

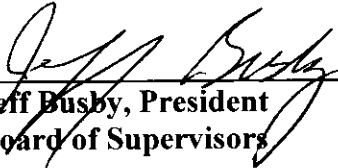
**ORDER: MOTION, TO TAKE UNDER
ADVISEMENT NOAH'S LAW ORDINANCE**

Motion was made by Chad McLarty, duly seconded by Robert Blackmon,
to take under advisement Noah's Law Ordinance.

The vote on the motion was as follows:

Supervisor Mike Pickens, voted yes
Supervisor Jeff Busby, voted yes
Supervisor Robert Blackmon, voted yes
Supervisor Chad McLarty, voted yes
Supervisor Mike Roberts, voted yes

After the vote, President Busby, declared the motion carried, this the
20th day of July, 2015.



Jeff Busby, President
Board of Supervisors



Sherry Wall, Clerancy Clerk

MISSISSIPPI LEGISLATURE

2015 Regular Session

To: Judiciary A

By: Representatives Reynolds, Baker, Horan, Lamar, Mayo,
Mettetal, Espy, Faulkner

House Bill 507

(As Passed the House)

AN ACT TO CREATE "NOAH'S LAW"; TO PROVIDE LEGISLATIVE INTENT; TO PROVIDE DEFINITIONS; TO PROHIBIT THE SALE OR TRANSFER OF CERTAIN CAFFEINE PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE; TO PROVIDE REGULATIONS FOR RETAIL SALES CLERKS, PROCEDURES TO NOTIFY THE PUBLIC AND PENALTIES FOR VIOLATION; TO PROHIBIT JUVENILE POSSESSION AND CONSUMPTION OF CERTAIN CAFFEINE PRODUCTS; TO REQUIRE POINT OF SALE WARNINGS; TO PROVIDE PENALTIES FOR JUVENILES WHO MISREPRESENT THEIR AGE; TO PROHIBIT SALES OF CERTAIN CAFFEINE PRODUCTS IN VENDING MACHINES; TO PROHIBIT THE DISTRIBUTION OF CERTAIN CAFFEINE PRODUCTS OTHER THAN IN SEALED PACKAGES; TO AUTHORIZE UNANNOUNCED INSPECTIONS BY THE ATTORNEY GENERAL; TO REQUIRE CONFIDENTIALITY OF JUVENILES WHO VIOLATE THIS ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. This act shall be known and cited as "Noah's Law."

SECTION 2. It is the intent of the Legislature that enforcement of this act be implemented in an equitable manner throughout the state. The provisions of this act shall supersede any existing or subsequently enacted local law, ordinance or regulation which relates to the sale, promotion and distribution of caffeine pills and caffeine powder.

SECTION 3. For the purposes of this act, the following words and phrases shall have the meaning ascribed in this section, unless the context clearly indicates otherwise:

(a) "Dealer" means every person, firm, corporation or association of persons, except retailers as defined herein, who receives the caffeine product from the manufacturer of caffeine pills or caffeine powder for distribution, for sale, for use, or for consumption in the State of Mississippi.

(b) "Person" means any natural person.

(c) "Photographic identification" means any government-issued card that includes a photograph of the person seeking to purchase caffeine products and that is accepted as proof of age under Mississippi law.

(d) "Point of sale" means a store, stand, or any other place of business or point of distribution maintained by a seller from which caffeine pills and caffeine powder are made available for sale or distribution to consumers.

(e) "Retailer" includes every company, corporation, partnership, business association, joint venture, estate, trust, or any other combination acting as a unit or legal entity other than a wholesale dealer as defined below, whose business is that of selling merchandise at retail, who shall sell or offer for sale a caffeine product to the consumer.

(f) "Seller" means any natural person, company, corporation, firm, partnership, organization or other legal entity who sells, dispenses, distributes or issues caffeine pills or caffeine powder for commercial purposes.

(g) "Caffeine product" means any caffeine pill or caffeine powder with more than twenty-five percent (25%) of caffeine.

