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## CRIMES AND OFFENSES Offenses Against Public Health and Morals: Provide for Stricter Regulations on the Sale of Cigarettes and Tobacco- Related Objects to Minors

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## CRIMES AND OFFENSES

### *Offenses Against Public Health and Morals: Provide for Stricter Regulations on the Sale of Cigarettes and Tobacco-Related Objects to Minors*

CODE SECTION: O.C.G.A. § 16-12-171 (amended)  
BILL NUMBER: HB 1365  
ACT NUMBER: 750  
GEORGIA LAWS: 1996 Ga. Laws 483  
SUMMARY: The Act provides that when the purchaser of tobacco reasonably could be a minor, the vendor of tobacco must request proof of age from the purchaser.  
EFFECTIVE DATE: July 1, 1996

#### *History*

In recent years, teenage smoking has become a significant public health issue.<sup>1</sup> The rate of smoking among teenagers is increasing and in 1996 was at its highest point in sixteen years.<sup>2</sup> Promoters of HB 1365 believed that this teen smoking epidemic was due in part to the fact that many teens under age eighteen could easily purchase tobacco because the old version of Code section 16-12-171 did not require tobacco vendors to check their customers' proof of age.<sup>3</sup>

Further, in recent years both the American Cancer Society and the Cobb County Police Department received numerous complaints from concerned citizens that many local merchants were selling tobacco products to minors.<sup>4</sup> There was also concern in the community that,

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1. Telephone Interview with Rep. George H. Grindley, Jr., House District No. 35 (Apr. 24, 1996) [hereinafter Grindley Interview].

2. *Id.*

3. *Id.*; see 1987 Ga. Laws 945, § 1, at 946-47 (formerly found at O.C.G.A. § 16-12-171 (Supp. 1995)). This concern was highlighted for Representative George Grindley, Jr., the sponsor of HB 1365, by a "sting" operation mounted by the Cobb County Solicitors Office in November 1995. Grindley Interview, *supra* note 1. Solicitors sent four children, obviously under age eighteen, to four different convenience stores and one department store in Cobb County to buy cigarettes. *Id.* Two of the stores sold cigarettes to the minors without requesting proof of age. *Id.*; see also Doug Payne, *Cigarette Sting Targets Teen Sales: Three are Arrested in Cobb Crackdown*, ATLANTA J. & CONST., Nov. 15, 1995, at B4; Jim Wooten, *Life, Liberty and Law's Long Arm*, ATLANTA J. & CONST., Nov. 19, 1995, at D7.

4. Grindley Interview, *supra* note 1. Representative Grindley is on the board of directors of the Cobb County chapter of the American Cancer Society. *Id.*

due to the weak wording of the old version of Code section 16-12-171, police could not effectively enforce the law.<sup>5</sup>

### *HB 1365*

HB 1365 was introduced by Representative George Grindley, Jr. during the 1996 Session of the General Assembly.<sup>6</sup> It was replaced by a House committee substitute, which corrected a typographical error in the original bill.<sup>7</sup> The House committee substitute was enacted into law.<sup>8</sup>

The Act made one addition to Code section 16-12-171: new subsection (a)(2)(B), which provides that when a person selling tobacco products could reasonably be in doubt as to whether the buyer is age eighteen or older, the vendor must request that the buyer furnish proof of age.<sup>9</sup> If the vendor does not require the buyer to furnish proof of age, that fact may be considered by the trier of fact in determining whether the vendor "knowingly" sold tobacco to a minor in violation of subsection (a)(1) of the Code.<sup>10</sup>

The purpose of the addition was to remove what Representative Grindley saw as a "loophole" in the old version of Code section 16-12-171.<sup>11</sup> Whereas the old law did not require tobacco vendors to take any affirmative steps to verify that buyers were over eighteen, the Act's requirement that vendors must check identification of any person who appears underage is designed to curtail the sale of cigarettes to minors by placing an affirmative burden on the merchant.<sup>12</sup> The Act also allows for more effective law enforcement, as merchants can no longer simply deny actual knowledge that the buyer was under the age of eighteen and thereby avoid prosecution.<sup>13</sup>

*Ronald J. Stay*

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5. *Id.*

6. HB 1365, as introduced, 1996 Ga. Gen. Assem.

7. Compare HB 1365, as introduced, 1996 Ga. Gen. Assem. with HB 1365 (HCS), 1996 Ga. Gen. Assem. The correction was made in Code section 16-12-171(a)(2)(B). See O.C.G.A. § 16-12-171(a)(2)(B) (1996). The original bill made reference to "proper identification as provided for in subsection (d) of this code"; the committee substitute changed "subsection (d)" to "subsection (b)." *Id.*

8. Compare HB 1365 (HCS), 1996 Ga. Gen. Assem. with O.C.G.A. § 16-12-171 (1996).

9. Compare 1987 Ga. Laws 945, § 1 (formerly found at O.C.G.A. § 16-12-171 (Supp. 1995)) with O.C.G.A. § 16-12-171 (1996).

10. O.C.G.A. § 16-12-171(a)(1), (a)(2)(B) (1996). The specific language of new subsection (a)(2)(B) was modeled after the language of the statute prohibiting the sale of alcohol to minors. See 1988 Ga. Laws 1372, § 1 (codified at O.C.G.A. § 3-3-23(h) (1990)); Grindley Interview, *supra* note 1.

11. Grindley Interview, *supra* note 1.

12. *Id.*

13. *Id.*