

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 1240

By: Kirby

AS INTRODUCED

An Act relating to intoxicating liquors; amending Sections 4, 5 and 9, Chapter 137, O.S.L. 1994, as amended by Sections 2, 3 and 4, Chapter 144, O.S.L. 1996 (37 O.S. Supp. 1996, Sections 600.3, 600.4 and 600.8), which relate to the Prevention of Youth Access to Tobacco Act; modifying certain fines; modifying suspension and nonissuance of certain licenses; requiring the ABLE Commission to notify the Oklahoma Tax Commission of certain violations; requiring the Oklahoma Tax Commission to suspend or not issue certain cigarette licenses until certain payments are rendered; eliminating the Department of Public Safety from certain requirements relating to driver licenses; amending 68 O.S. 1991, Section 304, as last amended by Section 24, Chapter 1, O.S.L. 1995 (68 O.S. Supp. 1996, Section 304), which relates to certain cigarette licenses; specifying certain license reinstatement fee; 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 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)~~ Fifty Dollars (\$50.00) for the first offense within a one-year period, ~~Fifty Dollars (\$50.00)~~ One Hundred Dollars (\$100.00) for the second offense within a one-year period, and ~~Seventy-five Dollars (\$75.00)~~ One Hundred Fifty Dollars (\$150.00) 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. 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~~

Oklahoma Tax Commission, and the ~~Department~~ Commission shall suspend or not issue ~~a driver~~ the retailer cigarette license required pursuant to Section 304 of Title 68 of the Oklahoma Statutes to the employer of said employee until proof of payment has been furnished to the ~~Department of Public Safety~~ 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, or have in their possession 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)~~ Fifty Dollars (\$50.00) for a first offense within a one-year period, and an administrative fine of ~~Fifty Dollars (\$50.00)~~ One Hundred

Dollars (\$100.00) 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 suspend or not issue a driver license to said individual until proof of payment has been furnished to the Department of Public Safety.~~

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 3. 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 Commission (ABLE) shall assess such person an administrative fine of ~~Twenty-five Dollars (\$25.00)~~ Fifty Dollars (\$50.00) for the first offense within a one-year period, ~~Fifty Dollars (\$50.00)~~ One Hundred Dollars (\$100.00) for the second offense within a one-year period, and ~~Seventy-five Dollars (\$75.00)~~ One Hundred Fifty Dollars (\$150.00) for a third offense or subsequent offense within a one-year period.

D. Upon failure of the individual to pay the administrative fine within ninety (90) days of the assessment of such fine, the ABLE Commission shall notify the ~~Department of Public Safety~~ Oklahoma Tax Commission, and the ~~Department~~ Commission shall suspend or not issue ~~a driver~~ any cigarette license to said individual or the employer of said individual pursuant to Section 304 of Title 68 of the Oklahoma Statutes until proof of payment has been furnished to the ~~Department of Public Safety~~ Oklahoma Tax Commission.

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 4. AMENDATORY 68 O.S. 1991, Section 304, as last amended by Section 24, Chapter 1, O.S.L. 1995 (68 O.S. Supp. 1996, Section 304), is amended to read as follows:

Section 304. A. Every manufacturer, wholesaler, warehouseman, jobber or distributor of cigarettes in this state, as a condition of carrying on such business, shall annually secure from the Tax Commission a written license, and shall pay therefor an annual fee of Twenty-five Dollars (\$25.00). This license, which will be for the ensuing year, must at all times be displayed in a conspicuous place so that it can be seen. Persons operating more than one place of business must secure a license for each place of business. "Place of business" shall be construed to include the place where orders are received, or where cigarettes are sold. If cigarettes are sold on or from any vehicle, the vehicle shall constitute a place of business and the regular license fee of Twenty-five Dollars (\$25.00) shall be paid with respect thereto. However, if the vehicle is owned or operated by a place of business for which the regular Twenty-five Dollars (\$25.00) is paid, the annual fee for the

license with respect to such vehicle shall be only Ten Dollars (\$10.00).

