

ENROLLED SENATE
BILL NO. 1130

By: Williams (Don) of the
Senate

and

Hilliard, Monks, Vaughn
(Ray), Toure and Perry of
the House

An Act relating to nonintoxicating liquors and public health and safety; amending 37 O.S. 1991, Section 509, which relates to the Director of the Alcoholic Beverage Laws Enforcement Commission (ABLE); amending 63 O.S. 1991, Sections 1-1523 and 1-1524, which relate to smoking in certain places; expanding powers and duties of Director of ABLE; creating the Prevention of Youth Access to Tobacco Act; defining terms; prohibiting sale of tobacco products to anyone, or purchase for anyone, under a certain age; providing for proof of age; providing administrative fines; prohibiting purchase of tobacco products by anyone under a certain age; providing administrative fines; requiring posting of certain sign; providing penalty; requiring certain notification of state law to every person engaged in the sale of tobacco products; stating time at which notification must occur; requiring proof that notification was received; prohibiting sale of tobacco through certain vending machines; providing for exceptions; requiring proof of age; prohibiting distribution of tobacco samples to persons under a certain age; stating limitations of tobacco sample distribution; providing administrative fines; prohibiting sale of tobacco

products except in original, sealed package;
providing penalty; prohibiting adoption of certain
order, ordinance, rule or regulation; providing
exceptions; authorizing ABLE to enforce provisions
of act; authorizing certain investigations;
authorizing the enlistment of minors in such
investigations under certain conditions; construing
the act to not exclude certain penalties authorized
by law; prohibiting smoking in certain nursing and
child care facilities; requiring certain smoking
areas be separately ventilated; providing for
exceptions; allowing restaurants to be designated
as totally smoking or nonsmoking areas; providing
for certain administrative penalties; specifying
penalties; providing for codification; providing an
effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 37 O.S. 1991, Section 509, is amended to read as follows:

Section 509. The Director shall employ an Assistant Director and inspectors, agents, clerks, stenographers, accountants, chemists and such other personnel as are necessary to properly enforce and administer this law. He or she shall require bonds in such instances—and amounts as the Alcoholic Beverage Laws Enforcement Commission may direct. He or she shall be in direct charge of all records and if authorized by the ABLE Commission shall have the following duties and responsibilities:

A. Immediately upon the appointment and qualification of the Director he or she shall become vested with the duties and powers of the management and control of the office of Director, and shall become vested with all duties and powers imposed upon him or her by any orders, rules and regulations as may be prescribed by the ABLE Commission, and in addition thereto shall have the following specific powers and duties:

1. To issue licenses provided for in the Oklahoma Alcoholic Beverage Control Act, Section 502 et seq. of this title, and to approve or reject any official bond required to be filed with the Director or the ABLE Commission;

2. To appoint and employ, supervise and discharge such personnel, clerical, skilled and semiskilled help, labor and other employees as may be determined necessary for the proper discharge of

the duties of the office of Director, upon salary fixed and determined by the ABLE Commission and subject to all the rules and regulations that may be promulgated by the ABLE Commission. The Director and the ABLE Commission, in appointing and employing personnel, shall give preference to honorably discharged members of the Armed Forces of the United States;

3. To conduct such investigations and make such reports as may be necessary to keep the ABLE Commission and members thereof advised concerning any violations of the provisions of the Oklahoma Alcoholic Beverage Control Act and make orders for its enforcement;

4. To make recommendations to the ABLE Commission concerning the suspension or revocation of any licenses, the levying of fines against licensees for violations of the provisions of the Oklahoma Alcoholic Beverage Control Act or regulations or rules of the ABLE Commission, or any action that should be filed or commenced against any official bond theretofore approved by the Director or the ABLE Commission;

5. To regularly inspect all places of business of licensees, brewers, distributors, winemakers, rectifiers, wholesalers, Class B wholesalers, industrial licensees, private carriers, bonded warehouses, and package stores, and all other persons, firms or corporations dealing in the manufacture, distribution, transportation, sale or service of alcoholic beverages under the provisions of the Oklahoma Alcoholic Beverage Control Act, and report to the ABLE Commission concerning any and all violations with his recommendation to the ABLE Commission for its determination;

6. To aid the enforcement authorities of this state or any county or municipality of the state, or federal government, in prosecutions of violations of the Oklahoma Alcoholic Beverage Control Act; ~~and~~

7. To approve and pay claims for services of professional and clerical, skilled, semiskilled help, labor and other employees in the absence of the ABLE Commission, when the salaries and wages of such persons shall have been previously approved by the ABLE Commission; and

8. To enforce the provisions of the Prevention of Youth Access to Tobacco Act, Sections 2 through 13 of this act, including, but not limited to, the levying of administrative fines against persons violating the provisions of the Prevention of Youth Access to Tobacco Act, and to at least annually conduct random unannounced inspections at locations where tobacco products are sold or distributed and conduct targeted inspections at those locations which have been in violation of the provisions of the Prevention of Youth Access to Tobacco Act.

