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COMMITTEE REPORT

March 20, 2013

**H. 3538**

Introduced by Reps. Bannister, Tallon, Sandifer, Hamilton, Erickson, Gambrell, Brannon, Allison, Felder and Weeks

S. Printed 3/20/13--H.

Read the first time February 19, 2013.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3538) to amend Section 16‑17‑500, as amended, Code of Laws of South Carolina, 1976, relating to the sale or purchase of tobacco products for minors, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 16‑17‑500, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SALE OR PURCHASE OF TOBACCO PRODUCTS FOR MINORS, SO AS TO INCLUDE ALTERNATIVE NICOTINE PRODUCTS IN THE PURVIEW OF THE STATUTE; TO AMEND SECTION 16‑17‑501, AS AMENDED, RELATING TO DEFINITIONS FOR PURPOSES OF RELEVANT TOBACCO PRODUCT FOR MINORS OFFENSES, SO AS TO DEFINE THE TERMS “ALTERNATIVE NICOTINE PRODUCT” AND “ELECTRONIC CIGARETTE”; AND TO AMEND SECTIONS 16‑17‑502, 16‑17‑503, AND 16‑17‑504, RELATING TO DISTRIBUTION OF TOBACCO PRODUCT SAMPLES, ENFORCEMENT AND REPORTING, AND IMPLEMENTATION, RESPECTIVELY, ALL SO AS TO MAKE CONFORMING CHANGES TO INCLUDE ALTERNATIVE NICOTINE PRODUCTS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 16‑17‑500 of the 1976 Code, as last amended by Act 231 of 2006, is further amended to read:

“Section 16-17-500. (A) It is unlawful for an individual to sell, furnish, give, distribute, purchase for, or provide a tobacco product or an alternative nicotine product to a minor under the age of eighteen years.

(B) It is unlawful to sell a tobacco product or an alternative nicotine product to an individual who does not present upon demand proper proof of age. Failure to demand identification to verify an individual’s age is not a defense to an action initiated pursuant to this subsection. Proof that is demanded, is shown, and reasonably is relied upon for the individual’s proof of age is a defense to an action initiated pursuant to this subsection.

(C) A person engaged in the sale of alternative nicotine products made through the internet or other remote sales methods shall perform an age verification through an independent, third‑party age verification service that compares information available from public records to the personal information entered by the individual during the ordering process that establishes the individual is eighteen years of age or older.

(D) It is unlawful to sell a tobacco product or an alternative nicotine product through a vending machine unless the vending machine is located in an establishment:

(1) which is open only to individuals who are eighteen years of age or older; or

(2) where the vending machine is under continuous control by the owner or licensee of the premises, or an employee of the owner or licensee, can be operated only upon activation by the owner, licensee, or employee before each purchase, and is not accessible to the public when the establishment is closed.

~~(D)~~(E)(1) An individual who knowingly violates a provision of subsections (A), (B), ~~or~~ (C), or (D) in person, by agent, or in any other way is guilty of a misdemeanor and, upon conviction, must be:

(a) for a first offense, fined not less than one hundred dollars nor more than two hundred dollars;

(b) for a second offense, which occurs within three years of the first offense, fined not less than two hundred dollars nor more than three hundred dollars;

(c) for a third or subsequent offense, which occurs within three years of the first offense, fined not less than three hundred dollars nor more than four hundred dollars.

(2) In lieu of the fine, the court may require an individual to successfully complete a Department of Alcohol and Other Drug Abuse Services approved merchant tobacco enforcement education program.

~~(E)~~(F)(1) A minor under the age of eighteen years must not purchase, attempt to purchase, possess, or attempt to possess a tobacco product or an alternative nicotine product, or present or offer proof of age that is false or fraudulent for the purpose of purchasing or possessing ~~a tobacco product~~ these products.

(2) A minor who knowingly violates a provision of ~~subsection (E)~~ item (1) in person, by agent, or in any other way commits a noncriminal offense and is subject to a civil fine of twenty‑five dollars. The civil fine is subject to all applicable court costs, assessments, and surcharges.

(3) In lieu of the civil fine, the court may require a minor to successfully complete a Department of Health and Environmental Control approved smoking cessation or tobacco prevention program, or to perform not more than five hours of community service for a charitable institution.

(4) If a minor fails to pay the civil fine, successfully complete a smoking cessation or tobacco prevention program, or perform the required hours of community service as ordered by the court, the court may restrict the minor’s driving privileges to driving only to and from school, work, and church, or as the court considers appropriate for a period of ninety days beginning from the date provided by the court. If the minor does not have a driver’s license or permit, the court may delay the issuance of the minor’s driver’s license or permit for a period of ninety days beginning from the date the minor applies for a driver’s license or permit. Upon restricting or delaying the issuance of the minor’s driver’s license or permit, the court must complete and remit to the Department of Motor Vehicles any required forms or documentation. The minor is not required to submit his driver’s license or permit to the court or the Department of Motor Vehicles. The Department of Motor Vehicles must clearly indicate on the minor’s driving record that the restriction or delayed issuance of the minor’s driver’s license or permit is not a traffic violation or a driver’s license suspension. The Department of Motor Vehicles must notify the minor’s parent, guardian, or custodian of the restriction or delayed issuance of the minor’s driver’s license or permit. At the completion of the ninety‑day period, the Department of Motor Vehicles must remove the restriction or allow for the issuance of the minor’s license or permit. No record may be maintained by the Department of Motor Vehicles of the restriction or delayed issuance of the minor’s driver’s license or permit after the ninety‑day period. The restriction or delayed issuance of the minor’s driver’s license or permit must not be considered by any insurance company for automobile insurance purposes or result in any automobile insurance penalty, including any penalty under the Merit Rating Plan promulgated by the Department of Insurance.