Provided, that no license for the sale of cigarettes or tobacco shall be issued to any manufacturer, wholesaler, warehouseman, jobber or distributor who does not maintain a place of business within the State of Oklahoma at which all products sold within this state are stocked, sold and delivered, and from which vehicles classed as a "place of business", as hereinabove defined, are loaded and operated, and where all records and accounts are kept, and necessary accounting procedures are performed; but these provisions shall not apply to manufacturers, wholesalers, warehousemen, jobbers or distributors having a place of business located in another state where such state does not require manufacturers, wholesalers, warehousemen, jobbers or distributors who have their place of business in Oklahoma to maintain a warehouse or place of business in such other state in order to secure a license to do business in such state.

Provided, further, that the Oklahoma Tax Commission shall not authorize the use of a stamp-metering device by any manufacturer, wholesaler, warehouseman, jobber or distributor who does not maintain a warehouse or wholesale establishment or place of business within the State of Oklahoma from which cigarettes are received, stocked and sold and where such metering device is kept and used; but the Tax Commission may, in its discretion, permit the use of such metering device by manufacturers, wholesalers, warehousemen, jobbers or distributors of cigarettes residing wholly within another state where such state permits a licensed Oklahoma resident, manufacturer, wholesaler, warehouseman, jobber or distributor of cigarettes the use of the metering device of such state without first requiring that such manufacturer, wholesaler, warehouseman, jobber or distributor establish a place of business in such other state. The provisions of this paragraph relating to metering

devices shall not apply to states which do not require the affixing of tax stamps to packages of cigarettes before same are offered for sale in such states.

B. Every retailer in this state, as a condition of carrying on such business, shall secure from the Tax Commission a license and shall pay therefor a fee of Thirty Dollars (\$30.00). Such license, which will be for the ensuing three (3) years, must at all times be displayed in a conspicuous place so that it can be seen. A license issued prior to September 1, 1994, shall be valid until it expires. Upon expiration of such license, the retailer to whom such license was issued may obtain a renewal license which shall be valid for three (3) years or until expiration of the retailer's sales tax permit, whichever is earlier, after which a renewal license shall be valid for three (3) years. The manner and prorated fee for renewals shall be prescribed by the Tax Commission. Every person operating under such license as a retailer and who owns or operates more than one place of business must secure a license for each place of business. "Place of business" shall be construed to include places where orders are received or where cigarettes are sold.

C. Every distributing agent shall, as a condition of carrying on such business, pursuant to written application on a form prescribed by and in such detailed form as the Tax Commission may require, annually secure from the Tax Commission a license, and shall pay therefor an annual fee of One Hundred Dollars (\$100.00). An application shall be filed and a license obtained for each place of business owned or operated by a distributing agent. The license, which will be for the ensuing year, shall be consecutively numbered, nonassignable and nontransferable, and shall authorize the storing and distribution of unstamped cigarettes within this state when such distribution is made upon interstate orders only.

D. 1. All wholesale, retail, and distributing agent's licenses shall be nonassignable and nontransferable from one person to

another person. Such licenses may be transferred from one location to another location after an application has been filed with the Commission requesting such transfer and after the approval of the Commission.

2. Wholesale, retail, and distributing agent's licenses shall be applied for on a form prescribed by the Commission. Any person operating as a wholesaler, retailer, or distributing agent must at all times have an effective unexpired license which has been issued by the Commission. If any such person or licensee continues to operate as such on a license issued by the Commission which has expired, or operates without ever having obtained from the Commission such license, he shall, after becoming delinquent for a period in excess of fifteen (15) days pay to the Commission, in addition to the annual license fee, a penalty of twenty-five cents (\$0.25) per day on each delinquent license for each day so operated in excess of fifteen (15) days. The penalty provided for herein shall not exceed the annual license fee for such license.

E. Any license issued pursuant to this section which is suspended or not issued for a violation of the Prevention of Youth Access to Tobacco Act in accordance with Sections 1 through 3 of this act shall not be issued or reinstated without payment to the Commission of a reinstatement fee of One Hundred Fifty Dollars (\$150.00).

SECTION 5. This act shall become effective November 1, 1997.

46-1-5812

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