GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S SENATE BILL 1037

Short Title: No Tobacco Sales to Minors. (Public)

Sponsors: Senators Gulley and Ballance.

Referred to: Judiciary II/Election Laws

May 4, 1995

1 A BILL TO BE ENTITLED

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AN ACT TO STRENGTHEN THE ENFORCEMENT OF THE CRIMINAL STATUTE THAT PROHIBITS SELLING CIGARETTES TO MINORS, TO ESTABLISH A CIVIL PENALTY FOR THE SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS LESS THAN EIGHTEEN YEARS OF AGE, AND TO AUTHORIZE THE ATTORNEY GENERAL TO BRING A CIVIL ACTION TO SEEK CIVIL REMEDIES.

Whereas, approximately 419,000 Americans (11,000 in North Carolina) die each year of diseases caused by cigarette smoking; and

Whereas, the Surgeon General of the Public Health Service has determined that smoking is the leading preventable cause of death in this country; and

Whereas, nicotine in tobacco has been found by the 1988 report of the Surgeon General, The Health Consequences of Smoking: Nicotine Addiction, to be a powerfully addictive drug; therefore, it is important to prevent young people from using nicotine when they are immature and incapable of making an informed and rational decision; and

Whereas, most adults who smoke wish to quit, a majority of current adult smokers have tried to quit without success, and one-half of all teenagers who have been smoking for five years or more have made at least one serious but unsuccessful attempt to quit; and Whereas, every day more than 3,000 minors begin smoking; and

Whereas, most smokers start at age 13-14; about 60% of current smokers had started smoking by age 14; 90% began by age 20; and

Whereas, according to a 1989 study by the National Automatic Merchandising Association, 72% of teenage smokers say they purchase their own cigarettes; and

Whereas, according to the Department of Environment, Health, and Natural Resources, children ages 11-17 in North Carolina have shown that tobacco products can be easily obtained at 51% of over-the-counter outlets and at 94% of tobacco vending machines across the State; and

Whereas, approximately 70% of the North Carolina high school seniors who smoke today will be the addicted adult smokers of tomorrow; and

Whereas, smoking-related health and economic costs in North Carolina have risen to over \$2,100,000,000 annually; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-313 reads as rewritten:

"§ 14-313. Selling cigarettes to minors.

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If any person shall knowingly sell, give away or otherwise dispose of, directly or indirectly, cigarettes, or tobacco in the form of cigarettes, or cut tobacco in any form or shape which may be used or intended to be used as a substitute for cigarettes, or cigarette wrapping papers, or a smokeless tobacco product to any minor under the age of 18 years, or if any person shall knowingly aid, assist or abet any other person in selling such articles to such minor, he shall be guilty of a Class 2 misdemeanor. As used in this section, 'smokeless tobacco product' means (i) loose tobacco or a flat compressed cake of tobacco that may be chewed or held in the mouth or (ii) shredded, powdered, or pulverized tobacco that may be inhaled through the nostrils, chewed, or held in the mouth."

Sec. 2. The General Assembly encourages district attorneys and the district courts to strictly enforce G.S. 14-313. The Administrative Office of the Courts shall collect and maintain records of the number of arrests being made in the State under G.S. 14-313, the number of convictions and dismissals, and the penalties imposed. No later than January 1, 1996, and annually thereafter, the Administrative Office of the Courts shall report these statistics to the General Assembly by filing a report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

Sec. 3. G.S. 7A-148(a) reads as rewritten:

"(a) The chief district judges of the various district court districts shall meet at least once a year upon call of the Chief Justice of the Supreme Court to discuss mutual problems affecting the courts and the improvement of court operations, to prepare and adopt uniform schedules of offenses for selling cigarettes to minors under G.S. 14-313 and the types of offenses specified in G.S. 7A-273(2) for which magistrates and clerks of court may accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, and establish a schedule of penalties or fines therefor, and to take such further action as may be found practicable and desirable to promote the uniform administration of justice."

Sec. 4. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"<u>ARTICLE 32.</u> "SALE OF TOBACCO PRODUCTS TO MINORS.

