2021 Regular Session

HOUSE BILL NO. 473

BY REPRESENTATIVE MINCEY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TOBACCO/TOBACCO PRODUCTS: Provides relative to the age limitations to purchase vapor products

1	AN ACT
2	To amend and reenact R.S. 14:91.6(A) and 91.8(C), (D), (E), and (F)(1) and (2)(introductory
3	paragraph), R.S. 26:793(C)(1), 910, 910.1(A), 911(A)(1), and 917(A)(introductory
4	paragraph), and R.S. 47:851(C)(2), and to enact R.S. 26:901.1, relative to tobacco
5	products; to provide relative to alternative nicotine products and vapor products; to
6	provide relative to the unlawful distribution, sale, and possession; to raise the
7	minimum age of persons for sale, purchase, and possession; to provide for legislative
8	facts and findings; to require unannounced compliance checks; to require
9	identification under certain circumstances; to provide relative to vending machines
10	and self-service displays; to provide for violations; and to provide for related matters.
11	Be it enacted by the Legislature of Louisiana:
12	Section 1. R.S. 14:91.6(A) and 91.8(C), (D), (E), and (F)(1) and (2)(introductory
13	paragraph) are hereby amended and reenacted to read as follows:
14	§91.6. Unlawful distribution of sample tobacco products, alternative nicotine
15	products, or vapor products to persons under age eighteen twenty-one;
16	penalty
17	A. No person shall distribute or cause to be distributed to persons under
18	eighteen twenty-one years of age a promotional sample of any tobacco product,
19	alternative nicotine product, or vapor product.
20	* * *

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

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4 C. It is unlawful for any manufacturer, distributor, retailer, or other person 5 knowingly to sell or distribute any tobacco product, alternative nicotine product, or 6 vapor product to a person under the age of eighteen twenty-one. However, it shall 7 not be unlawful for a person under the age of eighteen twenty-one to accept receipt 8 of a tobacco product, alternative nicotine product, or vapor product from an 9 employer when required in the performance of such person's duties. At the point of 10 purchase sale, a sign, in not less than 30-point type, shall be displayed in a manner 11 conspicuous to both employees and consumers, within any location where tobacco 12 products, alterative nicotine products, vapor products, or vapor paraphernalia and 13 devices are available for purchase, that reads "LOUISIANA LAW PROHIBITS THE 14 SALE OF TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, OR 15 VAPOR PRODUCTS, OR VAPOR PARAPHERNALIA AND DEVICES TO 16 PERSONS UNDER AGE 18 21". The sign shall also include a notice that displays 17 the telephone number for the Louisiana Tobacco Quitline (1-800-QUIT-NOW) and 18 the website for the Louisiana Tobacco Quitline (www.quitwithusla.org), as 19 determined by the state department of health Louisiana Department of Health.

§91.8. Unlawful sale, purchase, or possession of tobacco, alternative nicotine

product products, or vapor product products; signs required; penalties

20 D. It is unlawful for a vending machine operator to place in use a vending 21 machine to vend any tobacco product, alternative nicotine product, or vapor product 22 automatically, unless the machine displays a sign or sticker in not less than 22-point 23 type on the front of the machine stating, "LOUISIANA LAW PROHIBITS THE 24 SALE OF TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, OR 25 VAPOR PRODUCTS TO PERSONS UNDER AGE 18 21". The sign shall also 26 include a notice that displays the telephone number for the Louisiana Tobacco 27 Quitline (1-800-QUIT-NOW) and the website for the Louisiana Tobacco Quitline 28 (www.quitwithusla.org), as determined by the state department of health Louisiana 29 Department of Health.