B. If a witness in attendance before the Director refuses without reasonable cause to be examined or to answer a legal or pertinent question, or to produce a book, record or paper when ordered to do so by the Director, the Director may apply to the judge of the district court of any county where such witness is in attendance, upon proof by affidavit of the fact, for a rule or order returnable in not less than two (2) nor more than five (5) days, directing such witness to show cause before the judge who made the order, or any other district judge of said county, why he or she should not be punished for contempt; upon the return of such order, the judge before whom the matter shall come for hearing shall examine under oath such witness or person, and such person shall be given an opportunity to be heard; and if the judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce a book, record or paper which he or she was ordered to bring or produce, he or she may punish the offender as for contempt of court and shall fix the penalty in any sum not less than Two Hundred Fifty Dollars (\$250.00) but not to exceed Five Hundred

Dollars (\$500.00) or require him or her to serve a maximum of thirty (30) days in jail, or both.

C. Subpoenas shall be served and witness fees and mileage paid as in civil cases in the district court in the county to which such witness shall be called. Witnesses subpoenaed at the instance of the Director shall be paid their fees and mileage by the Director out of funds appropriated to the ABLE Commission. Court cost in this contempt proceedings shall be paid as taxed by the court.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.1 of Title 37, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Prevention of Youth Access to Tobacco Act".

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.2 of Title 37, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Person" means any individual, firm, fiduciary, partnership, corporation, trust, or association, however formed;

2. "Proof of age" means a driver license, license for identification only, or other generally accepted means of identification that describes the individual as eighteen (18) years of age or older and contains a photograph or other likeness of the individual and appears on its face to be valid;

3. "Sample" means a tobacco product distributed to members of the public at no cost for the purpose of promoting the product;

4. "Sampling" means the distribution of samples to members of the public in a public place;

5. "Separately ventilated" means that the ventilation system of the area or room designated for smoking is so designed, installed, and maintained as to prevent exchange of the air of the designated area or room from mixing or exchanging with the air of any other ventilation system within the structure; and

6. "Tobacco product" means any product that contains tobacco and is intended for human consumption.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.3 of Title 37, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful for any person to sell or furnish in any manner any tobacco product to another person who is under eighteen (18) years of age, or to purchase in any manner a tobacco product on behalf of any such person. Provided, however, that it shall not be unlawful for an employee under eighteen (18) years of age to handle such products when required in the performance of the employee's duties.

B. A person engaged in the sale or distribution of tobacco products shall demand proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser may be under eighteen (18) years of age.

C. When a person violates subsection A or B of this section, the Alcoholic Beverage Laws Enforcement Commission (ABLE) shall assess such person an administrative fine of Twenty-five Dollars (\$25.00) for the first offense within a one-year period, Fifty Dollars (\$50.00) for the second offense within a one-year period, and Seventy-five Dollars (\$75.00) for a third offense or subsequent offense within a one-year period. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age, shall be a defense to any action brought pursuant to this subsection.

D. If the sale is made by an employee of the owner of a store at which tobacco products are sold at retail, the employee shall be guilty of the violation and shall be subject to the fine.

E. For purposes of determining the liability of a person controlling franchises or business operations in multiple locations for a second or subsequent violation of subsection A or B, each individual franchise or business location shall be deemed a separate entity.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.4 of Title 37, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful for a person who is under eighteen (18) years of age to purchase or accept receipt of a tobacco product, or to present or offer 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. Provided, however, that it shall not be unlawful for such a person to handle such tobacco product when required in the performance of such person's duties.

B. When a person violates subsection A of this section, the Alcoholic Beverage Laws Enforcement Commission (ABLE) shall assess such person an administrative fine of Twenty-five Dollars (\$25.00) for a first offense within a one-year period, and a fine of Fifty Dollars (\$50.00) for a second or subsequent offense within a one-year period. Upon failure of the individual to pay such administrative fine within ninety (90) days of the day of such fine, the ABLE Commission shall notify the Department of Public Safety and the Department shall not thereafter issue or renew a driver license to said individual until proof of payment has been furnished to the Department of Public Safety.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.5 of Title 37, unless there is created a duplication in numbering, reads as follows:

A. Every person who sells tobacco products at retail shall post conspicuously and keep so posted at the place of business a sign, as specified by the Alcoholic Beverage Laws Enforcement Commission (ABLE), stating the following: "IT'S THE LAW. WE DO NOT SELL TOBACCO PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE".

