

CS for EHB 1867

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**THE STATE SENATE**  
**Tuesday, April 6, 2004**

**Committee Substitute for**  
**ENGROSSED**  
**House Bill No. 1867**

COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 1867 - By: WORTHEN  
and NANCE of the House and ROBINSON of the Senate.

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

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

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

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

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

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

21      7. "Transaction scan device" means any commercial device or  
22 combination of devices used at a point of sale or entry that is  
23 capable of deciphering in an electronically readable format the

1 information encoded on the magnetic strip or bar code of a driver  
2 license or other government-issued photo identification.

3 SECTION 2. AMENDATORY 37 O.S. 2001, Section 600.3, is  
4 amended to read as follows:

5 Section 600.3 A. It is unlawful for any person to sell, give  
6 or furnish in any manner any tobacco product to another person who  
7 is under eighteen (18) years of age, or to purchase in any manner a  
8 tobacco product on behalf of any such person. It shall not be  
9 unlawful for an employee under eighteen (18) years of age to handle  
10 tobacco products when required in the performance of the employee's  
11 duties.

12 B. A person engaged in the sale or distribution of tobacco  
13 products shall demand proof of age from a prospective purchaser or  
14 recipient if an ordinary person would conclude on the basis of  
15 appearance that the prospective purchaser may be under eighteen (18)  
16 years of age.

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

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

4 a. not more than One Hundred Dollars (\$100.00) for the  
5 first offense,

6 b. not more than Two Hundred Dollars (\$200.00) for the  
7 second offense within a ~~one-year~~ two-year period  
8 following the first offense,

9 c. not more than Three Hundred Dollars (\$300.00), ~~or not~~  
10 ~~more than fifteen (15) days suspension of the store's~~  
11 ~~license to sell tobacco products, or both such fine~~  
12 ~~and suspension~~ for a third offense within a ~~one-year~~  
13 two-year period following the first offense. In  
14 addition to any other penalty, the store's license to  
15 sell tobacco products may be suspended for a period  
16 not exceeding thirty (30) days, or

17 d. not more than Three Hundred Dollars (\$300.00), ~~or not~~  
18 ~~more than thirty (30) days suspension of the store's~~  
19 ~~license to sell tobacco products, or both such fine~~  
20 ~~and suspension~~ for a fourth or subsequent offense  
21 within a ~~one-year~~ two-year period following the first  
22 offense. In addition to any other penalty, the

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

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

9           3. Proof that the defendant demanded, was shown, and reasonably  
10 relied upon proof of age shall be a defense to any action brought  
11 pursuant to this section. A person cited for violating this section  
12 shall be deemed to have reasonably relied upon proof of age, and  
13 such person shall not be found guilty of such violation if such  
14 person proves that:

15           a. the individual who purchased or received the tobacco  
16 product presented a driver license or other  
17 government-issued photo identification purporting to  
18 establish that such individual was eighteen (18) years  
19 of age or older, and

20           b. the person cited for the violation confirmed the  
21 validity of the driver license or other government-  
22 issued photo identification presented by such

1 individual by performing a transaction scan by means  
2 of a transaction scan device.

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

11 D. If the sale is made by an employee of the owner of a store  
12 at which tobacco products are sold at retail, the employee shall be  
13 guilty of the violation and shall be subject to the fine. ~~If the  
14 sale is made by an employee who has previously been twice found to  
15 be in violation of this section, the owner of the store, if the  
16 owner knew of the employee's previous violations, shall also be  
17 found to be in violation and shall be subject to an identical fine~~

18 Each violation by any employee of an owner of a store licensed to  
19 sell tobacco products shall be deemed a violation against the owner  
20 for purposes of a license suspension pursuant to the provisions of  
21 subsection C of this section. An owner of a store licensed to sell  
22 tobacco products shall not be deemed in violation of the provisions  
23 of the Prevention of Youth Access to Tobacco Act for any acts

1 constituting a violation by any other person when the violation  
2 occurs prior to actual employment of the person by the store owner  
3 or the violation occurs at a location other than the owner's retail  
4 store. For purposes of determining the liability of a person  
5 controlling franchises or business operations in multiple locations,  
6 for any violations of the provisions of subsection A or B of this  
7 section, each individual franchise or business location shall be  
8 deemed a separate entity.

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

14 F. 1. Upon failure of the employee to pay the administrative  
15 fine within ninety (90) days of the day of the assessment of such  
16 fine, the ABLE Commission shall notify the Department of Public  
17 Safety and the Department shall suspend or not issue a driver  
18 license to the employee until proof of payment has been furnished to  
19 the Department of Public Safety.

