

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

13 Be it enacted by the Legislature of Louisiana:

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

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

19 A. ~~No~~ Except as provided in Subsection D of this Section, no person shall
20 distribute or cause to be distributed to persons under ~~eighteen~~ twenty-one years of

1 age a promotional sample of any tobacco product, alternative nicotine product, or
 2 vapor product. The provisions of this Section shall not apply to persons under
 3 twenty-one years of age who are either first responders as defined by R.S. 23:1017.1
 4 or active members or veterans of the armed forces.

5 * * *

6 D. Notwithstanding the provisions of this Section or any other provision of
 7 law to the contrary, nothing in this Section shall be construed to apply if a product
 8 or combination of products are distributed or are caused to be distributed to a person
 9 who has reached the age of eighteen before December 31, 2019.

10 * * *

11 §91.8. Unlawful sale, ~~purchase, or possession~~ of tobacco, alternative nicotine
 12 ~~product~~ products, or vapor ~~product~~ products; signs required; penalties

13 * * *

14 C. It is unlawful for any manufacturer, distributor, retailer, or other person
 15 ~~knowingly~~ to sell or distribute any tobacco product, alternative nicotine product, or
 16 vapor product to a person under the age of ~~eighteen~~ twenty-one. However, it shall
 17 not be unlawful for a person under the age of ~~eighteen~~ twenty-one to accept receipt
 18 of a tobacco product, alternative nicotine product, or vapor product from an
 19 employer when required in the performance of such person's duties. At the point of
 20 ~~purchase~~ sale, a sign, in not less than 30-point type, shall be displayed in a manner
 21 conspicuous to both employees and consumers, within six feet of each register and
 22 any other location where tobacco products, alternative nicotine products, or vapor
 23 products are available for purchase, that reads "LOUISIANA LAW PROHIBITS
 24 THE SALE OF TOBACCO PRODUCTS, ALTERNATIVE NICOTINE
 25 PRODUCTS, OR VAPOR PRODUCTS TO PERSONS UNDER AGE ~~18~~ 21.
 26 PERSONS WHO HAVE REACHED THE AGE OF 18 OR OLDER ON OR
 27 BEFORE DECEMBER 31, 2019, ARE NOT SUBJECT TO THIS PROHIBITION".
 28 The sign shall also include a notice that displays the telephone number for the
 29 Louisiana Tobacco Quitline (1-800-QUIT-NOW) and the website for the Louisiana

1 Tobacco Quitline (www.quitwithusla.org), as determined by the ~~state department of~~
2 ~~health~~ Louisiana Department of Health.

3 D. It is unlawful for a vending machine operator to place in use a vending
4 machine to vend any tobacco product, alternative nicotine product, or vapor product
5 automatically, unless the machine displays a sign or sticker in not less than 22-point
6 type on the front of the machine stating, "LOUISIANA LAW PROHIBITS THE
7 SALE OF TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, OR
8 VAPOR PRODUCTS TO PERSONS UNDER AGE ~~18~~ 21. PERSONS WHO HAVE
9 REACHED THE AGE OF 18 OR OLDER ON OR BEFORE DECEMBER 31, 2019,
10 ARE NOT SUBJECT TO THIS PROHIBITION". The sign shall also include a
11 notice that displays the telephone number for the Louisiana Tobacco Quitline (1-800-
12 QUIT-NOW) and the website for the Louisiana Tobacco Quitline
13 (www.quitwithusla.org), as determined by the ~~state department of health~~ Louisiana
14 Department of Health.

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

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

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

22 (a) When a person under ~~eighteen~~ twenty-one years of age is accompanied
23 by a parent, spouse, or legal guardian twenty-one years of age or older.

24 (b) In private residences.

25 (c) When the tobacco product, alternative nicotine product, or vapor product
26 is handled during the course and scope of his employment and required in the
27 performance of such person's duties.

28 (d) When the person is an active member or veteran of the armed forces.

1 any seller or server of alcoholic beverages, tobacco, or alternative nicotine or vapor
 2 products. In addition, any person under the age of ~~eighteen~~ or twenty-one enlisted
 3 under this Subsection shall truthfully answer any questions about the person's age.
 4 Except where expressly authorized in writing by the commissioner in furtherance of
 5 the objectives of this Section, any other use of persons under the age of ~~eighteen~~ or
 6 twenty-one to test compliance with the provisions of this Section or any other
 7 prohibition of like or similar import shall be unlawful and the person or persons
 8 responsible for such use shall be subject to the penalties prescribed in this Title or
 9 R.S. 14:91.6, 91.8(H), 92, or 93.11. Unannounced follow-up compliance checks of
 10 all noncompliant retailers are required within three months of any violation of this
 11 Chapter or the Prevention of Youth Access to Tobacco Law. The results of all
 12 compliance checks shall be made publicly available.