1	E. It is unlawful for any person under the age of eighteen twenty-one to buy
2	be sold any tobacco product, alternative nicotine product, or vapor product.
3	F.(1) It is unlawful for any person under the age of eighteen twenty-one to
4	possess any tobacco product, alternative nicotine product, or vapor product.
5	(2) However, it shall not be unlawful for a person under the age of eighteen
6	twenty-one to possess a tobacco product, alternative nicotine product, or vapor
7	product under any of the following circumstances:
8	* * *
9	Section 2. R.S. 26:793(C)(1), 910, 910.1(A), 911(A)(1), and 917(A)(introductory
10	paragraph) are hereby amended and reenacted and R.S. 26:901.1 is hereby enacted to read
11	as follows:
12	§793. Additional powers of the commissioner
13	* * *
14	C.(1) In order to ensure compliance with laws prohibiting the sale or service
15	of alcoholic beverages, tobacco, alternative nicotine, or vapor products to underage
16	persons, the commissioner shall <u>at least once</u> annually conduct random, unannounced
17	inspections at locations where alcoholic beverages, tobacco, or alternative nicotine,
18	or vapor products are sold, served, or distributed. Persons under over the age of
19	eighteen or sixteen and under the age of twenty-one may shall be enlisted by
20	employees of the office of alcohol and tobacco control to test compliance, but such
21	persons may be used only if the testing is conducted under the direct supervision of
22	such employees and written parental consent has been provided if the person is under
23	the age of eighteen. Any person under the age of eighteen or twenty-one shall either
24	carry the person's own identification showing the person's correct date of birth or
25	shall carry no identification. A person under the age of eighteen or twenty-one who
26	carries identification shall, on request, present it to any seller or server of alcoholic
27	beverages, tobacco, or alternative nicotine or vapor products. In addition, any person
28	under the age of eighteen or twenty-one enlisted under this Subsection shall
29	truthfully answer any questions about the person's age. Except where expressly

1	authorized in writing by the commissioner in furtherance of the objectives of this
2	Section, any other use of persons under the age of eighteen or twenty-one to test
3	compliance with the provisions of this Section or any other prohibition of like or
4	similar import shall be unlawful and the person or persons responsible for such use
5	shall be subject to the penalties prescribed in this Title or R.S. 14:91.6, 91.8(H), 92,
6	or 93.11. Unannounced follow-up compliance checks of all noncompliant retailers
7	are required within three months of any violation of this Chapter.
8	* * *
9	§901.1. Facts and findings
10	A. The federal Further Consolidated Appropriations Act of 2020 (P.L. 116-
11	94) raised the federal minimum age for sale of tobacco products from eighteen years
12	old to twenty-one years old. The Section of that Act providing for this change
13	became known as "Tobacco 21" or "T21". The new federal minimum age of sale of
14	tobacco and tobacco products was effective immediately and applies to all retail
15	establishments and persons with no exceptions.
16	B.(1) Federal enforcement of the federal change in age is through the federal
17	block grant program for mental health and substance abuse. In 1992, Congress
18	enacted the Alcohol, Drug Abuse, and Mental Health Administration Reorganization
19	Act (P.L. 102-321), which included an amendment (Section 1926 known as the
20	Synar Amendment) aimed at decreasing youth access to tobacco. This amendment
21	requires states to enact and enforce laws regarding tobacco and tobacco product sales
22	in compliance with federal law in order to receive their full Substance Abuse
23	Prevention and Treatment Block Grant (SABG) award.
24	(2) T21 contained a transition period of three years from the date of
25	enactment before dollars may be withheld from a SABG award to a state for
26	noncompliance. The Act requires states to document and report to the secretary of
27	the federal Department of Health and Human Services efforts made to come into
28	compliance with federal law.

