

**This article shall be known as "The Mississippi Juvenile Tobacco Access Prevention Act of 1997."**

**§ 97-32-2. *Legislative intent; supersedes local laws, ordinances and regulations***

It is the intent of the Legislature that enforcement of this chapter be implemented in an equitable manner throughout the state. The provisions of Sections 97-32-5, 97-32-7, 97-32-11, 97-32-15, 97-32-17, 97-32-19 and 97-32-21 shall supersede any existing or subsequently enacted local law, ordinance or regulation which relates to the sale, promotion and distribution of tobacco and tobacco products.

SOURCES: Laws, 1998, ch. 312, § 1, eff from and after passage (approved March 12, 1998).

**§ 97-32-3. *Definitions***

For the purposes of this article:

(a) "Dealer" means every person, firm, corporation or association of persons, except retailers as defined herein, who receives the product from the manufacturer of tobacco for distribution, for sale, for use, or for consumption in the State of Mississippi.

(b) "Person" means any natural person.

(c) "Photographic identification" means any government-issued card that includes a photograph of the person seeking to purchase tobacco products and that is accepted as proof of age under Mississippi law.

(d) "Point of sale" means a store, stand, or any other place of business or point of distribution maintained by a seller from which tobacco products are made available for sale or distribution to consumers.

(e) "Retailer" includes every company, corporation, partnership, business association, joint venture, estate, trust, or any other combination acting as a unit or legal entity other than a wholesale dealer as defined below, whose business is that of selling merchandise at retail, who shall sell or offer for sale tobacco to the consumer.

(f) "Seller" means any natural person, company, corporation, firm, partnership, organization or other legal entity who sells, dispenses, distributes or issues tobacco products for commercial purposes.

(g) "Tobacco product" means any substance that contains tobacco, including, but not limited to, cigarettes, cigars, pipes, snuff, smoking tobacco or smokeless tobacco; "tobacco product" also means cigarette rolling papers.

(h) "Wholesaler" includes dealers whose principal business is that of wholesale dealer or jobber, who is known to the retail trade as such, and whose place of business is located in Mississippi or in a state which affords reciprocity to wholesalers domiciled in Mississippi, who shall sell any taxable tobacco to retail dealers only for the purpose of resale.

(i) "Retailer Tobacco Prevention Education Program" includes any program authorized by the Attorney General that teaches and informs retailers and wholesalers about the laws regarding youth access to tobacco products.

SOURCES: Laws, 1997, ch. 578, § 2; Laws, 2002, ch. 307, § 1, eff from and after July 1, 2002.

**§ 97-32-5. *Prohibition of the sale or transfer of tobacco products to persons under 18 years of age***

It shall be unlawful for any person, or retailer, to sell, barter, deliver or give tobacco products to any individual under eighteen (18) years of age unless the individual under eighteen (18) years of age holds a retailer's license to sell tobacco under Section 27-69-1 et seq., Mississippi Code of 1972.

It shall be an absolute affirmative defense that the person selling, bartering, delivering or giving tobacco

products over the counter in a retail establishment to an individual under eighteen (18) years of age in violation of this article had requested and examined a government-issued photographic identification from such person establishing his age as at least eighteen (18) years prior to selling such person a tobacco product. The failure of a seller, barterer, deliverer or giver of tobacco products over the counter in a retail establishment to request and examine photographic identification from a person under eighteen (18) years of age prior to the sale of a tobacco product to such person if the individual is not known to the seller, barterer, deliverer or giver of the tobacco product to be over the age of eighteen (18) years, shall be construed against the seller, barterer, deliverer or giver and form a conclusive basis for the seller's violation of this section.

It shall be an absolute affirmative defense that the person or entity giving tobacco products through the mail to an individual under eighteen (18) years of age in violation of this article had requested and received documentary or written evidence from such person purportedly establishing his age to be at least eighteen (18) years of age.

Any person who violates this section shall be liable as follows: For a first conviction, a fine of Fifty Dollars (\$ 50.00); for a second conviction, a fine of Seventy-five Dollars (\$ 75.00); and for all subsequent convictions, a fine of One Hundred Fifty Dollars (\$ 150.00) shall be imposed.

Any person found in violation of this section shall be issued a citation and the holder of the retailer permit shall be sent notification of this citation by registered mail by the law enforcement agency issuing the citation. Notification shall include the opportunity for hearing before the appropriate court. For a first conviction, the retailer shall be sent a warning letter informing him of the retailer's responsibility in the selling of tobacco products. For a second conviction, the retailer, or retailer's designee, shall be required to enroll in and complete a "Retailer Tobacco Education Program."

