

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 619

By: Robinson, Monson, Muegge,
Weedn, Herbert and
Wilcoxson of the Senate

and

Settle of the House

COMMITTEE SUBSTITUTE

An Act relating to sale of tobacco; amending Section 4, Chapter 137, O.S.L. 1994, as amended by Section 2, Chapter 144, O.S.L. 1996, Section 5, Chapter 137, O.S.L. 1994, as amended by Section 3, Chapter 144, O.S.L. 1996, Section 6, Chapter 137, O.S.L. 1994, Section 7, Chapter 137, O.S.L. 1994, Section 9, Chapter 137, O.S.L. 1994, as amended by Section 4, Chapter 144, O.S.L. 1996, Section 10, Chapter 137, O.S.L. 1994, as amended by Section 5, Chapter 144, O.S.L. 1996, and Section 12, Chapter 137, O.S.L. 1994, as amended by Section 6, Chapter 144, O.S.L. 1996 (37 O.S. Supp. 1996, Sections 600.3, 600.4, 600.5, 600.6, 600.8, 600.9, and 600.11), which relate to the Prevention of Youth Access to Tobacco Act; modifying circumstances under which proof of age must be requested for sale of tobacco;

requiring and increasing fines for certain tobacco-related offenses; extending certain time period between certain subsequent offenses; allowing discretion for assessment of certain fines; providing for criminal liability of owner under certain circumstances; requiring suspension of tobacco license upon failure to pay certain fine; authorizing certain notification of parents and guardians of minors of certain violations; specifying each day of violation as a separate offense; providing for certain mitigating and aggravating circumstances; requiring certain notification of owners or store managers of certain violations of employees; specifying such notice; authorizing the ABLE Commission to provide certain information upon certain circumstances; specifying certain percent of ABLE assessed fines in certain municipalities to be remitted to such municipalities; stating purpose of certain fee; changing requirement for submission of certain report; amending 21 O.S. 1991, Section 1241, which relates to furnishing tobacco products to minors; modifying penalty; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY Section 4, Chapter 137, O.S.L. 1994, as amended by Section 2, Chapter 144, O.S.L. 1996 (37 O.S. Supp. 1996, Section 600.3), is amended to read as follows:

Section 600.3 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~~ It shall not be unlawful for an employee under eighteen (18) years of age to handle ~~such~~ tobacco 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)~~ or recipient appears to be younger than twenty-seven (27) years of age.

C. 1. When a person violates subsection A or B of this section, the Alcoholic Beverage Laws Enforcement (ABLE) Commission ~~(ABLE)~~ shall ~~assess such person~~ impose an administrative fine of ~~Twenty-five Dollars (\$25.00):~~

- a. not more than One Hundred Dollars (\$100.00) for the first offense ~~within a one-year period~~ Fifty Dollars (\$50.00),
- b. not more than Two Hundred Dollars (\$200.00) for the second offense within a ~~one-year~~ two-year period, ~~and~~ Seventy-five Dollars (\$75.00) following the first offense, or
- c. not more than Three Hundred Dollars (\$300.00), or not more than thirty (30) days suspension of the store's license to sell tobacco products, or both such fine and suspension for a third offense or subsequent offense within a ~~one-year~~ two-year period following the first offense.

2. 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. If the sale is made by an employee who has previously been convicted of a violation of this section, the owner of the store, if the owner knew or should have known of the employee's previous violation, shall also be guilty of the violation and shall be subject to the fine.

E. 1. Upon failure of the employee to pay the administrative fine within ninety (90) days of the day of the assessment of such fine, the ABLE Commission shall notify the Department of Public Safety and the Department shall suspend or not issue a driver license to ~~said~~ the employee until proof of payment has been furnished to the Department of Public Safety.

2. Upon failure of a store owner to pay the administrative fine within ninety (90) days of the assessment of the fine, the ABLE Commission shall notify the Oklahoma Tax Commission and the Oklahoma Tax Commission shall suspend the store's license to sell tobacco products until proof of payment has been furnished to the Oklahoma Tax Commission.

