

NORTH CAROLINA GENERAL STATUTE

Article 39.

Protection of Minors.

§ 14-313. Youth access to tobacco products.

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

- (1) Distribute. – To sell, furnish, give, or provide tobacco products, including tobacco product samples, or cigarette wrapping papers to the ultimate consumer.
- (2) Proof of age. – A drivers license or other photographic identification that includes the bearer's date of birth that purports to establish that the person is 18 years of age or older.
- (3) Sample. – A tobacco product distributed to members of the general public at no cost for the purpose of promoting the product.
- (4) Tobacco product. – Any product that contains tobacco and is intended for human consumption.

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

N.C. LAW STRICTLY PROHIBITS

THE PURCHASE OF TOBACCO PRODUCTS

BY PERSONS UNDER THE AGE OF 18.

PROOF OF AGE REQUIRED.

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

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor if in fact the prospective purchaser is under 18 years of age. Retail distributors of tobacco products shall train their sales employees in the requirements of this law. Proof of any of the following shall be a defense to any action brought under this subsection:

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

(b1) Vending machines. – Tobacco products shall not be distributed in vending machines; provided, however, vending machines distributing tobacco products are permitted (i) in any

establishment which is open only to persons 18 years of age and older; or (ii) in any establishment if the vending machine is under the continuous control of the owner or licensee of the premises or an employee thereof and can be operated only upon activation by the owner, licensee, or employee prior to each purchase and the vending machine is not accessible to the public when the establishment is closed. The owner, licensee, or employee shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor if in fact the prospective purchaser is under 18 years of age. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to any action brought under this subsection. Vending machines distributing tobacco products in establishments not meeting the above conditions shall be removed prior to December 1, 1997. Any person distributing tobacco products through vending machines in violation of this subsection shall be guilty of a Class 2 misdemeanor.

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

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

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

(f) Deferred prosecution. – Notwithstanding G.S. 15A-1341(a1), any person charged with a misdemeanor under this section shall be qualified for deferred prosecution pursuant to Article 82 of Chapter 15A of the General Statutes provided the defendant has not previously been placed on probation for a violation of this section and so states under oath. (1891, c. 276; Rev., s. 3804; C.S., s. 4438; 1969, c. 1224, s. 3; 1991, c. 628, s. 1; 1993, c. 539, s. 216; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 241, s. 1; 1997-434, ss. 1-6; 1997-443, s. 11A.118(a); 2001-461, s. 5; 2002-159, s. 5; 2005-350, s. 6(b).)