STATE OF OKLAHOMA

1st Session of the 51st Legislature (2007)

HOUSE BILL 1033 By: Cox

AS INTRODUCED

An Act relating to tobacco products; amending 37 O.S. 2001, Sections 600.2, 600.3, as amended by Section 1, Chapter 253, O.S.L. 2004, 600.4, 600.5, as amended by Section 2, Chapter 253, O.S.L. 2004, 600.6, 600.7, as amended by Section 3, Chapter 253, O.S.L. 2004, and 600.8, as amended by Section 4, Chapter 253, O.S.L. 2004 (37 O.S. Supp. 2006, Sections 600.3, 600.5, 600.7 and 600.8), which relate to the Prevention of Youth Access to Tobacco Act; modifying definition; modifying certain age restrictions pertaining to sale of tobacco products; amending Section 5, Chapter 253, O.S.L. 2004 (37 O.S. Supp. 2006, Section 600.10A), which relates to the sale of tobacco; modifying applicability; amending 37 O.S. 2001, Section 600.11, as amended by Section 6, Chapter 253, O.S.L. 2004 (37 O.S. Supp. 2006, Section 600.11), which relates to the sale of tobacco; modifying certain age provisions relating to enforcement; amending Section 1, Chapter 375, O.S.L. 2004 (37 O.S. Supp. 2006, Section 600.13), which relates to tobacco; modifying certain age restrictions; and providing an effective date.

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

SECTION 1. AMENDATORY 37 O.S. 2001, Section 600.2, 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)~~ twenty-one (21) 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;

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, as amended by Section 1, Chapter 253, O.S.L. 2004 (37 O.S. Supp. 2006, 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)~~ twenty-one (21) 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)~~ twenty-one (21) 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)~~ twenty-one (21) 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)~~ twenty-one (21) 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 two-year period following the first offense,

c. not more than Three Hundred Dollars ($300.00) for a third offense within a 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) for a fourth or subsequent offense within a 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 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)~~ twenty-one (21) 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. 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 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 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 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 Tax Commission and the 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. 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 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.

H. County sheriffs may enforce the provisions of the Prevention of Youth Access to Tobacco Act.

SECTION 3. 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)~~ twenty-one (21) 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)~~ twenty-one (21) 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 4. AMENDATORY 37 O.S. 2001, Section 600.5, as amended by Section 2, Chapter 253, O.S.L. 2004 (37 O.S. Supp. 2006, 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~~ 21 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 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 5. 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)~~ twenty-one (21) years of age and the purchase or receipt of tobacco products by any person under ~~eighteen (18)~~ twenty-one (21) 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)~~ twenty-one (21) 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)~~ twenty-one (21) 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)~~ twenty-one (21) 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."

SECTION 6. AMENDATORY 37 O.S. 2001, Section 600.7, as amended by Section 3, Chapter 253, O.S.L. 2004 (37 O.S. Supp. 2006, Section 600.7), is amended to read as follows:

Section 600.7 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)~~ twenty-one (21) years of age are not admitted.

SECTION 7. AMENDATORY 37 O.S. 2001, Section 600.8, as amended by Section 4, Chapter 253, O.S.L. 2004 (37 O.S. Supp. 2006, 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)~~ twenty-one (21) years of age.

B. 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)~~ twenty-one (21) 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 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 person 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 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 8. AMENDATORY Section 5, Chapter 253, O.S.L. 2004 (37 O.S. Supp. 2006, Section 600.10A), is amended to read as follows:

Section 600.10A 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 product without assistance from the person displaying the tobacco product or an employee or the owner of the store. The provisions of this subsection shall not apply to retail stores which do not admit into the store persons under ~~eighteen (18)~~ twenty-one (21) years of age.

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 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 9. AMENDATORY 37 O.S. 2001, Section 600.11, as amended by Section 6, Chapter 253, O.S.L. 2004 (37 O.S. Supp. 2006, 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 Sections 600.1 et seq. of this title. 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)~~ twenty-one (21) 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 municipal ordinance authorized by the Prevention of Youth Access to Tobacco Act and any compliance checks by a municipal police officer or a county sheriff 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)~~ twenty-one (21) years of age may be enlisted by the ABLE Commission, a municipality or town, or a county 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 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)~~ twenty-one (21) 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)~~ twenty-one (21) 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. If the ABLE Commission fails to notify the licensee of a violation by an employee, that violation shall not apply against the licensee for the purpose of determining a license suspension pursuant to Section 600.3 of this title. For purposes of this subsection, notification shall be deemed given if the ABLE Commission mails, by mail with delivery confirmation, the notification to the address which is on file with the Oklahoma Tax Commission of the licensee of the location at which the violation occurred and the ABLE Commission receives delivery confirmation from the U.S. Postal Service.

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 Section 1, Chapter 375, O.S.L. 2004 (37 O.S. Supp. 2006, Section 600.13), is amended to read as follows:

Section 600.13 A. It is unlawful for any person to sell, give or furnish in any manner to another person who is under ~~eighteen (18)~~ twenty-one (21) years of age 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.

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 One Hundred Dollars ($100.00) for each offense.

SECTION 11. This act shall become effective November 1, 2007.

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