

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 1867

By: Worthen and Nance of the
House

and

Robinson of the Senate

COMMITTEE SUBSTITUTE

An Act relating to the Prevention of Youth Access to Tobacco Act; amending 37 O.S. 2001, Sections 600.2, 600.3, 600.5, 600.7, 600.8 and 600.11, which relate to the Prevention of Youth Access to Tobacco Act; modifying definition; modifying language; modifying penalties; providing for suspension of certain license for three or more violations by employees; construing effect of prior violations by persons subsequently employed; modifying contents of sign required to be posted at place of business; modifying places where vending machines may be located and provisions related thereto; prohibiting sale of cigarettes and other tobacco products in manner that permits direct access to products; prohibiting display of tobacco products for retail sale in manner that allows public access without assistance and providing penalty; providing for enactment and enforcement of certain municipal ordinances with certain conditions; allowing peace officers to enforce and conduct compliance checks; allowing use of persons under certain age to conduct compliance checks and enforcement under certain conditions; conforming language; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 37 O.S. 2001, Section 600.2, is amended to read as follows:

Section 600.2 As used in the Prevention of Youth Access to Tobacco Act:

1. "Person" means any individual, firm, fiduciary, partnership, corporation, trust, or association, however formed;

2. "Proof of age" means a driver license, license for identification only, or other generally accepted means of identification that describes the individual as eighteen (18) years of age or older and contains a photograph or other likeness of the individual and appears on its face to be valid;

3. "Sample" means a tobacco product distributed to members of the public at no cost for the purpose of promoting the product;

4. "Sampling" means the distribution of samples to members of the public in a public place;

5. "Tobacco product" means any product that contains tobacco ~~and is~~ intended for human consumption and any material or device used in the smoking, chewing, or other method of consumption of tobacco, including cigarette papers, pipes, holders of smoking materials of all types, and other items designed primarily for the smoking or ingestion of tobacco products;

6. "Transaction scan" means the process by which a seller checks, by means of a transaction scan device, the validity of a driver license or other government-issued photo identification; and

7. "Transaction scan device" means any commercial device or combination of devices used at a point of sale or entry that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver license or other government-issued photo identification.

SECTION 2. 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, give 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 this 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~~ two-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~~ two-year period following the first offense. In addition to any other penalty, the store's license to sell tobacco products may be suspended for a period not exceeding thirty (30) days, 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~~ two-year period following the first offense. In addition to any other penalty, the

store's license to sell tobacco products may be suspended for a period not exceeding sixty (60) days.

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~~ Each violation by any employee of an owner of a store licensed to sell tobacco products shall be deemed a violation against the owner for purposes of a license suspension pursuant to the provisions of subsection C of this section. An owner of a store licensed to sell tobacco products shall not be deemed in violation of the provisions of the Prevention of Youth Access to Tobacco Act for any acts constituting a violation by any other person when the violation occurs prior to actual employment of the person by the store owner or the violation occurs at a location other than the owner's retail store. For purposes of determining the liability of a person controlling franchises or business operations in multiple locations, for any violations of the provisions of subsection A or B of this section, each individual franchise or business location shall be deemed a separate entity.

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 ordinances and ~~municipal police~~ peace officers may enforce ~~ordinances~~ any laws prohibiting and penalizing conduct under provisions of this section, but the provisions of ~~such~~ municipal ordinances shall be the same as provided for in this section, and the ~~enforcement~~ penalty provisions under such ordinances shall not be more stringent than those 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 or displays 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: "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~~ a violation 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 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; and

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.~~

SECTION 5. 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 or retailer to distribute tobacco products or product samples to any person under eighteen (18) years of age.

B. ~~Notwithstanding subsection A of this section, no~~ No person shall distribute tobacco products or 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 any provision of 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~~ any person 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~~ person until proof of payment has been furnished to the Department of Public Safety.

E. Cities and towns may enact ordinances and ~~municipal police~~ peace officers may enforce ~~ordinances~~ any laws prohibiting and penalizing conduct under provisions of this section, but the provisions of ~~such~~ municipal ordinances shall be the same as provided for in this section, and the ~~enforcement~~ penalty provisions

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

SECTION 6. 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 or retail store to display or offer for sale tobacco products in any manner that allows public access to the tobacco products without assistance from the person displaying the tobacco products, or from an employee or the owner of the store.

B. When a person violates the provisions of 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 ordinances and peace officers may enforce any laws prohibiting and penalizing conduct under provisions of this section, but the provisions of municipal ordinances shall be the same as provided for in this section and the penalty provisions under such ordinances shall not be more stringent than those of this section.

SECTION 7. 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 Prevention of Youth Access to Tobacco 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~~ municipal ordinance authorized by the Prevention of Youth Access to Tobacco Act and any compliance checks by a municipality or peace officer 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 as administrative fines and the offenses penalized by municipalities and towns 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 town to assist in compliance checks and 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 any peace officer 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 8. This act shall become effective July 1, 2004.

SECTION 9. 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.

49-2-3153

CJ

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