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

G. Cities and towns may enact and municipal police officers may enforce ordinances prohibiting and penalizing conduct under provisions of this section, but the provisions of such ordinances shall be the same as provided for in this section, and the

enforcement provisions under such ordinances shall not be more stringent than those of this section.

SECTION 2. AMENDATORY Section 5, Chapter 137, O.S.L. 1994, as amended by Section 3, Chapter 144, O.S.L. 1996 (37 O.S. Supp. 1996, Section 600.4), is amended to read as follows:

Section 600.4 A. It is unlawful for a person who is under eighteen (18) years of age to purchase, ~~accept receipt of~~ receive, or have in their possession a tobacco product, or to present or offer to any person any purported proof of age which is false, or fraudulent, ~~or not actually his or her own~~, for the purpose of purchasing or receiving any tobacco product. ~~Provided, however,~~ ~~that it~~ It shall not be unlawful for such a person an employee under eighteen (18) years of age to handle such tobacco product products when required in the performance of ~~such person's~~ the employee's duties.

B. When a person violates subsection A of this section, the Alcoholic Beverage Laws Enforcement (ABLE) Commission ~~(ABLE)~~ shall ~~assess such person~~ impose an administrative fine of:

1. Twenty-five Dollars (\$25.00) for a first offense ~~within a one-year period;~~ and ~~an administrative fine of~~

2. Fifty Dollars (\$50.00) for a second or subsequent offense within a one-year period following the first offense.

Upon failure of the individual to pay ~~such~~ the administrative fine within ninety (90) days of the day of ~~such~~ the fine, the ABLE Commission shall notify the Department of Public Safety and the Department shall suspend or not issue a driver license to ~~said~~ the individual until proof of payment has been furnished to the Department of Public Safety.

C. The ABLE Commission may notify a parent or guardian of any minor cited for a violation of this section. Notice may be given by registered mail at the minor's address.

D. Cities and towns may enact and municipal police officers may enforce ordinances prohibiting and penalizing conduct under provisions of this section, but the provisions of such ordinances shall be the same as provided for in this section, and the enforcement provisions under such ordinances shall not be more stringent than those of this section.

SECTION 3. AMENDATORY Section 6, Chapter 137, O.S.L. 1994 (37 O.S. Supp. 1996, Section 600.5), is amended to read as follows:

Section 600.5 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 (ABLE) 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 (ABLE) Commission ~~(ABLE)~~ shall ~~assess such person~~ impose an administrative fine of not more than Fifty Dollars (\$50.00) for each day ~~such~~ an offense occurs. Each day a violation is continuing shall constitute a separate offense. 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 4. AMENDATORY Section 7, Chapter 137, O.S.L. 1994 (37 O.S. Supp. 1996, Section 600.6), is amended to read as follows:

Section 600.6 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)~~ appears to be younger than twenty-seven (27) 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)~~ appears to be younger than twenty-seven (27) years of age. I promise, as a condition of my employment, to ~~observe~~ obey the law."

SECTION 5. AMENDATORY Section 9, Chapter 137, O.S.L. 1994, as amended by Section 4, Chapter 144, O.S.L. 1996 (37 O.S. Supp. 1996, Section 600.8), is amended to read as follows:

Section 600.8 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 (ABLE) Commission ~~(ABLE)~~ shall ~~assess such person~~ impose an administrative fine of ~~Twenty-five Dollars (\$25.00)~~;

1. Not more than One Hundred Dollars (\$100.00) for the first offense ~~within a one-year period, Fifty Dollars (\$50.00)~~;

2. Not more than Two Hundred Dollars (\$200.00) for the second offense within a ~~one-year~~ two-year period, ~~and Seventy-five Dollars (\$75.00)~~ following the first offense; and

3. Not more than Three Hundred Dollars (\$300.00) for a third offense or subsequent offense within a ~~one-year~~ two-year period following the first offense.

