

1 HB391  
2 111440-3  
3 By Representative Hall  
4 RFD: Judiciary  
5 First Read: 05-FEB-09

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ENROLLED, An Act,

To amend Sections 28-11-2, 28-11-8, 28-11-13, 28-11-14, and 28-11-15, Code of Alabama 1975, and to add Sections 28-11-6.1 and 28-11-6.2 to the Code of Alabama 1975, relating to the sale of tobacco products to minors, to make the use of false identification by a minor to purchase tobacco products unlawful, increase the penalties for the unlawful possession of contraband tobacco, prohibit the sale of tobacco products through a self-service display, and require the posting of signs that state the sale of tobacco products to minors is prohibited; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official ReCompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 28-11-2, 28-11-8, 28-11-13, 28-11-14, and 28-11-15, Code of Alabama 1975, are amended to read as follows:

"§28-11-2.

"For purposes of this chapter, the following terms have the following meanings unless the context clearly indicates otherwise:

1           "(1) BOARD. The Alabama Alcoholic Beverage Control  
2 Board.

3           "(2) DISTRIBUTION. To sell, barter, exchange, or  
4 give tobacco or tobacco products for promotional purposes or  
5 for gratis.

6           "(3) MINOR. Any person under the age of 19 years.

7           "(4) PERSON. Any natural person, firm, partnership,  
8 association, company, corporation, or other entity. Person  
9 does not include a manufacturer or wholesaler of tobacco or  
10 tobacco products nor does it include employees of the permit  
11 holder.

12           "(5) PROOF OF IDENTIFICATION. Any one or more of the  
13 following documents used for purposes of determining the age  
14 of a person purchasing, attempting to purchase, or receiving  
15 tobacco or tobacco products:

16           "a. A valid driver's license issued by any state and  
17 bearing the photograph of the presenting person.

18           "b. United States Uniform Service Identification.

19           "c. A valid passport.

20           "d. A valid identification card issued by any state  
21 agency for the purpose of identification and bearing the  
22 photograph and date of birth of the presenting individual.

23           "e. For legal mail order purposes only a valid  
24 signed certification that will verify the individual is 19  
25 years of age or older.

1           "(6) RESPONSIBLE VENDOR PROGRAM. A program  
2 administered by the board to encourage and support vendors in  
3 training employees in legal and responsible sales practices.

4           "(7) SAMPLER. Any business or person who distributes  
5 tobacco or tobacco products for promotional purposes.

6           "(8) SELF-SERVICE DISPLAY. A display that contains  
7 tobacco or tobacco products and is located in an area openly  
8 accessible to purchasers at retail and from which such  
9 purchasers can readily access tobacco or tobacco products  
10 without the assistance of the tobacco permit holder or an  
11 employee of the permit holder. A display case that holds  
12 tobacco or tobacco products behind locked doors does not  
13 constitute a self-service display.

14           ~~(8)~~(9) TOBACCO or TOBACCO PRODUCTS. Tobacco or any  
15 product containing tobacco, including, but not limited to, the  
16 following:

- 17           "a. Cigarettes.
- 18           "b. Cigars.
- 19           "c. Chewing tobacco.
- 20           "d. Snuff.
- 21           "e. Pipe tobacco.
- 22           "f. Smokeless tobacco.

23           "~~(9)~~(10) TOBACCO PERMIT. A permit issued by the  
24 board to allow the permit holder to engage in the distribution

1 of tobacco or tobacco products at the location identified in  
2 the permit.

3 "(11) TOBACCO SPECIALTY STORE. A business that  
4 derives at least 75 percent of its revenue from tobacco or  
5 tobacco products.

6 "§28-11-8.

7 "It shall be unlawful for any person to distribute  
8 tobacco or tobacco products without first obtaining from the  
9 board the appropriate permit. Failure to obtain or display a  
10 valid permit by January 1, 1998, shall result in issuance of a  
11 warning citation. The board shall conduct an information and  
12 education campaign by its Responsible Vendor Program to inform  
13 distributors of tobacco products at retail or in vending  
14 machines or self-service displays of the requirements of this  
15 law. Failure to obtain or display a valid permit pursuant to  
16 this chapter after January 1, 1998, shall constitute a  
17 misdemeanor offense. Each violation for selling tobacco  
18 products without a valid permit shall be treated as a separate  
19 offense and be punishable as follows: For the first violation  
20 by a fine of not less than one hundred dollars (\$100) nor more  
21 than five hundred dollars (\$500) and for each subsequent  
22 violation by a fine of not less than five hundred dollars  
23 (\$500) nor more than one thousand five hundred dollars  
24 (\$1,500).

25 "§28-11-13.

1           "(a) It is unlawful for any minor to purchase, use,  
2 possess, or transport tobacco or tobacco products within this  
3 state. It shall not be unlawful for a minor employee of a  
4 tobacco permit holder to handle, transport, or sell tobacco or  
5 tobacco products if the minor employee is acting within the  
6 line and scope of employment and the permit holder, or an  
7 employee of the permit holder who is 21 years of age or older,  
8 is present.