"<u>§ 66-250. Definitions.</u>

The following definitions apply in this Article:

- (1) Business. Any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations.
- (2) <u>Distribute. To give, deliver, sell, offer to give, deliver, sell, or cause or hire any person to give, deliver, sell or offer to give, deliver, or sell.</u>
- (3) Minor. Any individual who is less than 18 years old.
- (4) Person. Any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (5) Tobacco products. Any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco that may be used for smoking, chewing, inhalation, or other manner of ingestion.
- (6) Tobacco retailer. Any person, business, or governmental entity that operates a store, stand, booth, concession, vending machine, or other place at which sales of tobacco products are made to purchasers for consumption or use.
- (7) Tobacco vending machine. Any electronic or mechanical device or appliance in which the operation depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, that dispenses or releases a tobacco product.

"§ 66-251. Sale of tobacco products to minors prohibited.

Any tobacco retailer or any employee or agent of a tobacco retailer shall not sell or distribute tobacco products to any minor under the age of 18 years. Any tobacco retailer or any employee or agent of a tobacco retailer shall not knowingly aid or assist any other person in selling or distributing tobacco products to any minor under the age of 18 years.

"§ 66-252. False identification is a defense.

- (a) It is a complete defense to a violation of G.S. 66-251 if the business or person shows that the purchaser produced a drivers license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport, showing the purchaser's age to be at least the required age for purchase and bearing a physical description of the person named on the card reasonably describing the purchaser; or produces evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.
- (b) No minor shall present any written, printed, or photostatic evidence of age or identity that is false for the purpose of procuring or attempting to procure any tobacco products.

"§ 66-253. Posting a sign required.

(a) Every tobacco retailer that sells cigarettes or other tobacco products shall post a clear and conspicuous sign in each place of business where cigarettes and other tobacco products are sold that states:

'THE SALE OF CIGARETTES OR OTHER TOBACCO PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. PHOTO IDENTIFICATION IS REQUIRED TO PURCHASE TOBACCO.'

- (b) The letters of these signs shall be at least one-quarter inch high.
- (c) The sign required under subsection (a) of this section shall be displayed prominently for public view at each cash register within the retail outlet where tobacco products are sold.

"§ 66-254. Penalties.

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- (a) Upon ascertaining that the provisions of G.S. 66-251 or G.S. 66-253 have been violated, the Attorney General may institute a civil action seeking the civil penalties provided by this section.
- (b) In any action instituted by the Attorney General for a violation of G.S. 66-251, the court may impose injunctive relief or may impose a civil penalty as follows, or both:
 - (1) One hundred dollars (\$100.00) for the first violation.
 - (2) Five hundred dollars (\$500.00) for the second violation within any five-year period.
 - (3) One thousand dollars (\$1,000) for the third violation within any five-year period.
- (c) In any action instituted by the Attorney General for a violation of G.S. 66-253, the court may impose injunctive relief or may impose a civil penalty as follows, or both:
 - (1) Twenty-five dollars (\$25.00) for the first violation.
 - (2) Fifty dollars (\$50.00) for the second violation within any five-year period.
 - (3) One hundred dollars (\$100.00) for the third violation within any five-year period.

"§ 66-255. Citizen complaints.

Any citizen may notify the Attorney General of violations of G.S. 66-251 or G.S. 66-253 by submitting a written letter of complaint to the Attorney General. This letter shall state that the citizen witnessed the violation, the date, time, and location of the violation, and, if it is a violation of G.S. 66-251, the name or description of the clerk, if possible, or the vending machine location involved in the violation. The Attorney General may investigate citizen complaints under this section.

"§ 66-256. Local ordinances and rules intact.

Nothing contained in this Article shall be construed to restrict the authority of any North Carolina county, city, town, or other political subdivision of the State to adopt and enforce additional local laws, ordinances, or regulations that comply with at least the minimum applicable standard of severely restricting children's access to tobacco as set forth in this Article."

- Sec. 5. If any provision of this act or the application therof to any person or circumstance is held invalid by a court, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.
- Sec. 6. In order to increase voluntary compliance with Section 4 of this act, county health departments shall conduct informational activities to notify and educate tobacco retailers and the public of the law, that may include:
 - (1) Random unannounced youth tobacco buying assessment.
 - (2) Publication and distribution of materials on retail merchant education and employee training to prevent tobacco sales to minors; and
 - (3) Publication and distribution of materials on youth tobacco use prevention, education, cessation services, and programs that are available locally.
- Sec. 7. This act becomes effective October 1, 1995, and applies to tobacco products sold or distributed within the meaning of this act on or after that date.