

South Carolina General Assembly
123rd Session, 2019-2020

A25, R38, H3420

STATUS INFORMATION

General Bill

Sponsors: Reps. Bernstein, Finlay, Thayer, West, Clemmons and Simmons

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Companion/Similar bill(s): 396, 3422

Introduced in the House on January 8, 2019

Introduced in the Senate on February 6, 2019

Last Amended on April 9, 2019

Passed by the General Assembly on April 11, 2019

Governor's Action: April 26, 2019, Signed

Summary: Youth Access to Tobacco Prevention Act of 2006

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
12/18/2018	House	Prefiled
12/18/2018	House	Referred to Committee on Judiciary
1/8/2019	House	Introduced and read first time (House Journal-page 232)
1/8/2019	House	Referred to Committee on Judiciary (House Journal-page 232)
1/30/2019	House	Member(s) request name added as sponsor: West
1/30/2019	House	Committee report: Favorable with amendment Judiciary (House Journal-page 15)
1/31/2019	House	Member(s) request name added as sponsor: Clemmons, Simmons
1/31/2019		Scrivener's error corrected
1/31/2019	House	Amended (House Journal-page 19)
2/5/2019	House	Read second time (House Journal-page 13)
2/5/2019	House	Roll call Yeas-117 Nays-0 (House Journal-page 13)
2/6/2019	House	Read third time and sent to Senate (House Journal-page 54)
2/6/2019	Senate	Introduced and read first time (Senate Journal-page 38)
2/6/2019	Senate	Referred to Committee on Judiciary (Senate Journal-page 38)
3/1/2019	Senate	Referred to Subcommittee: Hutto (ch), Shealy, Young, McLeod, Senn
3/13/2019	Senate	Committee report: Favorable with amendment Judiciary (Senate Journal-page 11)
3/21/2019	Senate	Committee Amendment Adopted (Senate Journal-page 28)
3/21/2019	Senate	Amended (Senate Journal-page 28)
3/27/2019	Senate	Amended (Senate Journal-page 53)
3/28/2019	Senate	Read second time (Senate Journal-page 17)
3/28/2019	Senate	Roll call Ayes-38 Nays-0 (Senate Journal-page 17)
3/28/2019		Scrivener's error corrected
4/2/2019	Senate	Read third time and returned to House with amendments (Senate Journal-page 23)
4/9/2019	House	Senate amendment amended (House Journal-page 108)
4/9/2019	House	Returned to Senate with amendments (House Journal-page 108)
4/9/2019	House	Roll call Yeas-106 Nays-0 (House Journal-page 108)
4/11/2019	Senate	Concurred in House amendment and enrolled (Senate Journal-page 18)
4/11/2019	Senate	Roll call Ayes-36 Nays-0 (Senate Journal-page 18)
4/25/2019		Ratified R 38 (Senate Journal-page 56)
4/26/2019		Signed By Governor

5/3/2019 Effective date 04/26/19
5/6/2019 Act No. 25

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VERSIONS OF THIS BILL

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(A25, R38, H3420)

AN ACT TO AMEND SECTION 16-17-500, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE “YOUTH ACCESS TO TOBACCO PREVENTION ACT OF 2006”, SO AS TO STRENGTHEN AGE VERIFICATION REQUIREMENTS FOR THE INTERNET SALE OF TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS, TO PROHIBIT MINORS FROM ENTERING RETAIL ESTABLISHMENTS THAT PRIMARILY SELL SUCH PRODUCTS, WITH EXCEPTIONS, AND TO CREATE RELATED CRIMINAL PENALTIES; TO AMEND SECTION 16-17-501, RELATING TO TERMS DEFINED IN THE “YOUTH ACCESS TO TOBACCO PREVENTION ACT OF 2006”, SO AS TO CHANGE THE DEFINITION FOR “ALTERNATIVE NICOTINE PRODUCT” AND BY ADDING A DEFINITION FOR “ELECTRONIC SMOKING DEVICE”, “E-LIQUID”, AND “VAPOR PRODUCT”; BY ADDING SECTION 59-1-380 SO AS TO REQUIRE LOCAL SCHOOL DISTRICTS TO ADOPT, IMPLEMENT, AND ENFORCE A WRITTEN POLICY PROHIBITING THE USE OF TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS ON SCHOOL CAMPUSES AND AT SCHOOL EVENTS; TO AMEND SECTION 44-95-20, RELATING TO THE CLEAN INDOOR AIR ACT’S PROHIBITION OF SMOKING IN SCHOOLS, SO AS TO ELIMINATE THE EXCLUSION FOR PRIVATE OFFICES AND TEACHERS LOUNGES; BY ADDING SECTION 16-17-506 SO AS TO ESTABLISH LIMITATIONS ON THE SALE OF E-LIQUID CONTAINERS AND CREATE CRIMINAL PENALTIES; AND FOR OTHER PURPOSES.