1	(3) T21 provides for the United States Food and Drug Administration to
2	continue to conduct random and unannounced compliance check inspections on
3	tobacco product retailers to determine a retailer's compliance with federal law and
4	regulations. While T21 did not provide for a grace period or transition period for
5	tobacco retailers, the United States Food and Drug Administration has agreed to
6	continue to use minors under the age of eighteen for undercover buy inspections in
7	its compliance check program.
8	$\underline{C.(1)}$ In addition to the federal mandate, there is a growing body of evidence
9	about health problems related to tobacco and vapor use by youth.
10	(2) In 2016, the Substance Abuse and Mental Health Service Administration
11	conducted a national survey on drug use and health which showed that about ninety-
12	five percent of adult smokers began smoking before turning twenty-one years of age
13	and nearly eighty percent of them were daily smokers by the age of twenty-one. This
14	is significant because in 2014 the Surgeon General released a report entitled The
15	Health Consequences of Smoking: 50 Years of Progress which recognized that
16	adolescence and young adulthood are critical periods of growth and exposure to
17	nicotine can have lasting, negative consequences on brain development.
18	(3) Both the United States Food and Drug Administration and the United
19	States Centers for Disease Control and Prevention are working to investigate the
20	distressing incidents of severe respiratory illness and deaths associated with use of
21	vaping products and have issued consumer warnings and alerts on the matter. The
22	warnings and alerts include a recommendation that vaping products should never be
23	used by youth.
24	* * *
25	§910. Vending machines
26	In order to prevent persons under eighteen twenty-one years of age from
27	purchasing or receiving tobacco products, alternative nicotine products, or vapor
28	products from vending machines, the sale or delivery of such products through a
29	vending machine is prohibited unless either of the following apply:

(1) The machine is located in an establishment to which persons under the
age of eighteen <u>twenty-one</u> are denied access.
(2) The machine is located in facilities where the dealer ensures that no
person younger than eighteen twenty-one years of age is present or permitted to enter
at any time and the machine is located within the unobstructed line of sight of a
dealer or a dealer's agent or employee who is responsible for preventing persons
younger than eighteen twenty-one years of age from purchasing tobacco products,
alternative nicotine products, or vapor products through that machine.
§910.1. Self-service displays
A. In order to prevent persons under eighteen twenty-one years of age from
purchasing or receiving tobacco products, alternative nicotine products, or vapor
products from self-service displays, the sale or delivery of such products through a
self-service display is prohibited unless the machine is a vending machine as defined
in R.S. 26:910 that complies with the terms and provisions of that Section.
* * *
§911. Acts prohibited
A. No person, agent, associate, employee, representative, or servant of any
person shall permit any of the following acts to be done on or about any premises
which sells or offers for sale tobacco products, alternative nicotine products, or vapor
products:
(1) Sell or serve tobacco products, alternative nicotine products, or vapor
products over-the-counter in a retail establishment to any person under the age of
eighteen unless such person submits twenty-one. All persons engaging in the retail
sale of tobacco products, alternative nicotine products, or vapor products shall check
the identification of any tobacco purchaser to establish the age of the purchaser. A
person shall verify age by submitting a driver's license, selective service card, or
other lawful identification which on its face establishes the age of the person as

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1	eighteen twenty-one years or older and there is no reason to doubt the authenticity
2	or correctness of the identification.
3	* * *
4	§917. Violations by employee; employer liability
5	A. Sale of tobacco products, alternative nicotine products, or vapor products
6	to a minor person under twenty-one years of age by a retail dealer's agent, associate,
7	employee, representative, or servant shall be considered an act of the retail dealer for
8	purposes of suspension, revocation, or assessment of civil penalties unless all of the
9	following conditions exist:
10	* * *
11	Section 3. R.S. 47:851(C)(2) is hereby amended and reenacted to read as follows:
12	§851. Monthly reports required; dealers receiving unstamped cigarettes, cigars, and
13	smoking tobaccos; dealers receiving certain items for which taxes are not paid;
14	vending machine restrictions
15	* * *
16	C. Vending machine operators.
17	* * *
18	(2) In accordance with R.S. 14:91.8(D), vending machine operators shall
19	affix a sign or sticker in not less than 22-point type on the front of each machine
20	stating, "LOUISIANA LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS,
21	ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR PRODUCTS TO
22	PERSONS UNDER AGE 18 <u>21</u> ".
23	* * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 473 Reengrossed	2021 Regular Session	Mincey
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Abstract: Raises the minimum age for the prohibition of the distribution or sale of tobacco, alternative nicotine products, or vapor products <u>from</u> persons under the age of 18 to those under the age of 21.