9           "(b) It is unlawful for any minor to present or  
10 offer to another person proof of identification which is  
11 false, fraudulent, or not actually his or her own proof of  
12 identification in order to buy, receive, or otherwise obtain,  
13 or attempt to buy, receive, or otherwise obtain, any tobacco  
14 or tobacco products.

15           "§28-11-14.

16           "Any tobacco or tobacco product or false proof of  
17 identification found in the possession of a minor is  
18 contraband and subject to seizure by law enforcement. Any  
19 minor violating Section 28-11-13 shall be issued a citation  
20 similar to a uniform nontraffic citation and shall be fined  
21 not less than ten dollars (\$10) nor more than fifty dollars  
22 (\$50) for each violation.

23           "The minor shall not be required to pay any other  
24 court costs or fees. Any statute or law to the contrary  
25 notwithstanding, disposition of any violation shall be within

1 the jurisdiction of the district or municipal court and not  
2 the juvenile court. Violations shall not be considered  
3 criminal offenses and shall be administratively adjudicated by  
4 the district or municipal court.

5 "§28-11-15.

6 ~~This chapter shall be read in pari materia with~~  
7 ~~Section 13A-12-3.~~

8 ~~"(a) It is unlawful for any person to distribute~~  
9 ~~tobacco or tobacco products at retail within this state~~  
10 ~~without being presented proof of identification unless a~~  
11 ~~reasonably prudent person would conclude on the basis of the~~  
12 ~~prospective purchaser's appearance that such individual~~  
13 ~~appeared to be at least 27 years of age or older. In any~~  
14 ~~action for a violation of this subsection, it shall be an~~  
15 ~~affirmative defense that, at the time of the relevant~~  
16 ~~distribution, the purchaser of the tobacco or tobacco product~~  
17 ~~was not a minor or presented a proof of identification that a~~  
18 ~~reasonably prudent person would believe to be a valid proof of~~  
19 ~~age.~~

20 ~~"(a) It is unlawful for any person to distribute~~  
21 ~~tobacco or tobacco products at retail within this state~~  
22 ~~without being presented proof of identification unless a~~  
23 ~~reasonably prudent person would conclude on the basis of the~~  
24 ~~prospective purchaser's appearance that such individual~~  
25 ~~appeared to be at least 27 years of age or older. In any~~

1 ~~action for a violation of this subsection, it shall be an~~  
2 ~~affirmative defense that, at the time of the relevant~~  
3 ~~distribution, the purchaser of the tobacco or tobacco product~~  
4 ~~was not a minor.~~

5 "(b) (b) Any person who distributes tobacco or  
6 tobacco products within this state shall post conspicuously  
7 and keep so posted at each location of distribution and  
8 vending machines a sign that is placed in such a manner that  
9 it is likely to be read by those seeking to purchase or obtain  
10 tobacco or tobacco products. Each sign shall state that:

11 "(1) Alabama law strictly prohibits the purchase of  
12 tobacco products by persons under the age of 19.

13 "(2) Proof of age is required for the purchase of  
14 tobacco products."

15 Section 2. Sections 28-11-6.1 and 28-11-6.2 are  
16 hereby added to the Code of Alabama of 1975, to read as  
17 follows:

18 §28-11-6.1.

19 (a) No tobacco or tobacco product shall be  
20 distributed by use of a vending machine unless such machine:

21 (1) Is located in an area in which minors are not  
22 permitted ~~access.~~ access; or

23 (2) Dispenses tobacco or tobacco products through  
24 the operation of a device that requires the tobacco permit

1 holder or an employee of the permit holder to control the  
2 distribution of the product.

3 (b) No tobacco or tobacco product shall be  
4 distributed at retail by use of a vending machine if the  
5 tobacco or tobacco product is placed together with any  
6 non-tobacco product, other than matches, in the machine.

7 §28-11-6.2.

8 No tobacco or tobacco product shall be distributed  
9 at retail through a self-service display unless such display  
10 is a vending machine as permitted under Section 28-11-6.1 or  
11 is located in a tobacco specialty store.

12 Section 3. Although this bill would have as its  
13 purpose or effect the requirement of a new or increased  
14 expenditure of local funds, the bill is excluded from further  
15 requirements and application under Amendment 621, now  
16 appearing as Section 111.05 of the Official Recompilation of  
17 the Constitution of Alabama of 1901, as amended, because the  
18 bill defines a new crime or amends the definition of an  
19 existing crime.

20 Section 4. This act shall become effective on the  
21 first day of the third month following its passage and  
22 approval by the Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 30-APR-09, as amended.

Greg Pappas  
Clerk

Senate	14-MAY-09	Amended and Passed
House	14-MAY-09	Concurred in Senate Amendment