

2019 Regular Session

HOUSE BILL NO. 38

BY REPRESENTATIVE HOFFMANN

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

CRIME: Raises the minimum age relative to the distribution, sale, purchase, or possession of tobacco products, alternative nicotine products, or vapor products

1 AN ACT

2 To amend and reenact R.S. 14:91.6(A) and 91.8(C) through (E), R.S. 26:793(C)(1), 910,
3 910.1(A), 911(A)(1), and 917, and R.S. 47:851(C)(2) and to repeal R.S. 14:91.8(F),
4 relative to offenses affecting general morality; to provide relative to the unlawful
5 distribution or sale of tobacco, alternative nicotine, or vapor products; to raise the
6 minimum age of persons relative to the distribution or sale of any tobacco,
7 alternative nicotine, or vapor product; to require unannounced compliance checks;
8 to increase the age of persons permitted to receive tobacco products from vending
9 machines; to increase the age of persons permitted to receive tobacco products from
10 self-serve displays; to require identification under certain circumstances; and to
11 provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 14:91.6(A) and 91.8(C) through (E) are hereby amended and
14 reenacted to read as follows:

15 §91.6. Unlawful distribution of sample tobacco products, alternative nicotine
16 products, or vapor products to persons under age ~~eighteen~~ twenty-one;
17 penalty

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

21 * * *

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 or the Prevention
3 of Youth Access to Tobacco Law. The results of all compliance checks shall be
4 made publicly available.

5 * * *

6 §910. Vending machines

7 In order to prevent persons under ~~eighteen~~ twenty-one years of age from
8 purchasing or receiving tobacco products, alternative nicotine products, or vapor
9 products from vending machines, the sale or delivery of such products through a
10 vending machine is prohibited unless either of the following apply:

11 (1) The machine is located in an establishment to which persons under the
12 age of ~~eighteen~~ twenty-one are denied access.

13 (2) The machine is located in facilities where the dealer ensures that no
14 person younger than ~~eighteen~~ twenty-one years of age is present or permitted to enter
15 at any time and the machine is located within the unobstructed line of sight of a
16 dealer or a dealer's agent or employee who is responsible for preventing persons
17 younger than ~~eighteen~~ twenty-one years of age from purchasing tobacco products,
18 alternative nicotine products, or vapor products through that machine.

19 §910.1. Self-service displays

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

25 * * *

26 §911. Acts prohibited

27 A. No person, agent, associate, employee, representative, or servant of any
28 person shall permit any of the following acts to be done on or about any premises

1 which sells or offers for sale tobacco products, alternative nicotine products, or vapor
2 products:

3 (1) Sell or serve tobacco products, alternative nicotine products, or vapor
4 products over-the-counter in a retail establishment to any person under the age of
5 ~~eighteen~~ twenty-one. All persons engaging in the retail sale of tobacco products,
6 alternative nicotine products, or vapor products shall check the identification of
7 tobacco purchasers to establish the age of the purchaser if the person appears to be
8 under the age of thirty. A person shall verify age by submitting ~~unless such person~~
9 ~~submits~~ a driver's license, selective service card, or other lawful identification which
10 on its face establishes the age of the person as ~~eighteen~~ twenty-one years or older and
11 there is no reason to doubt the authenticity or correctness of the identification.

12 * * *

13 §917. Violations by employee; employer liability

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

19 (1) ~~The employer requires employees to attend a commissioner-approved~~
20 ~~seller training program.~~

21 (2) ~~The employee actually attends the training program.~~

22 (3) ~~The employer does not directly or indirectly encourage the employee to~~
23 ~~violate the prohibited sales provisions of this Chapter.~~

24 ~~B.~~ ~~The commissioner shall establish by administrative rule the minimum~~
25 ~~requirements for an approved seller training program. Upon submission of an~~
26 ~~application which establishes the course curriculum the commissioner may approve~~
27 ~~seller training programs with the minimum requirements. Training courses may be~~
28 ~~approved which are offered through private seminars or by accredited colleges or~~

1 ~~universities. The commissioner may charge an application fee in such amount as is~~
2 ~~necessary to defray the expense of processing the application.~~

3 ~~C. The provisions of Subsection A of this Section shall not apply if a retail~~
4 ~~dealer, or lawful retailer of alternative nicotine products or vapor products, as~~
5 ~~applicable, within one hundred eighty days from the hiring of an agent, associate,~~
6 ~~employee, representative, or servant can prove that he has made application to have~~
7 ~~the employee attend a training program or the retail dealer or lawful retailer, as~~
8 ~~applicable, has received an extension of time in which to comply from the~~
9 ~~commissioner because of unavailability of a training program.~~

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

12 §851. Monthly reports required; dealers receiving unstamped cigarettes, cigars, and
13 smoking tobaccos; dealers receiving certain items for which taxes are not
14 paid; 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~~ 21".