<u>Present law</u> prohibits the distribution of promotional samples of any tobacco product, alternative nicotine product, or vapor product to persons under the age of 18.

Proposed law raises the minimum age from 18 to 21 years.

<u>Present law</u> prohibits manufacturers, distributors, retailers, or other persons from selling or distributing any tobacco product, alternative nicotine product, or vapor product to persons under the age of 18.

<u>Proposed law</u> raises the minimum age from 18 to 21 years and removes the requirement for knowledge in the sale or distribution of any tobacco product, alternative nicotine product, or vapor product to persons under the age of 21.

Proposed law provides for legislative facts and findings.

<u>Present law</u> further requires signs at points of sale and on vending machines for tobacco products.

<u>Proposed law</u> requires signs at the point of sale to be placed in a manner conspicuous to both employees and consumers, within any location where tobacco products, alternative nicotine products, or vapor products are available for purchase.

<u>Present law</u> prohibits any person under the age of 18 from buying any tobacco product, alternative nicotine product, or vapor product.

<u>Proposed law</u> changes <u>present law</u> by prohibiting the sale of any tobacco product, alternative nicotine product, or vapor product to persons under the age of 21.

<u>Present law</u> prohibits any person under the age of 18 from possessing any tobacco product, alternative nicotine product, or vapor product, unless accompanied by a parent, spouse, or legal guardian who is over 21 years old, or in a private residence, or when the product is handled in the course and scope of employment and required in the performance of such person's duties.

Proposed law changes the age to 21.

<u>Present law</u> requires the commissioner of alcohol and tobacco control to annually conduct random, unannounced inspections at locations where tobacco products are sold and distributed. The office of alcohol and tobacco control may enlist persons under the age of 18 to test compliance if the testing is under the direct supervision of employees of the office of alcohol and tobacco control and written parental consent has been provided.

<u>Proposed law</u> changes <u>present law</u> allowing persons between the age of 16 and 21 to be enlisted to test compliance. Further requires unannounced follow-up compliance checks of all noncompliant retailers within three months of any violation of <u>proposed law</u>.

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<u>Present law</u> allows for the purchase of tobacco products from vending machines and self-service displays by persons 18 years of age or older.

Proposed law changes present law by raising the minimum age from 18 to 21 years of age.

Present law prohibits the sale of tobacco products to anyone under the age of 18.

<u>Proposed law</u> amends <u>present law</u> by raising the minimum age <u>from</u> 18 to 21 years of age for persons who may be sold tobacco products. <u>Proposed law</u> adds to <u>present law</u> by requiring that all persons engaging in the sale of tobacco products check the identification of any person attempting to purchase such product.

<u>Present law</u> requires that signs at points of sale and on vending machines for tobacco products reflect "LOUISIANA LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 18".

<u>Proposed law</u> updates the wording on signs required to be posted to reflect the minimum age change from 18 to 21.

(Amends R.S. 14:91.6(A) and 91.8(C), (D), (E), and (F)(1) and (2)(intro. para.), R.S. 26:793(C)(1), 910, 910.1(A), 911(A)(1), and 917(A)(into. para.), and R.S. 47:851(C)(2); Adds R.S. 26:901.1)

Summary of Amendments Adopted by House

- The Committee Amendments Proposed by <u>House Committee on Judiciary</u> to the <u>original</u> bill:
- 1. Change the term "compliance checks" to "inspections".
- 2. Delete the requirement that all compliance checks be made publicly available.
- 3. Remove the requirement for identification checks of persons who appear to be under 30 years of age and require checks for all persons.

The House Floor Amendments to the engrossed bill:

1. Make technical changes.