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SENATE DRS85137-MG-46B (01/30)

Short Title: Prohibit E-Cigarette Sales to Minors. (Public)

Sponsors: Senator Goolsby (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT THE DISTRIBUTION OF TOBACCO-DERIVED PRODUCTS
3 AND VAPOR PRODUCTS TO MINORS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 14-313 reads as rewritten:

6 "Article 39.

7 "Protection of Minors.

8 "§ 14-313. Youth access to tobacco ~~products~~products, tobacco-derived products, vapor
9 products, and cigarette wrapping papers.

10 (a) Definitions. – The following definitions apply in this section:

11 (1) Distribute. – To sell, furnish, give, or provide tobacco products,
12 tobacco-derived products, or vapor products, including tobacco
13 products samples, or cigarette wrapping papers to the ultimate consumer.

14 (2) Proof of age. – A drivers license or other photographic identification that
15 includes the bearer's date of birth that purports to establish that the person is
16 18 years of age or older.

17 (3) Sample. – A tobacco ~~product~~product, tobacco-derived product, or vapor
18 product distributed to members of the general public at no cost for the
19 purpose of promoting the product.

20 (3a) Tobacco-derived product. – Any noncombustible product derived from
21 tobacco that contains nicotine and is intended for human consumption,
22 whether chewed, absorbed, dissolved, ingested, or by other means. This term
23 does not include a vapor product or any product regulated by the United
24 States Food and Drug Administration under Chapter V of the federal Food,
25 Drug, and Cosmetic Act.

26 (4) Tobacco product. – Any product that contains tobacco and is intended for
27 human consumption. The term does not include a tobacco-derived product or
28 a vapor product.

29 (5) Vapor product. – Any noncombustible product containing nicotine that
30 employs a mechanical heating element, battery, or electronic circuit,
31 regardless of shape or size and that can be used to heat a liquid nicotine
32 solution contained in a vapor cartridge. The term includes an electronic
33 cigarette, electronic cigar, electronic cigarillo, and electronic pipe. The term
34 does not include any product regulated by the United States Food and Drug
35 Administration under Chapter V of the federal Food, Drug, and Cosmetic
36 Act.



1 (b) Sale or distribution to persons under the age of 18 years. – If any person shall
2 distribute, or aid, assist, or abet any other person in distributing tobacco ~~products~~products,
3 tobacco-derived products, vapor products, components of vapor products, or cigarette wrapping
4 papers to any person under the age of 18 years, or if any person shall purchase tobacco ~~products~~
5 products, tobacco-derived products, vapor products, components of vapor products, or cigarette
6 wrapping papers on behalf of a ~~person, less than~~person under the age of 18 years, the person
7 shall be guilty of a Class 2 misdemeanor; provided, however, that it shall not be unlawful to
8 distribute tobacco ~~products~~products, tobacco-derived products, vapor products, components of
9 vapor products, or cigarette wrapping papers to an employee when required in the performance
10 of the employee's duties. Retail distributors of tobacco ~~products~~products, tobacco-derived
11 products, vapor products, components of vapor products, or cigarette wrapping papers shall
12 prominently display near the point of sale a sign in letters at least five-eighths of an inch high
13 which states the following:

14
15 N.C. LAW STRICTLY PROHIBITS

16
17 THE PURCHASE OF TOBACCO ~~PRODUCTS~~PRODUCTS, TOBACCO-DERIVED
18 PRODUCTS, VAPOR PRODUCTS, AND CIGARETTE WRAPPING PAPERS.

19
20 BY PERSONS UNDER THE AGE OF 18.

21
22 PROOF OF AGE REQUIRED.

23
24 Failure to post the required sign shall be an infraction punishable by a fine of twenty-five
25 dollars (\$25.00) for the first offense and seventy-five dollars (\$75.00) for each succeeding
26 offense.

27 A person engaged in the sale of tobacco ~~products~~products, tobacco-derived products, vapor
28 products, components of vapor products, or cigarette wrapping papers shall demand proof of
29 age from a prospective purchaser if the person has reasonable grounds to believe that the
30 prospective purchaser is under 18 years of age. Failure to demand proof of age as required by
31 this subsection is a Class 2 misdemeanor if in fact the prospective purchaser is under 18 years
32 of age. Retail distributors of tobacco ~~products~~products, tobacco-derived products, vapor
33 products, components of vapor products, or cigarette wrapping papers shall train their sales
34 employees in the requirements of this law. Proof of any of the following shall be a defense to
35 any action brought under this subsection:

- 36 (1) The defendant demanded, was shown, and reasonably relied upon proof of
37 age in the case of a retailer, or any other documentary or written evidence of
38 age in the case of a nonretailer.
- 39 (2) The defendant relied on the electronic system established and operated by
40 the Division of Motor Vehicles pursuant to G.S. 20-37.02.
- 41 (3) The defendant relied on a biometric identification system that demonstrated
42 (i) the purchaser's age to be at least the required age for the purchase and (ii)
43 the purchaser had previously registered with the seller or seller's agent a
44 drivers license, a special identification card issued under G.S. 20-377.7, a
45 military identification card, or a passport showing the purchaser's date of
46 birth and bearing a physical description of the person named on the card.