B. When a person violates subsection A of this section, the Alcoholic Beverage Laws Enforcement Commission (ABLE) shall assess such person an administrative fine of Fifty Dollars (\$50.00) for each day such offense occurs. The notice required by subsection A of this section, shall be the only notice required to be posted or maintained in any store that sells tobacco products at retail.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.6 of Title 37, unless there is created a duplication in numbering, reads as follows:

A. Every person engaged in the business of selling tobacco products at retail shall notify each individual employed by that person as a retail sales clerk that state law:

1. Prohibits the sale or distribution of tobacco products to any person under eighteen (18) years of age and the purchase or receipt of tobacco products by any person under eighteen (18) years of age; and

2. Requires that proof of age be demanded from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser or recipient may be under eighteen (18) years of age.

B. This notice shall be provided before the individual commences work as a retail sales clerk, or, in the cases of an individual employed as a retail sales clerk on the date when this subsection becomes effective, within thirty (30) days of that date. The individual shall signify that he or she has received the notice required by this section by signing a form stating as follows: "I understand that state law prohibits the sale or distribution of tobacco products to persons under eighteen (18) years of age and

out-of-package sales, and requires proof of age of purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser or recipient may be under eighteen (18) years of age. I promise, as a condition of my employment, to observe the law".

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.7 of Title 37, unless there is created a duplication in numbering, reads as follows:

A. It shall be unlawful for any person to sell tobacco products through a vending machine unless the vending machine is located:

1. In areas of factories, businesses, offices or other places that are not open to the public;

2. In places that are open to the public, but to which persons under eighteen (18) years of age are not admitted;

3. In places where alcoholic beverages are sold for consumption on the premises, but only if the vending machine is under the continuous supervision of the owner or lessee of the premises or an employee thereof, and is inaccessible to the public when the establishment is closed; and

4. In other places, but only if the machine is under the continuous supervision of the owner or lessee of the premises or an employee thereof, or can be operated only by the activation of an electronic switch by the owner or lessee of the premises, or an employee thereof prior to each purchase, or can be operated only by a special token purchased from the owner or lessee of the premises, or an employee thereof.

B. In any place where supervision of a vending machine, activation of an electronic switch, or sale of a special token is required by subsection A of this section, the person responsible for that supervision or the activation of the switch shall demand proof of age from a prospective purchaser if any ordinary person would conclude on the basis of appearance that the prospective purchaser may be under eighteen (18) years of age.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.8 of Title 37, unless there is created a duplication in numbering, reads as follows:

A. It shall be unlawful for any person to distribute tobacco product samples to any person under eighteen (18) years of age.

B. Notwithstanding subsection A of this section, no person shall distribute tobacco product samples in or on any public street, sidewalk, or park that is within three hundred (300) feet of any playground, school, or other facility when the facility is being used primarily by persons under eighteen (18) years of age.

C. When a person violates subsection A or B of this section, the Alcoholic Beverage Laws Enforcement Commission (ABLE) shall assess such person an administrative fine of Twenty-five Dollars (\$25.00) for the first offense within a one-year period, Fifty Dollars (\$50.00) for the second offense within a one-year period, and Seventy-five Dollars (\$75.00) for a third offense or subsequent offense within a one-year period.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.9 of Title 37, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful for any person to sell cigarettes except in the original, sealed package in which they were placed by the manufacturer.

B. When a person violates subsection A of this section, the Alcoholic Beverage Laws Enforcement Commission (ABLE) shall assess such person an administrative fine of Two Hundred Dollars (\$200.00) for each offense.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.10 of Title 37, unless there is created a duplication in numbering, reads as follows:

No agency or other political subdivision of the state, including, but not limited to, municipalities, counties or any agency thereof, may adopt any order, ordinance, rule or regulation concerning the sale, purchase, distribution, advertising, sampling, promotion, display, possession, licensing, or taxation of tobacco products, except as provided in Section 1511 of Title 68 of the Oklahoma Statutes, Section 1-1521 et seq. of Title 63 of the Oklahoma Statutes and Section 1247 of Title 21 of the Oklahoma Statutes. Provided, however, nothing in this section shall preclude or preempt any agency or political subdivision from exercising its lawful authority to regulate zoning or land use or to enforce a fire code regulation regulating smoking or tobacco products to the extent that such regulation is substantially similar to nationally recognized standard fire codes.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.11 of Title 37, unless there is created a duplication in numbering, reads as follows:

A. The Alcoholic Beverage Laws Enforcement Commission (ABLE) is authorized and empowered to enforce the provisions of this act. The ABLE Commission shall enforce those provisions in a manner that can reasonably be expected to reduce the extent to which tobacco products are sold or distributed to persons under eighteen (18) years of age.

