

ACT No. 403

2021 Regular Session

HOUSE BILL NO. 473

BY REPRESENTATIVE MINCEY

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AN ACT

To amend and reenact R.S. 14:91.6(A) and 91.8(C), (D), (E), and (F)(1) and (2)(introductory paragraph), R.S. 26:793(C)(1), 910, 910.1(A), 911(A)(1), and 917(A)(introductory paragraph), and R.S. 47:851(C)(2), and to enact R.S. 26:901.1, relative to tobacco products; to provide relative to alternative nicotine products and vapor products; to provide relative to the unlawful distribution, sale, and possession; to raise the minimum age of persons for sale, purchase, and possession; to provide for legislative facts and findings; to require unannounced compliance checks; to require identification under certain circumstances; to provide relative to vending machines and self-service displays; to provide for violations; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:91.6(A) and 91.8(C), (D), (E), and (F)(1) and (2)(introductory paragraph) are hereby amended and reenacted to read as follows:

§91.6. Unlawful distribution of sample tobacco products, alternative nicotine products, or vapor products to persons under age ~~eighteen~~ twenty-one; penalty

A. No person shall distribute or cause to be distributed to persons under ~~eighteen~~ twenty-one years of age a promotional sample of any tobacco product, alternative nicotine product, or vapor product.

* * *

§91.8. Unlawful sale, purchase, or possession of tobacco, alternative nicotine ~~product~~ products, or vapor ~~product~~ products; signs required; penalties

* * *

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

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

27 E. It is unlawful for any person under the age of ~~eighteen~~ twenty-one to ~~buy~~
28 be sold any tobacco product, alternative nicotine product, or vapor product.

29 F.(1) It is unlawful for any person under the age of ~~eighteen~~ twenty-one to
30 possess any tobacco product, alternative nicotine product, or vapor product.

1 (2) However, it shall not be unlawful for a person under the age of ~~eighteen~~
2 twenty-one to possess a tobacco product, alternative nicotine product, or vapor
3 product under any of the following circumstances:

4 * * *

5 Section 2. R.S. 26:793(C)(1), 910, 910.1(A), 911(A)(1), and 917(A)(introductory
6 paragraph) are hereby amended and reenacted and R.S. 26:901.1 is hereby enacted to read
7 as follows:

8 §793. Additional powers of the commissioner

9 * * *

10 C.(1) In order to ensure compliance with laws prohibiting the sale or service
11 of alcoholic beverages, tobacco, alternative nicotine, or vapor products to underage
12 persons, the commissioner shall at least once annually conduct random, unannounced
13 inspections at locations where alcoholic beverages, tobacco, or alternative nicotine,
14 or vapor products are sold, served, or distributed. Persons ~~under~~ over the age of
15 ~~eighteen or sixteen and under the age of~~ twenty-one ~~may~~ shall be enlisted by
16 employees of the office of alcohol and tobacco control to test compliance, but such
17 persons may be used only if the testing is conducted under the direct supervision of
18 such employees and written parental consent has been provided if the person is under
19 the age of eighteen. Any person under the age of eighteen or twenty-one shall either
20 carry the person's own identification showing the person's correct date of birth or
21 shall carry no identification. A person under the age of ~~eighteen or~~ twenty-one who
22 carries identification shall, on request, present it to any seller or server of alcoholic
23 beverages, tobacco, or alternative nicotine or vapor products. In addition, any person
24 under the age of ~~eighteen or~~ twenty-one enlisted under this Subsection shall
25 truthfully answer any questions about the person's age. Except where expressly
26 authorized in writing by the commissioner in furtherance of the objectives of this
27 Section, any other use of persons under the age of ~~eighteen or~~ twenty-one to test
28 compliance with the provisions of this Section or any other prohibition of like or
29 similar import shall be unlawful and the person or persons responsible for such use
30 shall be subject to the penalties prescribed in this Title or R.S. 14:91.6, 91.8(H), 92,

1 or 93.11. Unannounced follow-up compliance checks of all noncompliant retailers
2 are required within three months of any violation of this Chapter.

