

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 328

Short Title: Stop Tobacco Sales to Minors.

(Public)

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Sponsors: Representatives Arnold, Fitch; Brawley, Cansler, Dedmon, Goodwin, Moore, and Mosley.

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Referred to: Judiciary I.

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February 26, 1997

A BILL TO BE ENTITLED

1 AN ACT TO PROHIBIT THE SALE OR PURCHASE OF TOBACCO PRODUCTS TO  
2 PERSONS LESS THAN EIGHTEEN YEARS OF AGE AND TO REQUIRE THAT  
3 CERTAIN PERSONS BE TRAINED REGARDING THESE LAWS.  
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5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 14-313(a) reads as rewritten:

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

8 (1) Distribute. – To sell, furnish, give, or provide tobacco products,  
9 including tobacco product samples, or cigarette wrapping papers to the  
10 ultimate consumer.

11 (2) Proof of age. – A drivers license or other ~~documentary or written evidence~~  
12 photographic identification that includes the bearer's date of birth that  
13 purports to establish that the person is 18 years of age or older.

14 (3) Sample. – A tobacco product distributed to members of the general  
15 public at no cost for the purpose of promoting the product.

16 (4) Tobacco product. – Any product that contains tobacco and is intended  
17 for human consumption."

18 Section 2. G.S. 14-313(b) reads as rewritten:

19 "(b) Sale or distribution to persons under the age of 18 years. – If any person shall  
20 ~~knowingly~~ distribute, or ~~knowingly~~ aid, assist, or abet any other person in distributing

1 tobacco products or cigarette wrapping papers to any person under the age of 18 years, or  
2 if any person shall ~~knowingly~~ purchase tobacco products or cigarette wrapping papers on  
3 behalf of a person, less than 18 years, the person shall be guilty of a Class 2  
4 misdemeanor; provided, however, that it shall not be unlawful to distribute tobacco  
5 products or cigarette wrapping papers to an employee when required in the performance  
6 of the employee's duties. Retail distributors of tobacco products shall prominently  
7 display near the point of sale a sign in letters at least five-eighths of an inch high which  
8 states the following:

9 **N.C. LAW STRICTLY PROHIBITS**  
10 **THE PURCHASE OF TOBACCO PRODUCTS**  
11 **BY PERSONS UNDER THE AGE OF 18.**  
12 **PROOF OF AGE REQUIRED.**

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

16 A person engaged in the sale of tobacco products shall demand proof of age from a  
17 prospective purchaser if the person has reasonable grounds to believe that the prospective  
18 purchaser is under 18 years of age. Failure to demand proof of age as required by this  
19 subsection is a Class 2 misdemeanor. Proof that the defendant demanded, was shown, and  
20 reasonably relied upon proof of age in the case of a retailer, or any other documentary or  
21 written evidence of age in the case of a nonretailer, shall be a defense to any action  
22 brought under this subsection. Retail distributors of tobacco products shall train their  
23 sales employees in the requirements of this law."

24 Section 3. G.S. 14-313(c) reads as rewritten:

25 "(c) Purchase by persons under the age of 18 years. – If any person under the age of  
26 18 years purchases or accepts receipt, or attempts to purchase or accept receipt, of  
27 tobacco products or cigarette wrapping papers, ~~or presents or offers to any person any~~  
28 ~~purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose~~  
29 ~~of purchasing or receiving any tobacco product, the person shall be guilty of an infraction as~~  
30 ~~provided in G.S. 14-3.1. a Class 3 misdemeanor. If any person presents or offers to any~~  
31 person any purported proof of age which is false, fraudulent, or not actually his or her  
32 own, for the purpose of purchasing or receiving any tobacco product, the person shall be  
33 guilty of a Class 2 misdemeanor."

34 Section 4. G.S. 14-313(d) reads as rewritten:

35 "(d) Send or assist person less than 18 years to purchase or receive tobacco product.  
36 – If any person shall ~~knowingly~~ send or assist a person less than 18 years of age to  
37 purchase, acquire, receive, or attempt to purchase, acquire, or receive tobacco products or  
38 cigarette wrapping papers, the person shall be guilty of a Class 2 misdemeanor; provided,  
39 however, persons under the age of 18 may be enlisted by police or local sheriffs'  
40 departments to test compliance if the testing is under the direct supervision of that law  
41 enforcement department and written parental consent is provided; provided further, that  
42 the Department of Human Resources shall have the authority, pursuant to a written plan  
43 prepared by the Secretary of Human Resources, to use persons under 18 years of age in

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

7 Section 5. G.S. 14-313 is amended by adding a new subsection to read:

8 "(b1) Vending machines. – Tobacco products shall not be distributed in vending  
9 machines; provided, however, vending machines distributing tobacco products are  
10 permitted (i) in any establishment which is open only to persons 18 years of age and  
11 older; or (ii) in any establishment if the vending machine is under the continuous control  
12 of the owner or licensee of the premises or an employee thereof and can be operated only  
13 upon activation by the owner, licensee or employee prior to each purchase and the  
14 vending machine is not accessible to the public when the establishment is closed. The  
15 owner, licensee or employee shall demand proof of age from a prospective purchaser if  
16 the person has reasonable grounds to believe that the prospective purchaser is under 18  
17 years of age. Failure to demand proof of age as required by this subsection is a Class 2  
18 misdemeanor. Proof that the defendant demanded, was shown, and reasonably relied  
19 upon proof of age shall be a defense to any action brought under this subsection.  
20 Vending machines distributing tobacco products in establishments not meeting the above  
21 conditions shall be removed by August 28, 1997. Any person distributing tobacco  
22 products through vending machines after August 28, 1997, in violation of this subsection  
23 shall be guilty of a Class 2 misdemeanor."

24 Section 6. G.S. 14-313 is amended by adding a new subsection to read:

25 "(b2) Out-of-package sales. – If any person engaged in the sale of cigarettes shall sell  
26 cigarettes other than in unopened packages originating with the manufacturer, the person  
27 shall be guilty of a Class 2 misdemeanor."

28 Section 7. Section 1 of this act becomes effective February 28, 1997, and  
29 applies to offenses committed on or after that date. Section 5 is effective when this act  
30 becomes law. The remaining sections become effective December 1, 1997.