(5) A violation of this subsection is not a criminal or delinquent offense and no criminal or delinquent record may be maintained. A minor may not be detained, taken into custody, arrested, placed in jail or in any other secure facility, committed to the custody of the Department of Juvenile Justice, or found to be in contempt of court for a violation of this subsection or for the failure to pay a fine, successfully complete a smoking cessation or tobacco prevention program, or perform community service.

(6) A violation of this subsection is not grounds for denying, suspending, or revoking an individual’s participation in a state college or university financial assistance program including, but not limited to, a Life Scholarship, a Palmetto Fellows Scholarship, or a need‑based grant.

(7) The uniform traffic ticket, established pursuant to Section 56‑7‑10, may be used by law enforcement officers for a violation of this subsection. A law enforcement officer issuing a uniform traffic ticket pursuant to this subsection must immediately seize the tobacco product or alternative nicotine product. The law enforcement officer also must notify a minor’s parent, guardian, or custodian of the minor’s offense, if reasonable, within ten days of the issuance of the uniform traffic ticket.

~~(F)~~(G) This section does not apply to the possession of a tobacco product or an alternative nicotine product by a minor working within the course and scope of his duties as an employee or participating within the course and scope of an authorized inspection or compliance check.

~~(G)~~(H) Jurisdiction to hear a violation of this section is vested exclusively in the municipal court and the ~~magistrate’s~~ magistrates court. A hearing pursuant to subsection ~~(E)~~(F) must be placed on the court’s appropriate docket for traffic violations, and not on the court’s docket for civil matters.

~~(H)~~(I) A retail establishment that distributes tobacco products or alternative nicotine products must train all retail sales employees regarding the unlawful distribution of tobacco products or alternative nicotine products to minors.

~~(I)~~(J) Notwithstanding any other provision of law, a violation of this section does not violate the terms and conditions of an establishment’s beer and wine permit and is not grounds for revocation or suspension of a beer and wine permit.”

SECTION 2. Section 16‑17‑501 of the 1976 Code, as last amended by Act 231 of 2006, is further amended to read:

“Section 16-17-501. As used in this section and Sections 16‑17‑502, 16‑17‑503, and 16‑17‑504:

(1) ‘Distribute’ means to sell, furnish, give, or provide tobacco products and alternative nicotine products, including tobacco product samples and alternative nicotine product samples, cigarette paper, or a substitute for them, to the ultimate consumer.

(2) ‘Proof of age’ means a driver’s license or identification card issued by this State or a United States Armed Services identification card.

(3) ‘Sample’ means a tobacco product or an alternative nicotine product distributed to members of the general public at no cost for the purpose of promoting the products.

(4) ‘Sampling’ means the distribution of samples to members of the general public in a public place.

(5) ‘Tobacco product’ means a product that contains tobacco and is intended for human consumption. ‘Tobacco product’ does not include an alternative nicotine product.

(6) ‘Alternative nicotine product’ means a product, including electronic cigarettes, that consists of or contains nicotine that can be ingested into the body by chewing, smoking, absorbing, dissolving, inhaling, or by any other means. ‘Alternative nicotine product’ does not include:

(a) a cigarette, as defined in Section 12‑21‑620, or other tobacco products, as defined in Section 12‑21‑800;

(b) a product that is a drug pursuant to 21 U.S.C. 321(g)(1);

(c) a device pursuant to 21 U.S.C. 321(h); or

(d) a combination product described in 21 U.S.C. 353(g).

(7) ‘Electronic cigarette’ means an electronic product or device that produces a vapor that delivers nicotine or other substances to the person inhaling from the device to simulate smoking, and is likely to be offered to, or purchased by, consumers as an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe. ‘Electronic cigarette’ does not include:

(a) a cigarette, as defined in Section 12‑21‑620, or other tobacco products, as defined in Section 12‑21‑800;

(b) a product that is a drug pursuant to 21 U.S.C. 321(g)(1);

(c) a device pursuant to 21 U.S.C. 321(h); or

(d) a combination product described in 21 U.S.C. 353(g).”

SECTION 3. Section 16‑17‑502(A) of the 1976 Code is amended to read:

“(A) It is unlawful for a person to distribute a tobacco product or an alternative nicotine product sample to a person under the age of eighteen years.”

SECTION 4. Section 16‑17‑503(A) of the 1976 Code is amended to read:

“(A) Except as otherwise provided by law, the Director of the Department of Revenue shall provide for the enforcement of ~~Section~~ Sections 16-17-500 and 16‑17‑502 in a manner that reasonably may be expected to reduce the extent to which tobacco products or alternative nicotine products are sold or distributed to persons under the age of eighteen years and annually shall conduct random, unannounced inspections at locations where tobacco products or alternative nicotine products are sold or distributed to ensure compliance with the section. The department shall designate an enforcement officer to conduct the annual inspections. Penalties collected pursuant to Section 16‑17‑502 must be used to offset the costs of enforcement.”

SECTION 5. Section 16‑17‑504(A) of the 1976 Code is amended to read:

“(A) Sections 16‑17‑500, 16‑17‑502, and 16‑17‑503 must be implemented in an equitable and uniform manner throughout the State and enforced to ensure the eligibility for and receipt of federal funds or grants the State receives or may receive relating to the sections. Any laws, ordinances, or rules enacted pertaining to tobacco products or alternative nicotine products may not supersede state law or regulation. Nothing ~~herein shall affect~~ in this section affects the right of any person having ownership or otherwise controlling private property to allow or prohibit the use of tobacco products or alternative nicotine products on ~~such~~ the property.”

SECTION 6. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 7. This act takes effect upon approval by the Governor.

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