23 * * *

24 Section 4. R.S. 14:91.8(F) is hereby repealed in its entirety.

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 38 Engrossed

2019 Regular Session

Hoffmann

Abstract: Raises the minimum age for the distribution or sale of tobacco, alternative nicotine products, or vapor products from persons under the age of 18 to those under 21 years of age.

Present law 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.

Present law 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.

Proposed law 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.

Present law further requires signs at points of sale and on vending machines for tobacco products stating, "LOUISIANA LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 18".

Proposed law requires signs at the point of sale to be placed in a manner conspicuous to both employees and consumers, within 6 feet of each register and any other location where tobacco products, alternative nicotine products, or vapor products are available for purchase.

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

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

Present law prohibits any person under the age of 18 from possessing any tobacco product, alternative nicotine product, or vapor product.

Proposed law repeals present law.

Present law 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.

Proposed law changes present law by requiring that compliance checks, instead of inspections, take place at least once annually. Persons under the age of 21 shall be enlisted to test compliance. Further requires unannounced follow-up compliance checks of all noncompliant retailers within 3 months of any violation of present law. The results of those compliance checks are required to be made publicly available.

Present law allows for the purchase of tobacco products from vending machines by persons 18 years of age or older.

Proposed law amends present law by raising the minimum age from 18 to 21 years of persons who can purchase or receive tobacco products, alternative nicotine products, or vapor products from vending machines.

Present law allows for the purchase of tobacco products from self-service displays by persons 18 years of age or older.

Proposed law amends present law by raising the minimum age from 18 to 21 years of persons who can purchase or receive tobacco products, alternative nicotine products, or vapor products from self-service displays.

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

Proposed law amends present law by raising the minimum age from 18 to 21 years of persons who may be sold tobacco products. Proposed law adds to present law by requiring that all persons engaging in the sale of tobacco products check the identification of any person attempting to purchase such product who appears under the age of 30.

Present law allows a retail dealer to meet certain conditions that would mitigate the consequences suffered if that retailer is found to be in violation of present law. Present law also requires the commissioner to establish by administrative rules the minimum requirements for an approved seller training program. Present law also exempts a retailer agent from the penalties of a violation if, within 180 days from the hiring of an agent, the retailer can prove that he has made an application to have the employee attend a training program.

Proposed law repeals present law.

Present law 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".

Proposed law updates the wording on signs required to be posted on vending machines to reflect the minimum age change from 18 to 21.

(Amends R.S. 14:91.6(A) and 91.8(C)-(E), R.S. 26:793(C)(1), 910, 910.1(A), 911(A)(1), and 917, and R.S. 47:851(C)(2); Repeals R.S. 14:91.8(F))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Revise present law by eliminating the words "purchase or possession".
2. Revise present law by removing the requirement that a manufacturer, distributor, or retailer have actual knowledge that they are selling or distributing a tobacco product, alternative nicotine product, or vapor product to a person under the age of 21.
3. Revise present law by requiring the posting of signs at the point of sale instead of at the point of purchase.
4. Add additional posting requirements for signs prohibiting the sale of tobacco products, alternative nicotine products, or vapor products.

5. Repeal provision that makes it unlawful for a person under the age of 18 to possess tobacco products, alternative nicotine products, or vapor products.
6. Add to the powers of the commissioner of alcohol and tobacco control by requiring unannounced follow-up compliance checks within 3 months of any violation and mandate that the results of such check be made publicly available.
7. Raise the minimum age from 18 to 21 years of persons enlisted by employees of the office of alcohol and tobacco control to test compliance.
8. Raise the minimum age from 18 to 21 years for any person purchasing tobacco products or alternative nicotine products from vending machines and self-service displays.
9. Require retailers to check the identification of anyone attempting to purchase tobacco products or alternative nicotine products who appear to be under the age of 30.
10. Repeal conditions under which the sale of tobacco products to a minor by a retail dealer's agent, associate, employee, representative, or servant can be considered the act of the retail dealer for the purposes of suspension, revocation, or assessment of civil penalties.
11. Update the wording on signs required to be posted on vending machines to reflect the minimum age change from 18 to 21 years.
12. Make technical changes.