* * *

14 §910. Vending machines

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

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

21 (2) The machine is located in facilities where the dealer ensures that no
 22 person younger than ~~eighteen~~ twenty-one years of age is present or permitted to enter
 23 at any time and the machine is located within the unobstructed line of sight of a
 24 dealer or a dealer's agent or employee who is responsible for preventing persons
 25 younger than ~~eighteen~~ twenty-one years of age from purchasing tobacco products,
 26 alternative nicotine products, or vapor products through that machine. The
 27 provisions of this Section shall not apply to any person under twenty-one years of
 28 age who is either a first responder as defined by R.S. 23:1017.1 or an active member
 29 or veteran of the armed forces.

1 tobacco products, alternative nicotine products, or vapor products shall check the
 2 identification of tobacco purchasers to establish the age, first responder status or
 3 military status of the purchaser if the person appears to be under the age of thirty. A
 4 person shall verify age by submitting ~~unless such person submits~~ a driver's license,
 5 selective service card, or other lawful identification which on its face establishes the
 6 age of the person as ~~eighteen~~ twenty-one years or older, a first responder as defined
 7 by R.S. 23:1017.1 or an active member or veteran of the armed forces and there is
 8 no reason to doubt the authenticity or correctness of the identification.

9 * * *

10 D. Notwithstanding the provisions of this Section or any other provision of
 11 law to the contrary, nothing in this Section shall be construed to apply if a product
 12 or combination of products are sold or served to a person who has reached the age
 13 of eighteen or older on or before December 31, 2019.

14 * * *

15 §917. Violations by employee; employer liability

16 A. Sale of tobacco products, alternative nicotine products, or vapor products
 17 to a ~~minor~~ person under twenty-one years of age by a retail dealer's agent, associate,
 18 employee, representative, or servant shall be considered an act of the retail dealer for
 19 purposes of suspension, revocation, or assessment of civil penalties. The provisions
 20 of this Section shall not apply for products sold to any person under twenty-one years
 21 of age who is either a first responder as defined by R.S. 23:1017.1 or an active
 22 member or veteran of the armed forces. ~~unless all of the following conditions exist:~~

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

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

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

28 ~~B. The commissioner shall establish by administrative rule the minimum~~
 29 ~~requirements for an approved seller training program. Upon submission of an~~

1 ~~application which establishes the course curriculum the commissioner may approve~~
2 ~~seller training programs with the minimum requirements. Training courses may be~~
3 ~~approved which are offered through private seminars or by accredited colleges or~~
4 ~~universities. The commissioner may charge an application fee in such amount as is~~
5 ~~necessary to defray the expense of processing the application.~~

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

13 B. Notwithstanding the provisions of this Section or any other provision of
14 law to the contrary, nothing in this Section shall be construed to apply if a product
15 or combination of products are sold to a person who has reached the age of eighteen
16 or older on or before December 31, 2019.

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

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

21 * * *

22 C. Vending machine operators.

23 * * *

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

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 between the age of 18 and 21 shall be enlisted to test compliance. Further requires unannounced follow-up compliance checks of all noncompliant retailers within three months of any violation of present law. The results of 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 changes present law by raising the minimum age from 18 to 21 years of age for persons who can purchase or receive tobacco products, alternative nicotine products, or vapor products from vending machines. Proposed law exempts persons 18 years old on or before Dec. 31, 2019, and first responders or active members or veterans of the armed forces.

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 age for persons who can purchase or receive tobacco products, alternative nicotine products, or vapor products from self-service displays. Proposed law exempts persons 18 years old on or before Dec. 31, 2019, and first responders or active members or veterans of the armed forces.

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 age for 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. Proposed law exempts persons 18 years old on or before Dec. 31, 2019, and first responders or active members or veterans of the armed forces.

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 and exception for persons 18 years old prior to Dec. 31, 2019.

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

The Committee Amendments Proposed by House Committee on Appropriations to the engrossed bill:

1. Add exceptions for persons who turn 18 years of age on or before Dec. 31, 2019.

2. Add exceptions for person who are first responders and active members or veterans of the armed forces. Further requires first responders and active members or veterans to carry identification to show the person's status as a first responder or member of the armed forces.
3. Add language to signs indicating the exception of persons who turn 18 years of age on or before Dec. 31, 2019.
4. Make technical corrections.