(h) "Wholesaler" includes dealers whose principal business is that of wholesale dealer or jobber, who is known to the retail trade as such, and whose place of business is located in Mississippi or in a state which affords reciprocity to wholesalers domiciled in Mississippi, who shall sell any taxable caffeine pill or caffeine powder to retail dealers only for the purpose of resale.

SECTION 4. It shall be unlawful for any person, or retailer, to sell, barter, deliver or give caffeine products to any individual under eighteen (18) years of age.

It shall be an absolute affirmative defense that the person selling, bartering, delivering or giving caffeine products over the counter in a retail establishment to an individual under eighteen (18) years of age in violation of this act had requested and examined a government-issued photographic identification from such person establishing his age as at least eighteen (18) years

prior to selling such person a caffeine product. The failure of a seller, barterer, deliverer or giver of caffeine products over the counter in a retail establishment to request and examine photographic identification from a person under eighteen (18) years of age prior to the sale of a caffeine product to such person if the individual is not known to the seller, barterer, deliverer or giver of the caffeine product to be over the age of eighteen (18) years, shall be construed against the seller, barterer, deliverer or giver and form a conclusive basis for the seller's violation of this section.

It shall be an absolute affirmative defense that the person or entity giving caffeine products through the mail to an individual under eighteen (18) years of age in violation of this act had requested and received documentary or written evidence from such person purportedly establishing his age to be at least eighteen (18) years of age.

Any person who violates this section shall be liable as follows: For a first conviction, a fine of Fifty Dollars (\$50.00); for a second conviction, a fine of Seventy-five Dollars (\$75.00); and for all subsequent convictions, a fine of One Hundred Fifty Dollars (\$150.00) shall be imposed.

Any person, including, but not limited to, the owner and seller of the caffeine product, found in violation of

this section shall be issued a citation by any proper law enforcement officer and the owner of the business shall be sent notification of this citation by registered mail by the law enforcement agency issuing the citation. Notification shall include the opportunity for hearing before the appropriate court.

It is the responsibility of all law enforcement officers and law enforcement agencies of this state to ensure that the provisions of this act are enforced.

It shall not be considered a violation of this section on the part of any law enforcement officer or person under eighteen (18) years of age for any law enforcement officer of this state to use persons under eighteen (18) years of age to purchase or attempt to purchase prohibited caffeine products for the purpose of monitoring compliance with this section, as long as those persons are supervised by duly authorized law enforcement agency officials.

Any law enforcement agency conducting enforcement efforts undertaken pursuant to this act shall prepare a report as prescribed by the Attorney General which includes the number of unannounced inspections conducted by the agency, a summary of enforcement actions taken pursuant to this act, the name and final judicial disposition on all enforcement actions. Reports shall be forwarded to the Office of the Attorney General within

twenty (20) working days of the final judicial disposition.

SECTION 5. (1) Every person engaged in the business of selling caffeine products shall notify each individual employed by that person as a retail sales clerk that state law:

(a) Prohibits the sale or distribution of certain caffeine products, including samples, to any person under eighteen (18) years of age and the purchase or receipt of such caffeine products by any person under eighteen (18) years of age, and

(b) Requires that proof of age be demanded from a prospective purchaser or recipient if the prospective purchaser or recipient is under the age of eighteen (18) years. Every person employed by a person engaged in the business of selling caffeine products at retail shall sign an agreement with his employer in substantially the following or similar form:

"I understand that state law prohibits the sale or distribution of certain caffeine products to persons under the age of eighteen (18) years and out-of-package sales, and requires that proof of age be demanded from a prospective purchaser or recipient under eighteen (18) years of age if the individual is not known to the seller, barterer, deliverer or giver of the prohibited caffeine product to be

over the age of eighteen (18) years. I promise, as a condition of my employment, to observe this law."

(2) Any person violating the provisions of this section shall be penalized not less than Fifty Dollars (\$50.00) nor more than One Hundred Dollars (\$100.00).

