

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2398

By: Vaughn

AS INTRODUCED

An Act relating to tobacco products and smoking; amending 37 O.S. 2001, Sections 600.3, 600.4, 600.8 and 600.9, which relate to the Prevention of Youth Access to Tobacco Act; removing state preemptions; amending 63 O.S. 2001, Section 1-1527, which relates to the Smoking in Public Places Act; removing state preemption; and providing an effective date.

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

SECTION 1. AMENDATORY 37 O.S. 2001, 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. It shall not be unlawful for an employee under eighteen (18) years of age to handle 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) years of age.

If an individual engaged in the sale or distribution of tobacco products has demanded proof of age from a prospective purchaser or recipient who is not under eighteen (18) years of age, the failure to subsequently require proof of age shall not constitute a violation of subsection B of this section.

C. 1. When a person violates subsection A or B of this section, the Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose an administrative fine of:

- a. not more than One Hundred Dollars (\$100.00) for the first offense,
- b. not more than Two Hundred Dollars (\$200.00) for the second offense within a one-year period following the first offense,
- c. not more than Three Hundred Dollars (\$300.00), or not more than fifteen (15) days suspension of the store's license to sell tobacco products, or both such fine and suspension for a third offense within a one-year period following the first offense, or
- d. 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 fourth or subsequent offense within a one-year period following the first offense.

2. When it has been determined that a penalty shall include a license suspension, the ABLE Commission shall notify the Oklahoma Tax Commission, and the Oklahoma Tax Commission shall suspend the store's license to sell tobacco products at the location where the offense occurred for the period of time prescribed by the ABLE Commission.

3. 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 section. A person cited for violating this section shall be deemed to have reasonably relied upon proof of age, and such person shall not be found guilty of such violation if such person proves that:

- a. the individual who purchased or received the tobacco product presented a driver license or other

government-issued photo identification purporting to establish that such individual was eighteen (18) years of age or older, and

- b. the person cited for the violation confirmed the validity of the driver license or other government-issued photo identification presented by such individual by performing a transaction scan by means of a transaction scan device.

Provided, that this defense shall not relieve from liability any person cited for a violation of this section if such person failed to exercise reasonable diligence to determine whether the physical description and picture appearing on the driver license or other government-issued photo identification was that of the individual who presented it. The availability of the defense described in this subsection does not affect the availability of any other defense under any other provision of law.

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 twice found to be in violation of this section, the owner of the store, if the owner knew of the employee's previous violations, shall also be found to be in violation and shall be subject to an identical fine.

E. On or before December 15, 1997, the ABLE Commission shall adopt rules establishing a method of notification of storeowners when one of their employees has been determined to be in violation of this section by the ABLE Commission or convicted of a violation by a municipality.

F. 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 the employee until proof of payment has been furnished to the Department of Public Safety.

2. Upon failure of a storeowner 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.

G. 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.

H. 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 37 O.S. 2001, 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, 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, for the purpose of purchasing or receiving any tobacco product. It shall not be unlawful for an employee under eighteen (18) years of age to handle tobacco products when required in the performance of the employee's duties.

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

1. Not to exceed One Hundred Dollars (\$100.00) for a first offense; and

2. Not to exceed Two Hundred Dollars (\$200.00) for a second or subsequent offense within a one-year period following the first offense.

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

C. The ABLE Commission shall establish rules to provide for notification to a parent or guardian of any minor cited for a violation of this section.

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 37 O.S. 2001, 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 shall impose an administrative fine of:

1. Not more than One Hundred Dollars (\$100.00) for the first offense;

2. Not more than Two Hundred Dollars (\$200.00) for the second offense; and

3. Not more than Three Hundred Dollars (\$300.00) for a third or subsequent offense.

D. Upon failure of an individual to pay an administrative fine within ninety (90) days of the assessment of the fine, the ABLE Commission shall notify the Department of Public Safety, and the Department shall suspend or not issue a driver license to 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 4. AMENDATORY 37 O.S. 2001, 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 shall 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 5. AMENDATORY 63 O.S. 2001, Section 1-1527, is amended to read as follows:

Section 1-1527. ~~The State Legislature by adopting this act intends to preempt any other regulation promulgated to control smoking in public places and to standardize laws that governmental subdivisions may adopt to control smoking.~~ Cities and towns may enact and enforce laws prohibiting and penalizing conduct under provisions of this act, ~~but the provisions of such laws shall be the same as provided in this act and the enforcement provisions under such laws shall not be more stringent than those of this act~~ the Smoking in Public Places Act.

SECTION 6. This act shall become effective November 1, 2002.

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