For a third or subsequent violation of this section by any retailer, within one (1) year of the two (2) prior violations, any retailer's permit issued pursuant to Section 27-69-1 et seq., Mississippi Code of 1972, may be revoked or suspended for a period of at least one (1) year after notice and opportunity for hearing. If said permit is revoked by the Tax Commission, the retailer may not reapply for a permit to sell tobacco for a period of six (6) months. For the purposes of this section, "subsequent violations" are those committed at the same place of business.

It is the responsibility of all law enforcement officers and law enforcement agencies of this state to ensure that the provisions of this article are enforced. It shall not be considered a violation of this section on the part of any law enforcement officer or person under eighteen (18) years of age for any law enforcement officer of this state to use persons under eighteen (18) years of age to purchase or attempt to purchase tobacco products for the purpose of monitoring compliance with this section, as long as those persons are supervised by duly authorized law enforcement agency officials.

Any law enforcement agency conducting enforcement efforts undertaken pursuant to this article shall prepare a report as prescribed by the Attorney General which includes the number of unannounced inspections conducted by the agency, a summary of enforcement actions taken pursuant to this article, the name and permit number of the retailer pursuant to Section 27-69-1 et seq., Mississippi Code of 1972, and final judicial disposition on all enforcement actions. Reports shall be forwarded to the Office of the Attorney General within twenty (20) working days of the final judicial disposition.

On notification from local law enforcement that a retailer has violated this article so as to warrant a revocation of the retailer's permit, the Attorney General shall notify in writing the State Tax Commission within twenty (20) working days.

In accordance with the procedures of Section 27-69-9, Mississippi Code of 1972, the State Tax Commission shall initiate revocation procedures of the retailer's permit. The Office of the Attorney General shall provide legal assistance in revocation procedures when requested by the Tax Commission. SOURCES: Laws, 1997, ch. 578, § 3, eff from and after February 1, 1998.

**§ 97-32-7. Retail sales clerks; notification and agreement; penalties for violations**

(1) Every person engaged in the business of selling tobacco products at retail shall notify each individual employed by that person as a retail sales clerk that state law:

(a) Prohibits the sale or distribution of tobacco products, including samples, to any person under eighteen (18) years of age and the purchase or receipt of tobacco products by any person under eighteen (18) years of age, and (b) requires that proof of age be demanded from a prospective purchaser or recipient if the prospective purchaser or recipient is under the age of eighteen (18) years. Every person employed by a person engaged in the business of selling tobacco products at retail shall sign an agreement with his employer in substantially the following or similar form:

"I understand that state and federal law prohibit the sale or distribution of tobacco products to persons under the age of eighteen (18) years and out-of-package sales, and requires that proof of age be demanded from a prospective purchaser or recipient under eighteen (18) years of age if the individual is not known to the seller, barterer, deliverer or giver of the tobacco product to be over the age of eighteen (18) years. I promise, as a condition of my employment, to observe this law."

(2) Any person violating the provisions of this section shall be penalized not less than Fifty Dollars (\$ 50.00) nor more than One Hundred Dollars (\$ 100.00).

(3) No retailer who instructs his employee as provided in this section shall be liable for any violations committed by such employees.

SOURCES: Laws, 1997, ch. 578, § 4, eff from and after February 1, 1998.

**§ 97-32-9. Juvenile purchase, possession and consumption of tobacco**

No person under eighteen (18) years of age shall purchase any tobacco product. No student of any high school, junior high school or elementary school shall possess tobacco on any educational property as defined in Section 97-37-17.

(a) If a person under eighteen (18) years of age is found by a court to be in violation of any other statute and is also found to be in possession of a tobacco product, the court may order the minor to perform up to three (3) hours of community service, in addition to any other punishment imposed by the court.

(b) A violation under this section is not to be recorded on the criminal history of the minor and, upon proof of satisfaction of the court's order, the record shall be expunged from any records other than youth court records.

SOURCES: Laws, 1997, ch. 578, § 5; Laws, 2012, ch. 533, § 1, eff from and after July 1, 2012.

**§ 97-32-11. Point of sale warning signs**

Point of sale warning signs are required, and each seller shall place and maintain in legible condition, at each point of sale of tobacco products to consumers, a sign no smaller than eight and one-half (8- 1/2)

by eleven (11) inches or ninety-three (93) square inches stating: "STATE LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 18 YEARS. PROOF OF AGE REQUIRED."

