HB391
111440-3
By Representative Hall
RFD: Judiciary
First Read: 05-FEB-09

ACT# 2009-578

Tobacco

Check ID (all) buying tobacco?
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) BOARD. The Alabama Alcoholic Beverage Control Board.

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

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

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

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

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

"b. United States Uniform Service Identification.

"c. A valid passport.

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

"e. For legal mail order purposes only a valid signed certification that will verify the individual is 19 years of age or older.
"(6) RESPONSIBLE VENDOR PROGRAM. A program administered by the board to encourage and support vendors in training employees in legal and responsible sales practices.

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

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

"(9) TOBACCO or TOBACCO PRODUCTS. Tobacco or any product containing tobacco, including, but not limited to, the following:

"a. Cigarettes.
"b. Cigars.
"c. Chewing tobacco.
"d. Snuff.
"e. Pipe tobacco.
"f. Smokeless tobacco.

"(10) TOBACCO PERMIT. A permit issued by the board to allow the permit holder to engage in the distribution
of tobacco or tobacco products at the location identified in
the permit.

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

"§28-11-8.

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

"§28-11-13."
"(a) It is unlawful for any minor to purchase, use, possess, or transport tobacco or tobacco products within this state. It shall not be unlawful for a minor employee of a tobacco permit holder to handle, transport, or sell tobacco or tobacco products if the minor employee is acting within the line and scope of employment and the permit holder, or an employee of the permit holder who is 21 years of age or older, is present.

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

"$28-11-14.

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

"The minor shall not be required to pay any other court costs or fees. Any statute or law to the contrary notwithstanding, disposition of any violation shall be within
the jurisdiction of the district or municipal court and not
the juvenile court. Violations shall not be considered
criminal offenses and shall be administratively adjudicated by
the district or municipal court.

"§28-11-15.

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

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

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tobacco or tobacco products at retail within this state
without being presented proof of identification unless a
reasonably prudent person would conclude on the basis of the
prospective purchaser's appearance that such individual
appeared to be at least 27 years of age or older. In any
action for a violation of this subsection, it shall be an affirmative defense that, at the time of the relevant distribution, the purchaser of the tobacco or tobacco product was not a minor.

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

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

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

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

§28-11-6.1.

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

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

(2) Dispenses tobacco or tobacco products through the operation of a device that requires the tobacco permit
holder or an employee of the permit holder to control the 
distribution of the product.

(b) No tobacco or tobacco product shall be 
distributed at retail by use of a vending machine if the 
tobacco or tobacco product is placed together with any 
non-tobacco product, other than matches, in the machine. 
§28-11-6.2.

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

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

Section 4. This act shall become effective on the 
first day of the third month following its passage and 
approval by the Governor, or its otherwise becoming law.
HB391

Speaker of the House of Representatives

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

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Amended and Passed
Concurred in Senate Amendment

APPROVED May 30, 2009
TIME 8:10 a.m.

Alabama Secretary Of State
Act Num....: 2009-578
Bill Num....: H-391
Recv'd 05/20/09 11:10amJJB