

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

1

HOUSE BILL 864*

Short Title: Prohibit E-Cigarette Sales to Minors. (Public)

Sponsors: Representative Fulghum (Primary Sponsor).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary Subcommittee B.

April 15, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT THE DISTRIBUTION OF TOBACCO-DERIVED PRODUCTS
3 AND VAPOR PRODUCTS TO MINORS.

4 The General Assembly of North Carolina enacts:

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

6 "Article 39.

7 "Protection of Minors.

8 "§ 14-313. Youth access to tobacco ~~products~~products, tobacco-derived products, vapor
9 products, and cigarette wrapping papers.

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

11 (1) Distribute. – To sell, furnish, give, or provide tobacco products,
12 tobacco-derived products, or vapor products, including tobacco
13 product samples, or cigarette wrapping papers to the ultimate consumer.

14 (2) Proof of age. – A drivers license or other photographic identification that
15 includes the bearer's date of birth that purports to establish that the person is
16 18 years of age or older.

17 (3) Sample. – A tobacco ~~product~~product, tobacco-derived product, or vapor
18 product distributed to members of the general public at no cost for the
19 purpose of promoting the product.

20 (3a) Tobacco-derived product. – Any noncombustible product derived from
21 tobacco that contains nicotine and is intended for human consumption,
22 whether chewed, absorbed, dissolved, ingested, or by other means. This term
23 does not include a vapor product or any product regulated by the United
24 States Food and Drug Administration under Chapter V of the federal Food,
25 Drug, and Cosmetic Act.

26 (4) Tobacco product. – Any product that contains tobacco and is intended for
27 human consumption. The term does not include a tobacco-derived product or
28 a vapor product.

29 (5) Vapor product. – Any noncombustible product containing nicotine that
30 employs a mechanical heating element, battery, or electronic circuit,
31 regardless of shape or size and that can be used to heat a liquid nicotine
32 solution contained in a vapor cartridge. The term includes an electronic
33 cigarette, electronic cigar, electronic cigarillo, and electronic pipe. The term
34 does not include any product regulated by the United States Food and Drug



1 Administration under Chapter V of the federal Food, Drug, and Cosmetic
2 Act.

3 (b) Sale or distribution to persons under the age of 18 years. – If any person shall
4 distribute, or aid, assist, or abet any other person in distributing tobacco ~~products~~products,
5 tobacco-derived products, vapor products, components of vapor products, or cigarette wrapping
6 papers to any person under the age of 18 years, or if any person shall purchase tobacco ~~products~~
7 products, tobacco-derived products, vapor products, components of vapor products, or cigarette
8 wrapping papers on behalf of a person, less than ~~person under the age of 18 years, the person~~
9 shall be guilty of a Class 2 misdemeanor; provided, however, that it shall not be unlawful to
10 distribute tobacco ~~products~~products, tobacco-derived products, vapor products, components of
11 vapor products, or cigarette wrapping papers to an employee when required in the performance
12 of the employee's duties. Retail distributors of tobacco ~~products~~products, tobacco-derived
13 products, vapor products, components of vapor products, or cigarette wrapping papers shall
14 prominently display near the point of sale a sign in letters at least five-eighths of an inch high
15 which states the following:

16
17 N.C. LAW STRICTLY PROHIBITS

18
19 THE PURCHASE OF TOBACCO ~~PRODUCTS~~PRODUCTS, TOBACCO-DERIVED
20 PRODUCTS, VAPOR PRODUCTS, AND CIGARETTE WRAPPING PAPERS.

21
22 BY PERSONS UNDER THE AGE OF 18.

23
24 PROOF OF AGE REQUIRED.

25
26 Failure to post the required sign shall be an infraction punishable by a fine of twenty-five
27 dollars (\$25.00) for the first offense and seventy-five dollars (\$75.00) for each succeeding
28 offense.

29 A person engaged in the sale of tobacco ~~products~~products, tobacco-derived products, vapor
30 products, components of vapor products, or cigarette wrapping papers shall demand proof of
31 age from a prospective purchaser if the person has reasonable grounds to believe that the
32 prospective purchaser is under 18 years of age. Failure to demand proof of age as required by
33 this subsection is a Class 2 misdemeanor if in fact the prospective purchaser is under 18 years
34 of age. Retail distributors of tobacco ~~products~~products, tobacco-derived products, vapor
35 products, components of vapor products, or cigarette wrapping papers shall train their sales
36 employees in the requirements of this law. Proof of any of the following shall be a defense to
37 any action brought under this subsection:

- 38 (1) The defendant demanded, was shown, and reasonably relied upon proof of
39 age in the case of a retailer, or any other documentary or written evidence of
40 age in the case of a nonretailer.
- 41 (2) The defendant relied on the electronic system established and operated by
42 the Division of Motor Vehicles pursuant to G.S. 20-37.02.
- 43 (3) The defendant relied on a biometric identification system that demonstrated
44 (i) the purchaser's age to be at least the required age for the purchase and (ii)
45 the purchaser had previously registered with the seller or seller's agent a
46 drivers license, a special identification card issued under G.S. 20-377.7, a
47 military identification card, or a passport showing the purchaser's date of
48 birth and bearing a physical description of the person named on the card.

