

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1487

Short Title: Prohibit Self-Service Displays for Tobacco. (Public)

Sponsors: Representatives Harrell, Martin (Primary Sponsors); Burris-Floyd, Cotham, Jackson, Ross, and Stevens.

Referred to: Health, if favorable, Commerce, Small Business, and Entrepreneurship.

April 13, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT THE DISTRIBUTION OF TOBACCO PRODUCTS IN
3 SELF-SERVICE DISPLAYS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 14-313 reads as rewritten:

6 "§ 14-313. Youth access to tobacco products.

7 (a) Definitions. – The following definitions apply in this section:

8 (1) Cigarette. – Any product that contains nicotine, is intended to be burned or
9 heated under ordinary conditions of use, and consists of or contains (i) any
10 roll of tobacco wrapped in paper or in any substance not containing tobacco;
11 (ii) tobacco, in any form, that is functional in the product, which, because of
12 its appearance, the type of tobacco used in the filler, or its packaging and
13 labeling, is likely to be offered to, or purchased by, consumers as a cigarette;
14 or (iii) any roll of tobacco wrapped in any substance containing tobacco
15 which, because of its appearance, the type of tobacco used in the filler, or its
16 packaging and labeling, is likely to be offered to, or purchased by,
17 consumers as a cigarette described in clause (i) of this definition.

18 ~~(1)~~(2) Distribute. – To sell, furnish, give, or provide tobacco products, including
19 tobacco product samples, or cigarette wrapping papers to the ultimate
20 consumer.

21 ~~(2)~~(3) Proof of age. – A drivers license or other photographic identification that
22 includes the bearer's date of birth that purports to establish that the person is
23 18 years of age or older.

24 ~~(3)~~(4) Sample. – A tobacco product distributed to members of the general public at
25 no cost for the purpose of promoting the product.

26 (5) Self-service display. – A display that contains a tobacco product and is
27 located in an area openly accessible to the ultimate consumer, and from
28 which the consumer can readily access tobacco products without the
29 assistance of the owner or licensee of the premises or an employee thereof.
30 A display case that holds tobacco products behind locked doors does not
31 constitute a self-service display.

32 (6) Smokeless tobacco. – Any finely cut, ground, or powdered tobacco that is
33 not intended to be smoked or any leaf tobacco that is not intended to be
34 smoked.

35 ~~(4)~~(7) Tobacco product. – Any product that contains tobacco and is intended for
36 human consumption.



1 this subsection is a Class 2 misdemeanor if in fact the prospective purchaser is under 18 years
2 of age. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age
3 shall be a defense to any action brought under this subsection. Vending machines distributing
4 tobacco products in establishments not meeting the above conditions shall be removed prior to
5 December 1, 1997. Any person distributing tobacco products through vending machines in
6 violation of this subsection shall be guilty of a Class 2 misdemeanor.

7 (b2) Self-service displays. – Tobacco products shall not be distributed in self-service
8 displays; provided, however, self-service displays distributing tobacco products are permitted if
9 the display (i) is located in a tobacco specialty store and does not contain cigarettes or
10 smokeless tobacco; or (ii) is a vending machine permitted under subsection (b1) of this section.
11 Self-service displays distributing tobacco products in establishments not meeting the above
12 conditions shall be removed prior to December 1, 2009. Any person distributing tobacco
13 products through a self-service display in violation of this subsection shall be guilty of a Class
14 2 misdemeanor.

15 (c) Purchase by persons under the age of 18 years. – If any person under the age of 18
16 years purchases or accepts receipt, or attempts to purchase or accept receipt, of tobacco
17 products or cigarette wrapping papers, or presents or offers to any person any purported proof
18 of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing
19 or receiving any tobacco product or cigarette wrapping papers, the person shall be guilty of a
20 Class 2 misdemeanor.

21 (d) Send or assist person less than 18 years to purchase or receive tobacco product. – If
22 any person shall send a person less than 18 years of age to purchase, acquire, receive, or
23 attempt to purchase, acquire, or receive tobacco products or cigarette wrapping papers, or if any
24 person shall aid or abet a person who is less than 18 years of age in purchasing, acquiring, or
25 receiving or attempting to purchase, acquire, or receive tobacco products or cigarette wrapping
26 papers, the person shall be guilty of a Class 2 misdemeanor; provided, however, persons under
27 the age of 18 may be enlisted by police or local sheriffs' departments to test compliance if the
28 testing is under the direct supervision of that law enforcement department and written parental
29 consent is provided; provided further, that the Department of Health and Human Services shall
30 have the authority, pursuant to a written plan prepared by the Secretary of Health and Human
31 Services, to use persons under 18 years of age in annual, random, unannounced inspections,
32 provided that prior written parental consent is given for the involvement of these persons and
33 that the inspections are conducted for the sole purpose of preparing a scientifically and
34 methodologically valid statistical study of the extent of success the State has achieved in
35 reducing the availability of tobacco products to persons under the age of 18, and preparing any
36 report to the extent required by section 1926 of the federal Public Health Service Act (42 USC
37 § 300x-26).

38 (e) Statewide uniformity. – It is the intent of the General Assembly to prescribe this
39 uniform system for the regulation of tobacco products to ensure the eligibility for and receipt of
40 any federal funds or grants that the State now receives or may receive relating to the provisions
41 of G.S. 14-313. To ensure uniformity, no political subdivisions, boards, or agencies of the State
42 nor any county, city, municipality, municipal corporation, town, township, village, nor any
43 department or agency thereof, may enact ordinances, rules or regulations concerning the sale,
44 distribution, display or promotion of tobacco products or cigarette wrapping papers on or after
45 September 1, 1995. This subsection does not apply to the regulation of vending machines, nor
46 does it prohibit the Secretary of Revenue from adopting rules with respect to the administration
47 of the tobacco products taxes levied under Article 2A of Chapter 105 of the General Statutes.

48 (f) Deferred prosecution. – Notwithstanding G.S. 15A-1341(a1), any person charged
49 with a misdemeanor under this section shall be qualified for deferred prosecution pursuant to
50 Article 82 of Chapter 15A of the General Statutes provided the defendant has not previously
51 been placed on probation for a violation of this section and so states under oath."

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SECTION 2. This act is effective when it becomes law.