D. Upon failure of ~~the~~ an individual to pay ~~the~~ an administrative fine within ninety (90) days of the assessment of ~~such~~ the fine, the ABLE Commission shall notify the Department of Public Safety, and the Department shall suspend or not issue a driver license to ~~said~~ the individual until proof of payment has been furnished to the Department of Public Safety.

E. Cities and towns may enact and municipal police officers may enforce ordinances prohibiting and penalizing conduct under provisions of this section, but the provisions of such ordinances shall be the same as provided for in this section, and the enforcement provisions under such ordinances shall not be more stringent than those of this section.

SECTION 6. AMENDATORY Section 10, Chapter 137, O.S.L. 1994, as amended by Section 5, Chapter 144, O.S.L. 1996 (37 O.S. Supp. 1996, Section 600.9), is amended to read as follows:

Section 600.9 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 (ABLE) Commission ~~(ABLE)~~ shall

~~assess such person~~ impose an administrative fine of not more than Two Hundred Dollars (\$200.00) for each offense.

C. Cities and towns may enact and municipal police officers may enforce ordinances prohibiting and penalizing conduct under provisions of this section, but the provisions of such ordinances shall be the same as provided for in this section, and the enforcement provisions under such ordinances shall not be more stringent than those of this section.

SECTION 7. AMENDATORY Section 12, Chapter 137, O.S.L. 1994, as amended by Section 6, Chapter 144, O.S.L. 1996 (37 O.S. Supp. 1996, Section 600.11), is amended to read as follows:

Section 600.11 A. The Alcoholic Beverage Laws Enforcement (ABLE) 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. The ABLE Commission may consider mitigating or aggravating circumstances involved with the violation of the Prevention of Youth Access to Tobacco Act when assessing penalties.

C. The ABLE Commission shall notify the owner or store manager of the store of each violation of an employee of the store. Notice shall be given by registered mail at the licensee's address.

D. Persons under eighteen (18) years of age may be enlisted by the ABLE Commission to assist in enforcement. ~~Provided, however, i~~ provided, 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~~ conducted in the manner prescribed by the ABLE Commission. ~~Provided, however, that this~~ This subsection shall not apply to the use of persons under eighteen

(18) years of age to test compliance if the compliance test is being conducted by or on behalf of a retailer of cigarettes, as defined in Section 301 of Title 68 of the Oklahoma Statutes, at any location the retailer of cigarettes is authorized to sell cigarettes. 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).

~~E.~~ E. Upon request of an employer, the ABLE Commission is hereby authorized to provide information on any Prevention of Youth Access to Tobacco offense of any applicant for employment or employee of the employer.

F. The ABLE Commission shall provide assistance to the Department of Mental Health and Substance Abuse Services to 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 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.11b of Title 37, unless there is created a duplication in numbering, reads as follows:

For violations of the Prevention of Youth Access to Tobacco Act which occur in a municipality that has adopted ordinances prohibiting and penalizing conduct under provisions of the Prevention of Youth Access to Tobacco Act, thirty-five percent (35%) of each administrative fine imposed by the Alcoholic Beverage Laws Enforcement (ABLE) Commission pursuant to the Prevention of Youth Access to Tobacco Act shall be remitted to such municipality.

SECTION 9. AMENDATORY 21 O.S. 1991, Section 1241, is amended to read as follows:

Section 1241. Any person who shall furnish to any minor by gift, sale or otherwise any ~~cigarettes, cigarette papers, cigars, snuff, chewing tobacco,~~ or any other form of tobacco product not specified in the Prevention of Youth Access to Tobacco Act, upon conviction, shall be guilty of a misdemeanor and, upon conviction thereof, shall ~~be sentenced to~~ pay a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00) ~~and be confined in the county jail not less than ten (10) days nor more than ninety (90) days~~ for each offense.

SECTION 10. This act shall become effective November 1, 1997.

46-1-7296 MCD