49 (b1) ~~Vending machines.~~Distribution of tobacco products, tobacco-derived products, or
50 vapor products. – Tobacco ~~products~~products, tobacco-derived products, vapor products, or
51 components of vapor products shall not be distributed in vending machines; provided, however,

1 vending machines distributing tobacco ~~products~~–products, tobacco-derived products, vapor
2 products, or components of vapor products are permitted (i) in any establishment which is open
3 only to persons 18 years of age and older; or (ii) in any establishment if the vending machine is
4 under the continuous control of the owner or licensee of the premises or an employee thereof
5 and can be operated only upon activation by the owner, licensee, or employee prior to each
6 purchase and the vending machine is not accessible to the public when the establishment is
7 closed. The owner, licensee, or employee shall demand proof of age from a prospective
8 purchaser if the person has reasonable grounds to believe that the prospective purchaser is
9 under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2
10 misdemeanor if in fact the prospective purchaser is under 18 years of age. Proof that the
11 defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to
12 any action brought under this subsection. Vending machines distributing tobacco products in
13 establishments not meeting the above conditions shall be removed prior to December 1, 1997.
14 Vending machines distributing tobacco-derived products, vapor products, or components of
15 vapor products in establishments not meeting the above conditions shall be removed prior to
16 December 1, 2013. Any person distributing tobacco ~~products~~–products, tobacco-derived
17 products, vapor products, or components of vapor products through vending machines in
18 violation of this subsection shall be guilty of a Class 2 misdemeanor.

19 (b2) Internet sales of tobacco products, tobacco-derived products, or vapor products. – A
20 person engaged in the sale of tobacco products, tobacco-derived products, vapor products, or
21 components of vapor products through the Internet or other remote sales methods shall perform
22 an age verification through an independent, third-party age verification service that compares
23 information available from public records to the personal information entered by the individual
24 during the ordering process to establish that the individual ordering the tobacco products,
25 tobacco-derived products, vapor products, or components of vapor products is 18 years of age
26 or older.

27 (c) Purchase by persons under the age of 18 years. – If any person under the age of 18
28 years purchases or accepts receipt, or attempts to purchase or accept receipt, of tobacco
29 ~~products~~–products, tobacco-derived products, vapor products, components of vapor products, or
30 cigarette wrapping papers, or presents or offers to any person any purported proof of age which
31 is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving
32 any tobacco ~~product~~–products, tobacco-derived products, vapor products, components of vapor
33 products, or cigarette wrapping papers, the person shall be guilty of a Class 2
34 ~~misdemeanor~~–misdemeanor; provided, however, that it shall not be unlawful for an employee to
35 purchase or accept receipt of tobacco products, tobacco-derived products, vapor products,
36 components of vapor products, or cigarette wrapping papers when required in the performance
37 of the employee's duties.

38 (d) Send or assist~~Send or assist~~Sending or assisting person less than 18 years to purchase or receive
39 tobacco ~~product~~–products, tobacco-derived products, vapor products, or cigarette wrapping
40 papers. – If any person shall send a person less than 18 years of age to purchase, acquire,
41 receive, or attempt to purchase, acquire, or receive tobacco ~~products~~–products, tobacco-derived
42 products, vapor products, components of vapor products, or cigarette wrapping papers, or if any
43 person shall aid or abet a person who is less than 18 years of age in purchasing, acquiring, or
44 receiving or attempting to purchase, acquire, or receive tobacco ~~products~~–products,
45 tobacco-derived products, vapor products, components of vapor products, or cigarette wrapping
46 papers, the person shall be guilty of a Class 2 misdemeanor; provided, however, persons under
47 the age of 18 may be enlisted by police or local sheriffs' departments to test compliance if the
48 testing is under the direct supervision of that law enforcement department and written parental
49 consent is provided; provided further, that the Department of Health and Human Services shall
50 have the authority, pursuant to a written plan prepared by the Secretary of Health and Human
51 Services, to use persons under 18 years of age in annual, random, unannounced inspections,

1 provided that prior written parental consent is given for the involvement of these persons and
2 that the inspections are conducted for the sole purpose of preparing a scientifically and
3 methodologically valid statistical study of the extent of success the State has achieved in
4 reducing the availability of tobacco products to persons under the age of 18, and preparing any
5 report to the extent required by section 1926 of the federal Public Health Service Act (42 USC
6 § 300x-26).

7 (e) Statewide uniformity. – It is the intent of the General Assembly to prescribe this
8 uniform system for the regulation of tobacco ~~products~~products, tobacco-derived products,
9 vapor products, and cigarette wrapping papers to ensure the eligibility for and receipt of any
10 federal funds or grants that the State now receives or may receive relating to the provisions of
11 G.S. 14-313. To ensure uniformity, no political subdivisions, boards, or agencies of the State
12 nor any county, city, municipality, municipal corporation, town, township, village, nor any
13 department or agency thereof, may enact ordinances, rules or regulations concerning the sale,
14 distribution, display or promotion of (i) tobacco products or cigarette wrapping papers on or
15 after September 1, ~~1995~~1995, or (ii) tobacco-derived products or vapor products on or after
16 December 1, 2013. This subsection does not apply to the regulation of vending machines, nor
17 does it prohibit the Secretary of Revenue from adopting rules with respect to the administration
18 of the tobacco products taxes levied under Article 2A of Chapter 105 of the General Statutes.

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

23 **SECTION 2.** This act becomes effective December 1, 2013, and applies to
24 offenses committed on or after that date.