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

Sale of tobacco and alternative nicotine products to minors, prohibitions

SECTION 1. Section 16-17-500(C), (E)(1), (F)(1), and (J) of the 1976 Code is amended to read:

“(C) A person engaged in the sale of tobacco products or 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 and shall use a method of mailing, shipping, or delivery that requires the signature of a person at least eighteen years of age before a tobacco product or alternative nicotine product will be released to the purchaser, unless the Internet or other remote sales methods employ the following protections to ensure age verification:

(1) the customer creates an online profile or account with personal information including, but not limited to, name, address, social security information, and a valid phone number, and that personal information is verified through publicly available records; or

(2) the customer is required to upload a copy of his or her government-issued identification in addition to a current photograph of the customer; and

(3) delivery is made to the customer's name and address.

(E)(1) An individual who knowingly violates a provision of subsections (A), (B), (C), (D), or (J) 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 two hundred dollars and not more than three hundred dollars;

(b) for a second and subsequent offense, fined not less than four hundred dollars and not more than five hundred dollars, imprisoned for not more than thirty days, or both.

(F)(1)(a) 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 these products.

(b) A minor under the age of eighteen years is prohibited from entering a retail establishment that has as its primary purpose the sale of tobacco products, alternative nicotine products, or both, unless the minor is actively supervised and accompanied by an adult.

(c) The provisions of this subsection do not apply to a minor under the age of eighteen who is recruited and authorized by a law enforcement agency to test an establishment's compliance with laws relating to the unlawful transfer of tobacco or alternative nicotine products. The testing must be conducted under the direct supervision of a law enforcement agency, and the law enforcement agency must have the minor's parental consent.

(J)(1) A retail establishment that has as its primary purpose the sale of tobacco products, alternative nicotine products, or both, must prohibit minors under the age of eighteen years of age from entering the retail establishment, unless the minor is actively supervised and accompanied by an adult, and shall determine whether a person is at least eighteen years by requiring proper proof of age in accordance with subsection (B), prior to the purchase of a tobacco or alternative nicotine product.

(2) A retail establishment described in item (1) must conspicuously post on all entrances to the establishment the following:

(a) a sign in boldface type that states ‘NOTICE: It is unlawful for a person under eighteen years of age to enter this store, unless the minor is actively supervised and accompanied by an adult. Age will be verified prior to purchase.’;

(b) a sign printed in letters and numbers at least one-half inch high that displays a toll free number for assistance to callers in quitting smoking, as determined by the Department of Health and Environmental Control.

(3) For purposes of this section, whether a retail establishment has as its primary purpose the sale of tobacco products, alternative nicotine products, or both, must be based on the totality of the circumstances. Facts that must be considered, but not be limited to, are the retail establishment’s business filings, business name and signage, marketing and other advertisements, and the percentage of revenue and inventory directly related to the sale of tobacco and alternative nicotine products.

(K) 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.”

Alternative nicotine products, definitions

SECTION 2. A. The undesignated clause in Section 16-17-501 of the 1976 Code is amended to read:

“As used in this section and Sections 16-17-500, 16-17-502, 16-17-503, and 16-17-504:”

B. Section 16-17-501(6) of the 1976 Code is amended to read:

“(6) ‘Alternative nicotine product’ means any vaping product, whether or not it includes nicotine, including electronic smoking

devices, 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).”

C. Section 16-17-501(7) of the 1976 Code is amended to read:

“(7) ‘Electronic smoking device’ means any device that may be used to deliver any aerosolized or vaporized substance, including e-liquid, to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, vapor product, or e-hookah. ‘Electronic smoking device’ includes any component, part or accessory of the device, and also includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance includes nicotine. ‘Electronic smoking device’ does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.”

D. Section 16-17-501 of the 1976 Code is amended by adding appropriately numbered items at the end to read:

“(8) ‘E-liquid’ means a substance that:

- (a) may or may not contain nicotine;
- (b) is intended to be vaporized and inhaled using a vapor product; and
- (c) is a legal substance under the laws of this State and the laws of the United States;

E-liquid does not include cannabis or CBD as defined under the laws of this State and the laws of the United States.