20 2. Upon failure of a storeowner to pay the administrative fine  
21 within ninety (90) days of the assessment of the fine, the ABLE  
22 Commission shall notify the ~~Oklahoma~~ Tax Commission and the ~~Oklahoma~~  
23 Tax Commission shall suspend the store's license to sell tobacco

1 products until proof of payment has been furnished to the ~~Oklahoma~~  
2 Tax Commission.

3 G. ~~For purposes of determining the liability of a person~~  
4 ~~controlling franchises or business operations in multiple locations~~  
5 ~~for any violation of subsection A or B of this section, each~~  
6 ~~individual franchise or business location shall be deemed a separate~~  
7 ~~entity.~~

8 ~~H.~~ Cities and towns may enact ordinances and ~~municipal police~~  
9 peace officers may enforce ~~ordinances~~ any laws prohibiting and  
10 penalizing conduct under provisions of this section, but the  
11 provisions of ~~such~~ municipal ordinances shall be the same as  
12 provided for in this section, and the ~~enforcement~~ penalty provisions  
13 under such ordinances shall not be more stringent than those of this  
14 section.

15 SECTION 3. AMENDATORY 37 O.S. 2001, Section 600.5, is  
16 amended to read as follows:

17 Section 600.5 A. Every person who sells or displays tobacco  
18 products at retail shall post conspicuously and keep so posted at  
19 the place of business a sign, as specified by the Alcoholic Beverage  
20 Laws Enforcement (ABLE) Commission, stating the following: "IT'S  
21 THE LAW. WE DO NOT SELL TOBACCO PRODUCTS TO PERSONS UNDER 18 YEARS  
22 OF AGE." The sign shall also provide the toll-free number operated  
23 by the Alcoholic Beverage Laws Enforcement (ABLE) Commission for the

1 purpose of reporting violations of the Prevention of Youth Access to  
2 Tobacco Act.

3 B. When a person violates subsection A of this section, the  
4 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose  
5 an administrative fine of not more than Fifty Dollars (\$50.00) for  
6 each day ~~an offense~~ a violation occurs. Each day a violation is  
7 continuing shall constitute a separate offense. The notice required  
8 by subsection A of this section~~,~~ shall be the only notice required  
9 to be posted or maintained in any store that sells tobacco products  
10 at retail.

11 SECTION 4. AMENDATORY 37 O.S. 2001, Section 600.7, is  
12 amended to read as follows:

13 Section 600.7 ~~A.~~ It shall be unlawful for any person to sell  
14 tobacco products through a vending machine unless the vending  
15 machine is located:

16 1. In areas of factories, businesses, offices or other places  
17 that are not open to the public; and

18 2. In places that are open to the public, but to which persons  
19 under eighteen (18) years of age are not admitted~~,~~

20 ~~3. In places where alcoholic beverages are sold for consumption~~  
21 ~~on the premises, but only if the vending machine is under the~~  
22 ~~continuous supervision of the owner or lessee of the premises or an~~

1 ~~employee thereof, and is inaccessible to the public when the~~  
2 ~~establishment is closed; and~~

3 ~~4. In other places, but only if the machine is under the~~  
4 ~~continuous supervision of the owner or lessee of the premises or an~~  
5 ~~employee thereof, or can be operated only by the activation of an~~  
6 ~~electronic switch by the owner or lessee of the premises, or an~~  
7 ~~employee thereof prior to each purchase, or can be operated only by~~  
8 ~~a special token purchased from the owner or lessee of the premises,~~  
9 ~~or an employee thereof.~~

10 ~~B. In any place where supervision of a vending machine,~~  
11 ~~activation of an electronic switch, or sale of a special token is~~  
12 ~~required by subsection A of this section, the person responsible for~~  
13 ~~that supervision or the activation of the switch shall demand proof~~  
14 ~~of age from a prospective purchaser if any ordinary person would~~  
15 ~~conclude on the basis of appearance that the prospective purchaser~~  
16 ~~may be under eighteen (18) years of age.~~

17 SECTION 5. AMENDATORY 37 O.S. 2001, Section 600.8, is  
18 amended to read as follows:

19 Section 600.8 A. It shall be unlawful for any person or  
20 retailer to distribute tobacco products or product samples to any  
21 person under eighteen (18) years of age.

22 B. ~~Notwithstanding subsection A of this section, no~~ No person  
23 shall distribute tobacco products or product samples in or on any

1 public street, sidewalk, or park that is within three hundred (300)  
2 feet of any playground, school, or other facility when the facility  
3 is being used primarily by persons under eighteen (18) years of age.