(3) No retailer who instructs his employee as provided in this section shall be liable for any violations committed by such employees.

SECTION 6. (1) No person under eighteen (18) years of age shall purchase any caffeine product prohibited by this act. No student of any high school, junior high school or elementary school shall possess or use caffeine products that are prohibited by this act on any educational property as defined in Section 97-37-17(a).

(a) If a person under eighteen (18) years of age is found by a court to be in violation of any other statute and is also found to be in possession of such caffeine product, the court may order the minor to perform up to three (3) hours of community service, in addition to any other punishment imposed by the court.

(b) A violation under this section is not to be recorded on the criminal history of the minor and, upon proof of satisfaction of the court's order, the record shall be expunged from any records other than youth court records.

(2) (a) No person shall use any caffeine product on any educational property. Any adult who violates this section shall be subject to a fine and shall be liable as follows: (i) for a first conviction, a warning; (ii) for a second conviction, a fine of Seventy-five Dollars (\$75.00); and (iii) for all subsequent convictions, a fine not to exceed One Hundred Fifty Dollars (\$150.00) shall be imposed.

(b) Any adult found in violation of this section shall be issued a citation by a law enforcement officer, which citation shall include notice of the date, time and location for hearing before the justice court having jurisdiction where the violation is alleged to have occurred. For the purposes of this section, "subsequent convictions" are for violations committed on any educational property within the State of Mississippi.

Anyone convicted under this act shall be recorded as being fined for a civil violation of this act and not for violating a criminal statute.

It is the responsibility of all law enforcement officers and law enforcement agencies of this state to ensure that the provisions of this act are enforced.

SECTION 7. Point of sale warning signs are required, and each seller shall place and maintain in legible condition, at each point of sale of prohibited caffeine products to consumers, a sign no smaller than eight and one-half (8-1/2) by eleven (11) inches or

ninety-three (93) square inches stating: "STATE LAW PROHIBITS THE SALE OF CERTAIN CAFFEINE PRODUCTS TO PERSONS UNDER THE AGE OF 18 YEARS. PROOF OF AGE REQUIRED."

Any person who violates this section shall be punished by a penalty of not more than One Hundred Dollars (\$100.00).

SECTION 8. Any person under the age of eighteen (18) years who falsely states he is eighteen (18) years of age or older, or presents any document that indicates he is eighteen (18) years of age or older, for the purpose of purchasing or possessing prohibited caffeine products shall be penalized not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00) or required to complete at least thirty (30) days of community service, or both.

SECTION 9. It shall be unlawful for any person to sell caffeine products that are prohibited by this act through a vending machine, unless the vending machine is located in an establishment to which individuals under the age of eighteen (18) years are denied access or are required to be accompanied by an adult. A person who violates this section shall be punished by a penalty of not more than Two Hundred Fifty Dollars (\$250.00).

SECTION 10. No retailer shall distribute caffeine products that are prohibited by this act other than in a sealed package provided by the manufacturer. A retailer

who is in violation of this section shall be liable for a penalty of not more than One Hundred Dollars (\$100.00) for the first violation not more than Two Hundred Dollars (\$200.00) for a second violation within one (1) year of a prior violation; and a penalty of Three Hundred Dollars (\$300.00) for all subsequent violations.

SECTION 11. The Office of the Attorney General or local law enforcement agencies shall, at least annually, conduct random, unannounced inspections at locations where caffeine products that are prohibited by this act are sold or distributed to ensure compliance with this act. Persons under the age of eighteen (18) years may be enlisted by the Office of the Attorney General or local law enforcement to test compliance with this act, provided that the parent or legal guardian of the person under eighteen (18) years of age so utilized has given prior written consent for the minor's participation in unannounced inspections. The Office of the Attorney General must prepare a report of the findings, and report these findings to the Legislature by December 31 of each year.

SECTION 12. It shall be unlawful to publish the name or identity of any person under the age of eighteen (18) years who is convicted or adjudicated of any violation of this act.

SECTION 13. This act shall take effect and be in force from and after July 1, 2015.