

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1310

By: Morgan

AS INTRODUCED

An Act relating to tobacco products; amending 37 O.S. 2001, Sections 600.3, 600.4, 600.5, 600.6, 600.7, 600.8, 600.9, 600.11 and 600.11a, which relate to the Prevention of Youth Access to Tobacco Act; modifying conditions under which owner of store may be guilty of violation of provisions of Act and subject to certain penalties; authorizing municipalities to enact and enforce ordinances prohibiting and penalizing conduct under additional provisions of Act; requiring municipal ordinances be no less stringent than provisions of Act; modifying contents of sign required to be posted at place of business; modifying places where vending machines may be located; prohibiting display of tobacco products for retail sale in manner that allows public access without assistance and providing for penalties and enforcement; allowing county law enforcement officers to conduct compliance checks; conforming language; correcting statutory cite; repealing 37 O.S. 2001, Section 600.10, which relates to regulation of tobacco products by agencies and political subdivisions of state; providing for codification; 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, both the employee and the owner of the store 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~~ penalty.

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~~ 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~~ no less stringent than ~~those~~ the provisions 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~~. 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~~ no less stringent than ~~these~~ the provisions of this section.

SECTION 3. AMENDATORY 37 O.S. 2001, 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, stating the following: "TOBACCO PRODUCTS ARE ADDICTIVE. IT'S THE LAW. WE DO NOT SELL TOBACCO PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE". The sign shall also provide the toll-free number operated by the Alcoholic Beverage Laws Enforcement (ABLE) Commission for the purpose of reporting violations of the Prevention of Youth Access to Tobacco Act.

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 Fifty Dollars (\$50.00) for each day 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.

C. Cities and towns may enact and municipal police officers may enforce ordinances prohibiting and penalizing conduct under provisions of this section. The provisions of such ordinances shall be no less stringent than the provisions of this section.

SECTION 4. AMENDATORY 37 O.S. 2001, 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) years of age.

B. This notice shall be provided before the individual commences work as a retail sales clerk. 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 obey the law. I understand that violations by me may be punishable by fines, suspension or nonissuance of my driver license. In addition, I understand that violations by me may subject the storeowner to fines or license suspension."

C. Cities and towns may enact and municipal police officers may enforce ordinances prohibiting and penalizing conduct under provisions of this section. The provisions of such ordinances shall be no less stringent than the provisions of this section.

SECTION 5. AMENDATORY 37 O.S. 2001, Section 600.7, is amended to read as follows:

Section 600.7 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; or

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.

C. Cities and towns may enact and municipal police officers may enforce ordinances prohibiting and penalizing conduct under provisions of this section. The provisions of such ordinances shall be no less stringent than the provisions of this section.

SECTION 6. 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~~. 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~~ no less stringent than ~~those~~ the provisions of this section.

SECTION 7. 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~~. 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~~ no less stringent than ~~these~~ the provisions of this section.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.10A of Title 37, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful for any person to display tobacco products for retail sale in any manner that allows public access to the tobacco product without assistance from an employee or the owner of the store.

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. The provisions of such ordinances shall be no less stringent than the provisions of this section.

SECTION 9. AMENDATORY 37 O.S. 2001, Section 600.11, is amended to read as follows:

Section 600.11 A. The Alcoholic Beverage Laws Enforcement (ABLE) Commission 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. Any conviction for a violation of a local ordinance authorized by the Prevention of Youth Access to Tobacco Act and any

compliance checks by a municipality or county pursuant to subsection E of this section shall be reported in writing to the ABLE Commission within thirty (30) days of such conviction or compliance check. Such reports shall be compiled in the manner prescribed by the ABLE Commission.

D. For the purpose of determining second or subsequent violations, both the offenses penalized by the ABLE Commission and the offenses penalized by municipalities and counties and reported to the ABLE Commission, shall be considered together in such determination.

E. Persons under eighteen (18) years of age may be enlisted by the ABLE Commission or a municipality or county to assist in enforcement; provided, 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. Municipalities which have enacted municipal ordinances in accordance with the Prevention of Youth Access to Tobacco Act and county law enforcement officers may conduct, pursuant to rules of the ABLE Commission, compliance checks without prior notification to the ABLE Commission and shall be exempt from the written notice requirement in this subsection. 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).

F. At the beginning of each month, the Oklahoma Tax Commission, pursuant to Section 205 of Title 68 of the Oklahoma Statutes, shall provide to the ABLE Commission and to each municipality which has ordinances concerning the Prevention of Youth Access to Tobacco Act, the location, name, and address of each licensee licensed to sell tobacco products at retail or otherwise furnish tobacco products. ~~Upon violation of an employee at a location, the ABLE Commission shall notify the storeowner for that location of the latest and all previous violations when one of their employees has been determined to be in violation of the Prevention of Youth Access to Tobacco Act by the ABLE Commission or convicted of a violation by a municipality. In the event the employee is thereafter found in violation of the Prevention of Youth Access to Tobacco Act by the ABLE Commission or convicted of a violation by a municipality for a third or subsequent offense, the storeowner shall be subject to the penalties prescribed in subparagraph b, c or d of paragraph 1 of subsection C of Section 1 of this act, whichever is applicable.~~

G. Upon request of a storeowner or a municipality which has enacted ordinances in accordance with the Prevention of Youth Access to Tobacco Act, the ABLE Commission is hereby authorized to provide information on any Prevention of Youth Access to Tobacco Act offense of any applicant for employment or employee of the storeowner.

H. 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 10. AMENDATORY 37 O.S. 2001, Section 600.11a, is amended to read as follows:

Section 600.11a Any city or town that enacts and enforces ordinances prohibiting and penalizing conduct under provisions of Section ~~600.3, 600.4, 600.8 or 600.9~~ 600.1 et seq. of this title shall furnish information requested by the ABLE Commission in the form, manner and time as may be determined by the ABLE Commission which will allow the ABLE Commission to comply with subsection C H of Section 600.11 of this title.

SECTION 11. REPEALER 37 O.S. 2001, Section 600.10, is hereby repealed.

SECTION 12. This act shall become effective November 1, 2002.

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