Any person who violates this section shall be punished by a penalty of not more than One Hundred Dollars (\$ 100.00).

SOURCES: Laws, 1997, ch. 578, § 6, eff from and after February 1, 1998.

**§ 97-32-13. *Juvenile misrepresentation of age***

Any person under the age of eighteen (18) years who falsely states he is eighteen (18) years of age or older, or presents any document that indicates he is eighteen (18) years of age or older, for the purpose of purchasing or possessing any tobacco or tobacco product shall be penalized not less than Twenty-five Dollars (\$ 25.00) nor more than Two Hundred Dollars (\$ 200.00) or required to complete at least thirty (30) days community service, or both.

SOURCES: Laws, 1997, ch. 578, § 7, eff from and after February 1, 1998.

**§ 97-32-15. *Vending machine tobacco sales; location***

It shall be unlawful for any person to sell tobacco products through a vending machine, unless the vending machine is located in an establishment to which individuals under the age of eighteen (18) years are denied access or are required to be accompanied by an adult. A person who violates this section shall be punished by a penalty of not more than Two Hundred Fifty Dollars (\$ 250.00).

SOURCES: Laws, 1997, ch. 578, § 8, eff from and after February 1, 1998.

**§ 97-32-17. *Prohibition on the distribution of tobacco products other than in sealed packages***

No retailer shall distribute tobacco products other than cigars and pipe tobacco for commercial purposes other than in a sealed package provided by the manufacturer with the required health warning. A retailer who is in violation of this section shall be liable for a penalty of not more than One Hundred Dollars (\$ 100.00) for the first violation or enrollment in a Retailer Tobacco Education Prevention Program, or both; not more than Two Hundred Dollars (\$ 200.00) for a second violation within one (1) year of a prior violation; and a penalty of Three Hundred Dollars (\$ 300.00) for all subsequent violations.

In addition, for a third and all subsequent violations within one (1) year of two (2) prior violations, the permit to sell tobacco products of any person violating this section may be suspended or revoked under the provisions of Section 27-69-1 et seq., Mississippi Code of 1972, for a period of one (1) year after notice and opportunity for a hearing. For the purposes of this section, "subsequent violations" are those committed at the same place of business.

SOURCES: Laws, 1997, ch. 578, § 9, eff from and after February 1, 1998.

**§ 97-32-19. *Transfers of tobacco products from distributors or wholesalers to retailers***

No distributor or wholesaler of tobacco products shall sell, distribute, deliver, or in any other manner transfer any tobacco products for sale at retail to any person not possessing a valid tobacco permit under Section 27-69-1 et seq., Mississippi Code of 1972.

Any distributor or wholesaler who violates this section shall be liable for a penalty of up to Two Hundred Fifty Dollars (\$ 250.00) for a first offense. For a second offense within one (1) year of the prior

offense, any distributor or wholesaler shall be liable for a penalty of up to Five Hundred Dollars (\$ 500.00).

For all subsequent offenses within one (1) year of two (2) prior offenses, the distributor or wholesaler may become ineligible to hold a tobacco distributor's permit for a period of at least one (1) year under Section 27-69-1 et seq., Mississippi Code of 1972, and shall be liable for a penalty of One Thousand Dollars (\$ 1,000.00).

SOURCES: Laws, 1997, ch. 578, § 10, eff from and after February 1, 1998.

**§ 97-32-21. *Unannounced inspections***

The Office of the Attorney General or local law enforcement agencies shall at least annually conduct random, unannounced inspections at locations where tobacco products are sold or distributed to ensure compliance with the Mississippi Tobacco Youth Access Prevention Act of 1997. Persons under the age of eighteen (18) years may be enlisted by the Office of the Attorney General or local law enforcement to test compliance with the Mississippi Juvenile Tobacco Access Prevention Act of 1997, provided that the parent or legal guardian of the person under eighteen (18) years of age so utilized has given prior written consent for the minor's participation in unannounced inspections. The Office of the Attorney General must prepare a report of the findings, and report these findings to the Department of Health and Department of Mental Health. The Department of Mental Health shall prepare the annual report required by Section 1926, subpart 1 of Part B, Title XIX of the Federal Public Health Service Act (42 USCS 300X-26). The report shall be approved by the Governor and then promptly transmitted to the Secretary of the United States Department of Health and Human Services.

SOURCES: Laws, 1997, ch. 578, § 11, eff from and after February 1, 1998. Top of Form  
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**§ 97-32-23. *Confidentiality***

It shall be unlawful to publish the name or identity of any person under the age of eighteen (18) years who is convicted or adjudicated of any violation of this article.

