

SHORT TITLE: Prevention of Youth Access to Tobacco Act; raising  
fines for certain tobacco related offenses; emergency.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 619

By: Robinson

AS INTRODUCED

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, Section 11, Chapter 137, O.S.L. 1994, 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, 600.10, 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; raising fines for certain tobacco-related offenses; requiring suspension of tobacco license upon failure to pay certain fine; allowing discretion for assessment of certain fines against minors and retail merchants; modifying language; allowing municipalities to establish certain tobacco licensing requirements and access annual 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; and declaring an emergency.

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 is twenty-six (26) years of age or younger.

C. 1. When a person violates subsection A or B of this section, the Alcoholic Beverage Laws Enforcement Commission (ABLE) ~~shall assess such person~~ may 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~~ two-year period, ~~and~~ 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); 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.

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. The ABLE Commission may consider any other mitigating or aggravating circumstances involved with the violation of the Prevention of Youth Access to Tobacco Act when assessing penalties.

D. If the sale is made by an employee of the owner of a store at which tobacco products are sold at retail, both the employee and the owner of the store shall 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 Commission (ABLE) ~~shall assess~~ ~~such person~~ may impose an administrative fine of not more than Twenty-five Dollars (\$25.00) for a first offense within a one-year period, and an administrative fine of not more than Fifty Dollars (\$50.00) for a second or subsequent offense within a one-year period. 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. 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 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~~ may 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)~~ is twenty-six (26) years of age or younger.

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)~~ is twenty-six (26) years of age or younger. 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 Commission (ABLE) ~~shall~~

~~assess such person may 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~~ two-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); and~~

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

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~~ 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 Commission (ABLE) ~~shall assess such person may 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 11, Chapter 137, O.S.L. 1994 (37 O.S. Supp. 1996, Section 600.10), is amended to read as follows:

Section 600.10 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; 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; provided further, municipalities may adopt ordinances to establish local tobacco retailer licensing requirements under which a seller of tobacco products could be subject to a maximum thirty-day suspension of his or her tobacco license as a result of a third or subsequent violation of the provisions of Section 600.3 of this title within a two-year period. The annual fee for a municipal tobacco retailer license shall not exceed Fifty Dollars (\$50.00) for each retail location. Fees shall be used to assist in the funding of a regular compliance check program to enforce the municipal ordinance.

SECTION 8. 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 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,;~~ 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).

C. 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 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. 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.

46-1-0304

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