B. Persons under eighteen (18) years of age may be enlisted by the ABLE Commission to assist in enforcement. Provided, however, that such persons may be used to test compliance only if written parental consent has been provided and the testing is conducted under the direct supervision of the ABLE Commission or conducted by another law enforcement agency if such agency has given written notice to the ABLE Commission in the manner prescribed by the Able Commission. Any other use of persons under eighteen (18) years of age to test compliance shall be unlawful and punishable by the ABLE Commission by assessment of an administrative fine of One Hundred Dollars (\$100.00).

C. The ABLE Commission shall prepare for submission annually to the Secretary of the United States Department of Health and Human Services, the report required by Section 1926 of the federal Public Health Service Act (42 U.S.C. 300-26), and otherwise shall be responsible for ensuring the state's compliance with that provision of federal law and any implementing of regulations promulgated by the United States Department of Health and Human Services.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.12 of Title 37, unless there is created a duplication in numbering, reads as follows:

Nothing in the Prevention of Youth Access to Tobacco Act shall be construed to prevent the imposition of any penalty as specified in Section 1241 of Title 21 of the Oklahoma Statutes.

SECTION 14. AMENDATORY 63 O.S. 1991, Section 1-1523, is amended to read as follows:

Section 1-1523. A. No person shall smoke in a designated nonsmoking area in a public place ~~or~~, at a meeting of a public body, in a nursing facility licensed pursuant to the Nursing Home Care Act, Section 1-1901 et seq. of this title, or in a child care facility, during hours of operation, licensed pursuant to the Oklahoma Child Care Facilities Licensing Act, Section 401 et seq. of Title 10 of the Oklahoma Statutes. A nursing facility licensed pursuant to the Nursing Home Care Act may designate smoking areas for residents and their guests. Nursing facilities may designate smoking areas for employees if such designated areas are in separate rooms that are not used by residents.

B. A health facility or educational facility may prohibit all smoking in such facility or may designate smoking and nonsmoking areas within the facility. An educational facility in which

children in grades kindergarten through twelve are educated may also prohibit smoking, the use of snuff, chewing tobacco or any other form of tobacco product in the buildings and on the grounds of the facility. In an educational facility in which children in grades kindergarten through twelve are educated, smoking areas may only be designated for adults and must be separately ventilated. Provided further, educational facilities in which children in grades kindergarten through twelve are educated which designate a smoking area within the facility shall also designate a nonsmoking area within the facility which may be used by school personnel for breaks, lunch or similar activities.

C. This section shall not apply to a room, hall or building used for a private function if the seating arrangements are under the control of the sponsor of the function and not under the control of the state or local governmental agency or the person who owns or operates the room, hall or building, or to a licensed premises that is a part of a bowling alley area, or to a racetrack licensed by the Oklahoma Racing Commission.

D. This section shall not apply to areas in which prisoners are housed in municipal jails, county jails or correctional institutions as defined in Section 502 of Title 57 of the Oklahoma Statutes.

E. This section shall not apply to a separate or enclosed bar area of a licensed premise, as provided in Section 241 of Title 37 of the Oklahoma Statutes, which has as its main purpose the selling or serving of nonintoxicating beverages for consumption on the premises.

SECTION 15. AMENDATORY 63 O.S. 1991, Section 1-1524, is amended to read as follows:

Section 1-1524. A. Smoking and nonsmoking areas shall be designated by the state or local governmental agency or the person who owns or operates a public place, except in a public place in which smoking is prohibited by law. A restaurant may have designated smoking and nonsmoking areas or may be designated as being a totally smoking area or a totally nonsmoking area. Existing physical barriers and ventilation systems shall be used to minimize smoke in both smoking and adjacent nonsmoking areas.

B. In the case of a public place consisting of a single room, the state or local governmental agency or the person who owns or operates the single room shall be in compliance with this act if an area of the room is reserved and posted as a nonsmoking area.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1526.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

In addition to any other penalties authorized by law, the State Board of Health or the Department of Human Services, whichever is the appropriate entity, shall impose administrative fines against nursing facilities, employees of nursing facilities, or both, and child care facilities for violations of Section 1-1521 et seq. of Title 63 of the Oklahoma Statutes, in accordance with this section. If after a hearing in accordance with the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes, the appropriate entity as specified in this section shall find any person to be in violation of subsection A of Section 14 of this act, such person shall be subject to an administrative penalty of Fifty Dollars (\$50.00) for the first offense within a one-year period, One Hundred Dollars (\$100.00) for the second offense within a one-year period, and Two Hundred Dollars (\$200.00) for a third or subsequent offense within a one-year period.

SECTION 17. This act shall become effective July 1, 1994.

SECTION 18. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 26th day of April, 1994.

President of the Senate

Passed the House of Representatives the 5th day of April, 1994.

Speaker of the House of
Representatives