47 (b1) ~~Vending machines.~~Distribution of tobacco products, tobacco-derived products, or
48 vapor products. – Tobacco ~~products~~products, tobacco-derived products, vapor products, or
49 components of vapor products shall not be distributed in vending machines; provided, however,
50 vending machines distributing tobacco ~~products~~products, tobacco-derived products, vapor
51 products, or components of vapor products are permitted (i) in any establishment which is open

1 only to persons 18 years of age and older; or (ii) in any establishment if the vending machine is
2 under the continuous control of the owner or licensee of the premises or an employee thereof
3 and can be operated only upon activation by the owner, licensee, or employee prior to each
4 purchase and the vending machine is not accessible to the public when the establishment is
5 closed. The owner, licensee, or employee shall demand proof of age from a prospective
6 purchaser if the person has reasonable grounds to believe that the prospective purchaser is
7 under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2
8 misdemeanor if in fact the prospective purchaser is under 18 years of age. Proof that the
9 defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to
10 any action brought under this subsection. Vending machines distributing tobacco products in
11 establishments not meeting the above conditions shall be removed prior to December 1, 1997.
12 Vending machines distributing tobacco-derived products, vapor products, or components of
13 vapor products in establishments not meeting the above conditions shall be removed prior to
14 December 1, 2013. Any person distributing tobacco products—products, tobacco-derived
15 products, vapor products, or components of vapor products through vending machines in
16 violation of this subsection shall be guilty of a Class 2 misdemeanor.

17 (b2) Internet sales of tobacco products, tobacco-derived products, or vapor products. – A
18 person engaged in the sale of tobacco products, tobacco-derived products, vapor products, or
19 components of vapor products through the Internet or other remote sales methods shall perform
20 an age verification through an independent, third-party age verification service that compares
21 information available from public records to the personal information entered by the individual
22 during the ordering process to establish that the individual ordering the tobacco products,
23 tobacco-derived products, vapor products, or components of vapor products is 18 years of age
24 or older.

25 (c) Purchase by persons under the age of 18 years. – If any person under the age of 18
26 years purchases or accepts receipt, or attempts to purchase or accept receipt, of tobacco
27 products—products, tobacco-derived products, vapor products, components of vapor products, or
28 cigarette wrapping papers, or presents or offers to any person any purported proof of age which
29 is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving
30 any tobacco product—products, tobacco-derived products, vapor products, components of vapor
31 products, or cigarette wrapping papers, the person shall be guilty of a Class 2
32 misdemeanor; provided, however, that it shall not be unlawful for an employee to
33 purchase or accept receipt of tobacco products, tobacco-derived products, vapor products,
34 components of vapor products, or cigarette wrapping papers when required in the performance
35 of the employee's duties.

36 (d) Send or assist. Sending or assisting person less than 18 years to purchase or receive
37 tobacco product—products, tobacco-derived products, vapor products, or cigarette wrapping
38 papers. – If any person shall send a person less than 18 years of age to purchase, acquire,
39 receive, or attempt to purchase, acquire, or receive tobacco products—products, tobacco-derived
40 products, vapor products, components of vapor products, or cigarette wrapping papers, or if any
41 person shall aid or abet a person who is less than 18 years of age in purchasing, acquiring, or
42 receiving or attempting to purchase, acquire, or receive tobacco products—products,
43 tobacco-derived products, vapor products, components of vapor products, or cigarette wrapping
44 papers, the person shall be guilty of a Class 2 misdemeanor; provided, however, persons under
45 the age of 18 may be enlisted by police or local sheriffs' departments to test compliance if the
46 testing is under the direct supervision of that law enforcement department and written parental
47 consent is provided; provided further, that the Department of Health and Human Services shall
48 have the authority, pursuant to a written plan prepared by the Secretary of Health and Human
49 Services, to use persons under 18 years of age in annual, random, unannounced inspections,
50 provided that prior written parental consent is given for the involvement of these persons and
51 that the inspections are conducted for the sole purpose of preparing a scientifically and

1 methodologically valid statistical study of the extent of success the State has achieved in
2 reducing the availability of tobacco products to persons under the age of 18, and preparing any
3 report to the extent required by section 1926 of the federal Public Health Service Act (42 USC
4 § 300x-26).

5 (e) Statewide uniformity. – It is the intent of the General Assembly to prescribe this
6 uniform system for the regulation of tobacco ~~products~~products, tobacco-derived products,
7 vapor products, and cigarette wrapping papers to ensure the eligibility for and receipt of any
8 federal funds or grants that the State now receives or may receive relating to the provisions of
9 G.S. 14-313. To ensure uniformity, no political subdivisions, boards, or agencies of the State
10 nor any county, city, municipality, municipal corporation, town, township, village, nor any
11 department or agency thereof, may enact ordinances, rules or regulations concerning the sale,
12 distribution, display or promotion of (i) tobacco products or cigarette wrapping papers on or
13 after September 1, ~~1995~~1995, or (ii) tobacco-derived products or vapor products on or after
14 December 1, 2013. This subsection does not apply to the regulation of vending machines, nor
15 does it prohibit the Secretary of Revenue from adopting rules with respect to the administration
16 of the tobacco products taxes levied under Article 2A of Chapter 105 of the General Statutes.

17 (f) Deferred prosecution. – Notwithstanding G.S. 15A-1341(a1), any person charged
18 with a misdemeanor under this section shall be qualified for deferred prosecution pursuant to
19 Article 82 of Chapter 15A of the General Statutes provided the defendant has not previously
20 been placed on probation for a violation of this section and so states under oath."

21 **SECTION 2.** This act becomes effective December 1, 2013, and applies to
22 offenses committed on or after that date.