(9) ‘Vapor product’ means a powered vaporizer that converts e-liquid to a vapor intended for inhalation.”

Mandatory tobacco and alternative nicotine product-free local school board policy

SECTION 3. Article 5, Chapter 1, Title 59 of the 1976 Code is amended by adding:

“Section 59-1-380. (A) By August 1, 2019, every local school district in the State shall adopt, implement, and enforce a written policy prohibiting at all times the use of any tobacco product or alternative nicotine product by any person in school buildings, in school facilities, on school campuses, and in or on any other school property owned or operated by the local school administrative unit. The policy also must prohibit the use of any tobacco product or alternative nicotine product by persons attending a school-sponsored event at a location not listed in this subsection when in the presence of students or school personnel or in an area where smoking or other tobacco use is otherwise prohibited by law.

(B) The policy must include at least all of the following elements:

- (1) adequate notice to students, parents or guardians, the public, and school personnel of the policy;
- (2) posting of signs prohibiting at all times the use of tobacco products or alternative nicotine products by any person in and on school property; and
- (3) requirements that school personnel enforce the policy, including appropriate disciplinary action.

(C) Disciplinary actions for violating the policy may include, but not be limited to:

- (1) for students: administrator and parent or legal guardian conference, mandatory enrollment in tobacco prevention education or cessation programs, community service, in-school suspension, suspension for extracurricular activities, or out-of-school suspension;
- (2) for staff: verbal reprimand, written notification in personnel file, mandatory enrollment in tobacco prevention education, voluntary enrollment in cessation programs, or suspension;
- (3) for contract or other workers: verbal reprimand, notification to contract employer, or removal from district property; and
- (4) for visitors: verbal request to leave district property or prosecution for disorderly conduct for repeated offenses.

(D) The local school district shall collaborate with the Department of Health and Environmental Control, the Department of Alcohol and Other Drug Abuse Services, and the South Carolina Department of Education, as appropriate, to implement the policy, including as part of tobacco education and cessation programs and substance use prevention efforts.

(E) The policy may permit tobacco products or alternative nicotine products to be included in instructional or research activities in public school buildings if the activity is conducted or supervised by the faculty member overseeing the instruction or research and the activity does not

include smoking, chewing, inhaling, or otherwise ingesting the tobacco product or alternative nicotine product.

(F) For purposes of this section:

(1) ‘Tobacco product’ has the same meaning as defined in Section 16-17-501.

(2) ‘Alternative nicotine product’ has the same meaning as defined in Section 16-17-501.”

Clean Indoor Air Act, smoke-free schools

SECTION 4. Section 44-95-20(1) of the 1976 Code is amended to read:

“(1) public schools and preschools;”

Sale of e-liquid containers, restrictions

SECTION 5. Article 7, Chapter 17, Title 16 of the 1976 Code is amended by adding:

“Section 16-17-506. (1) For purposes of this section, ‘container’ means a bottle or other container of any kind that contains e-liquid and is offered for sale, sold, or otherwise distributed, or intended for distribution to consumers, but that does not include a cartridge that is prefilled and sealed by the manufacturer and not intended to be opened by the customer.

(2) It is unlawful to sell, hold for sale, or distribute a container of e-liquid unless:

(a) the container satisfies the requirements of 21 C.F.R. 1143.3, if applicable, for the placement of labels, warnings, or any other information upon a package of e-liquid that is to be sold within the United States;

(b) the container complies with child-resistant effectiveness standards under 16 C.F.R. 1700.15(b)(1) when tested in accordance with the requirements of 16 C.F.R. 1700.20; and

(c) the container complies with federal trademark or copyright laws.

(3) A person who knowingly sells, holds for sale, or distributes e-liquid containers in violation of subsection (2) is guilty of a misdemeanor and, upon conviction, shall be imprisoned for not more than three years or fined not more than one thousand dollars, or both.

(4) In addition to the other penalties provided by law, law enforcement may seize and destroy or sell to the manufacturer, for export only, any containers in violation of this section.”

Sale of tobacco and alternative nicotine products to minors, age verification requirements

SECTION 6. Section 16-17-500(E) of the 1976 Code is amended by adding an appropriately numbered item to read:

“() Failure of an individual to require identification for the purpose of verifying a person’s age is prima facie evidence of a violation of this section.”

Time effective

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

Ratified the 25th day of April, 2019.

Approved the 26th day of April, 2019.