SOURCES: Laws, 1997, ch. 578, § 14, eff from and after February 1, 1998.

**This article shall be known as "Mississippi Adult Tobacco Use on Educational Property Act of 2000."**

**§ 97-32-27. *Definitions***

(1) "Adult" means any natural person at least eighteen (18) years old.

(2) "Minor" means any natural person under the age of eighteen (18) years.

(3) "Person" means any natural person.

(4) "Tobacco product" means any substance that contains tobacco including, but not limited to, cigarettes, cigars, pipes, snuff, smoking tobacco or smokeless tobacco.

(5) "Educational property" means any public school building or bus, public school campus, grounds, recreational area, athletic field, or other property owned, used or operated by any local school board, school, or directors for the administration of any public educational institution or during a school-related activity; provided, however, that the term "educational property" shall not include any sixteenth

section school land or lieu land on which is not located a public school building, public school campus, public school recreational area or public school athletic field. Educational property shall not include property owned or operated by the state institutions of higher learning, the public community and junior colleges, or vocational-technical complexes where only adult students are in attendance.  
SOURCES: Laws, 2000, ch. 626, § 2, eff from and after July 1, 2000.

**§ 97-32-29. *Use of tobacco by adults on certain educational property prohibited; penalties for violation***

No person shall use any tobacco product on any educational property as defined in Section 97-32-27. Any adult who violates this section shall be subject to a fine and shall be liable as follows: (a) for a first conviction, a warning; (b) for a second conviction, a fine of Seventy-five Dollars (\$ 75.00); and (c) for all subsequent convictions, a fine not to exceed One Hundred Fifty Dollars (\$ 150.00) shall be imposed.

Any adult found in violation of this section shall be issued a citation by a law enforcement officer, which citation shall include notice of the date, time and location for hearing before the justice court having jurisdiction where the violation is alleged to have occurred. For the purposes of this section, "subsequent convictions" are for violations committed on any educational property within the State of Mississippi.

Anyone convicted under this article shall be recorded as being fined for a civil violation of this article and not for violating a criminal statute.

It is the responsibility of all law enforcement officers and law enforcement agencies of this state to ensure that the provisions of this article are enforced.  
SOURCES: Laws, 2000, ch. 626, § 3, eff from and after July 1, 2000.

**§ 97-32-51. *Distribution of alternative nicotine products to minors prohibited; definitions; penalties; verification of purchaser's age***

(1) For the purposes of this section:

(a) (i) "Alternative nicotine product" means:

1. An electronic cigarette; or
2. Any other product that consists of or contains nicotine that can be ingested into the body by

chewing, smoking, absorbing, dissolving, inhaling or by any other means.

(ii) Alternative nicotine product does not include:

1. A cigarette or other tobacco product as defined in Section 97-32-3;
2. A product that is a drug under 21 USCS 321(g)(1);
3. A product that is a device under 21 USCS 321(h); or
4. A combination product described in 21 USCS 353(g).

(b) (i) "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.

(ii) Electronic cigarette does not include:

1. A cigarette or other tobacco products as defined in Section 97-32-3;

2. A product that is a drug under 21 USCS 321(g)(1);
3. A product that is a device under 21 USCS 321(h); or
4. A combination product described in 21 USCS 353(g).

(2) No person, either directly or indirectly by an agent or employee, or by a vending machine owned by the person or located in the person's establishment, shall sell, offer for sale, give or furnish any alternative nicotine product, or any cartridge or component of an alternative nicotine product, to an individual under eighteen (18) years of age. A violation of this subsection is punishable as follows:

- (a) By a fine of Fifty Dollars (\$ 50.00) for a first offense;
- (b) By a fine of Seventy-Five Dollars (\$ 75.00) for a second offense; and
- (c) By a fine of One Hundred Dollars (\$ 100.00) for a third or subsequent offense.

(3) Before selling, offering for sale, giving or furnishing an alternative nicotine product, or any cartridge or component of an alternative nicotine product to an individual, a person shall verify that the individual is at least eighteen (18) years of age by:

- (a) Examining from any individual that appears to be under twenty-seven (27) years of age a government-issued photographic identification that establishes the individual is at least eighteen (18) years of age; or
- (b) For sales made through the Internet or other remote sales methods, performing 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 (18) years of age or older.

SOURCES: Laws, 2013, ch. 355, § 1, eff from and after July 1, 2013.

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