. ~~The term 'vapor product'~~ This term 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 or other substances 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'~~ This term 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."

SECTION 2.

Said article is further amended by revising Code Section 16-12-171, relating to prohibited acts, as follows:

"16-12-171.

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

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

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

(C) Advise, counsel, or compel any ~~minor person under 21 years of age~~ to smoke, inhale, chew, or use cigarettes, tobacco products, 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, 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 to whom the cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products are sold is ~~18~~ 21 years of age or older.

(B) In any case ~~where~~ when a reasonable or prudent person could reasonably be in doubt as to whether or not the person to whom cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products are to be sold or otherwise furnished is actually ~~18~~ 21 years of age or older, it shall be the duty of the person selling or otherwise furnishing such cigarettes, tobacco products, 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. The failure to make such request and verification in any case ~~where~~ when the person to whom the cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products are sold or otherwise furnished is less than ~~18~~ 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, tobacco related objects, alternative nicotine products, or vapor products did so knowingly.

(3)(A) A law enforcement officer shall seize any cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products that have been sold to and are in the possession of a person under 21 years of age.

(B) Any cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products in possession of a person under 21 years of age in violation of this Code section shall be declared as contraband and shall be seized by any peace officer.

~~(3)~~(4) Any person who violates this subsection shall be guilty of a misdemeanor.

(b)(1) It shall be unlawful for any minor person under 21 years of age to:

(A) Purchase, attempt to purchase, or possess for personal use any cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products. This subparagraph shall not apply to possession of cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products by a minor person under 21 years of age when a parent or guardian of such minor person gives the cigarettes, tobacco products, tobacco related objects, alternative nicotine products, or vapor products to the minor person under 21 years of age and possession is in the home of the parent or guardian and such parent or guardian is present; or

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

(2) A minor person under 21 years of age 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, and a fine in the amount of \$25.00;

(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 person under 21 years of age;

(C) When a person under 21 years of age fails to comply with the imposed community service and payment of fines, or for a second or subsequent violation within 12 weeks after the first violation, the court shall direct the Department of Driver Services to withhold issuance of or to suspend the driver's license or driving privilege of such person for a period of 45 consecutive days;

(D) The court shall, in addition to the penalties provided in this paragraph require the person under 21 years of age to attend tobacco awareness programs or to perform community service in programs related to tobacco awareness; or

~~(C)~~(E) By a any combination of the punishments described in subparagraphs (A), (B), (C), and (D) of this paragraph.

(c) Any person 21 years of age or older who commits the offense of possessing a vapor product within a school safety zone as such term is defined in Code Section 16-11-127.1 shall be guilty of a misdemeanor and shall pay a fine in the amount of \$25.00."

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SECTION 3.

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