3 * * *

4 §901.1. Facts and findings

5 A. The federal Further Consolidated Appropriations Act of 2020 (P.L. 116-
6 94) raised the federal minimum age for sale of tobacco products from eighteen years
7 old to twenty-one years old. The Section of that Act providing for this change
8 became known as "Tobacco 21" or "T21". The new federal minimum age of sale of
9 tobacco and tobacco products was effective immediately and applies to all retail
10 establishments and persons with no exceptions.

11 B.(1) Federal enforcement of the federal change in age is through the federal
12 block grant program for mental health and substance abuse. In 1992, Congress
13 enacted the Alcohol, Drug Abuse, and Mental Health Administration Reorganization
14 Act (P.L. 102-321), which included an amendment (Section 1926 known as the
15 Synar Amendment) aimed at decreasing youth access to tobacco. This amendment
16 requires states to enact and enforce laws regarding tobacco and tobacco product sales
17 in compliance with federal law in order to receive their full Substance Abuse
18 Prevention and Treatment Block Grant (SABG) award.

19 (2) T21 contained a transition period of three years from the date of
20 enactment before monies may be withheld from a SABG award to a state for
21 noncompliance. The Act requires states to document and report to the secretary of
22 the United States Department of Health and Human Services efforts made to come
23 into compliance with federal law.

24 (3) T21 provides for the United States Food and Drug Administration to
25 continue to conduct random and unannounced compliance check inspections on
26 tobacco product retailers to determine a retailer's compliance with federal law and
27 regulations. While T21 did not provide for a grace period or transition period for
28 tobacco retailers, the United States Food and Drug Administration has agreed to
29 continue to use minors under the age of eighteen for undercover buy inspections in
30 its compliance check program.

1 §910.1. Self-service displays

2 A. In order to prevent persons under ~~eighteen~~ twenty-one years of age from
3 purchasing or receiving tobacco products, alternative nicotine products, or vapor
4 products from self-service displays, the sale or delivery of such products through a
5 self-service display is prohibited unless the machine is a vending machine as defined
6 in R.S. 26:910 that complies with the terms and provisions of that Section.

7 * * *

8 §911. Acts prohibited

9 A. No person, agent, associate, employee, representative, or servant of any
10 person shall permit any of the following acts to be done on or about any premises
11 which sells or offers for sale tobacco products, alternative nicotine products, or vapor
12 products:

13 (1) Sell or serve tobacco products, alternative nicotine products, or vapor
14 products over-the-counter in a retail establishment to any person under the age of
15 ~~eighteen unless such person submits~~ twenty-one. All persons engaging in the retail
16 sale of tobacco products, alternative nicotine products, or vapor products shall check
17 the identification of any tobacco purchaser to establish the age of the purchaser. A
18 person shall verify age by submitting a driver's license, selective service card, or
19 other lawful identification which on its face establishes the age of the person as
20 ~~eighteen~~ twenty-one years or older and there is no reason to doubt the authenticity
21 or correctness of the identification.

22 * * *

23 §917. Violations by employee; employer liability

24 A. Sale of tobacco products, alternative nicotine products, or vapor products
25 to a ~~minor~~ person under twenty-one years of age by a retail dealer's agent, associate,
26 employee, representative, or servant shall be considered an act of the retail dealer for
27 purposes of suspension, revocation, or assessment of civil penalties unless all of the
28 following conditions exist:

29 * * *

1 Section 3. R.S. 47:851(C)(2) is hereby amended and reenacted to read as follows:

2 §851. Monthly reports required; dealers receiving unstamped cigarettes, cigars, and
3 smoking tobaccos; dealers receiving certain items for which taxes are not
4 paid; vending machine restrictions

5 * * *

6 C. Vending machine operators.

7 * * *

8 (2) In accordance with R.S. 14:91.8(D), vending machine operators shall
9 affix a sign or sticker in not less than 22-point type on the front of each machine
10 stating, "LOUISIANA LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS,
11 ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR PRODUCTS TO
12 PERSONS UNDER AGE ~~18~~ 21".

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____