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

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

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

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

13 D. Upon failure of ~~an individual~~ any person to pay an  
14 administrative fine within ninety (90) days of the assessment of the  
15 fine, the ABLE Commission shall notify the Department of Public  
16 Safety, and the Department shall suspend or not issue a driver  
17 license to the ~~individual~~ person until proof of payment has been  
18 furnished to the Department of Public Safety.

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

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

3 SECTION 6. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 600.10A of Title 37, unless  
5 there is created a duplication in numbering, reads as follows:

6 A. It is unlawful for any person or retail store to display or  
7 offer for sale tobacco products in any manner that allows public  
8 access to the tobacco products without assistance from the person  
9 displaying the tobacco products, or from an employee or the owner of  
10 the store.

11 B. When a person violates the provisions of subsection A of  
12 this section, the Alcoholic Beverage Laws Enforcement (ABLE)  
13 Commission shall impose an administrative fine of not more than Two  
14 Hundred Dollars (\$200.00) for each offense.

15 C. Cities and towns may enact ordinances and peace officers may  
16 enforce any laws prohibiting and penalizing conduct under provisions  
17 of this section, but the provisions of municipal ordinances shall be  
18 the same as provided for in this section and the penalty provisions  
19 under such ordinances shall not be more stringent than those of this  
20 section.

21 SECTION 7. AMENDATORY 37 O.S. 2001, Section 600.11, is  
22 amended to read as follows:

1 Section 600.11 A. The Alcoholic Beverage Laws Enforcement  
2 (ABLE) Commission is authorized and empowered to enforce the  
3 provisions of ~~this act~~ the Prevention of Youth Access to Tobacco  
4 Act. The ABLE Commission shall enforce those provisions in a manner  
5 that can reasonably be expected to reduce the extent to which  
6 tobacco products are sold or distributed to persons under eighteen  
7 (18) years of age.

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

11 C. Any conviction for a violation of a ~~local~~ municipal  
12 ordinance authorized by the Prevention of Youth Access to Tobacco  
13 Act and any compliance checks by a municipality or peace officer  
14 pursuant to subsection E of this section shall be reported in  
15 writing to the ABLE Commission within thirty (30) days of such  
16 conviction or compliance check. Such reports shall be compiled in  
17 the manner prescribed by the ABLE Commission.

18 D. For the purpose of determining second or subsequent  
19 violations, both the offenses penalized by the ABLE Commission as  
20 administrative fines and the offenses penalized by municipalities  
21 and towns and reported to the ABLE Commission, shall be considered  
22 together in such determination.

1 E. Persons under eighteen (18) years of age may be enlisted by  
2 the ABLE Commission or a municipality or town to assist in  
3 compliance checks and enforcement; provided, such persons may be  
4 used to test compliance only if written parental consent has been  
5 provided and the testing is conducted under the direct supervision  
6 of the ABLE Commission or conducted by another law enforcement  
7 agency if such agency has given written notice to the ABLE  
8 Commission in the manner prescribed by the ABLE Commission.  
9 Municipalities which have enacted municipal ordinances in accordance  
10 with the Prevention of Youth Access to Tobacco Act and any peace  
11 officer may conduct, pursuant to rules of the ABLE Commission,  
12 compliance checks without prior notification to the ABLE Commission  
13 and shall be exempt from the written notice requirement in this  
14 subsection. This subsection shall not apply to the use of persons  
15 under eighteen (18) years of age to test compliance if the  
16 compliance test is being conducted by or on behalf of a retailer of  
17 cigarettes, as defined in Section 301 of Title 68 of the Oklahoma  
18 Statutes, at any location the retailer of cigarettes is authorized  
19 to sell cigarettes. Any other use of persons under eighteen (18)  
20 years of age to test compliance shall be unlawful and punishable by  
21 the ABLE Commission by assessment of an administrative fine of One  
22 Hundred Dollars (\$100.00).

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

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

1           H. The ABLE Commission shall prepare for submission annually to  
2 the Secretary of the United States Department of Health and Human  
3 Services, the report required by Section 1926 of the federal Public  
4 Health Service Act (42 U.S.C. 300-26), and otherwise shall be  
5 responsible for ensuring the state's compliance with that provision  
6 of federal law and any implementing of regulations promulgated by  
7 the United States Department of Health and Human Services.

8           SECTION 8. This act shall become effective July 1, 2004.

9           SECTION 9. It being immediately necessary for the preservation  
10 of the public peace, health and safety, an emergency is hereby  
11 declared to exist, by reason whereof this act shall take effect and  
12 be in full force from and after its passage and approval.

13 COMMITTEE REPORT BY: COMMITTEE ON HUMAN RESOURCES, dated 4-1-04 - DO  
14 PASS, As Amended.