

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 925

By: Sparks

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5
6 AS INTRODUCED

7 An Act relating to smoking; amending 37 O.S. 2001,
8 Sections 600.3, as amended by Section 1, Chapter 253,
9 O.S.L. 2004, 600.4, 600.8, as amended by Section 4,
10 Chapter 253, O.S.L. 2004 (37 O.S. Supp. 2008, Sections
11 600.3 and 600.8), 600.9, 600.10, Section 5, Chapter
12 253, O.S.L. 2004 (37 O.S. Supp. 2008, Section 600.10A)
and 63 O.S. 2001, Section 1-1527, which relate to
tobacco; modifying certain ordinances which may be
enacted and enforced by cities and towns; removing
language prohibiting certain ordinances; modifying
legislative intent; and providing an effective date.

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

16 SECTION 1. AMENDATORY 37 O.S. 2001, Section 600.3, as
17 amended by Section 1, Chapter 253, O.S.L. 2004 (37 O.S. Supp. 2008,
18 Section 600.3), is amended to read as follows:

19 Section 600.3 A. It is unlawful for any person to sell, give or
20 furnish in any manner any tobacco product to another person who is
21 under eighteen (18) years of age, or to purchase in any manner a
22 tobacco product on behalf of any such person. It shall not be
23 unlawful for an employee under eighteen (18) years of age to handle
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1 tobacco products when required in the performance of the employee's
2 duties.

3 B. A person engaged in the sale or distribution of tobacco
4 products shall demand proof of age from a prospective purchaser or
5 recipient if an ordinary person would conclude on the basis of
6 appearance that the prospective purchaser may be under eighteen (18)
7 years of age.

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

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

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

18 b. not more than Two Hundred Dollars (\$200.00) for the
19 second offense within a two-year period following the
20 first offense,

21 c. not more than Three Hundred Dollars (\$300.00) for a
22 third offense within a two-year period following the
23 first offense. In addition to any other penalty, the
24 store's license to sell tobacco products may be

1 suspended for a period not exceeding thirty (30) days,
2 or

3 d. not more than Three Hundred Dollars (\$300.00) for a
4 fourth or subsequent offense within a two-year period
5 following the first offense. In addition to any other
6 penalty, the store's license to sell tobacco products
7 may be suspended for a period not exceeding sixty (60)
8 days.

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

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

20 a. the individual who purchased or received the tobacco
21 product presented a driver license or other government-
22 issued photo identification purporting to establish
23 that such individual was eighteen (18) years of age or
24 older, and

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

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

14 D. If the sale is made by an employee of the owner of a store at
15 which tobacco products are sold at retail, the employee shall be
16 guilty of the violation and shall be subject to the fine. Each
17 violation by any employee of an owner of a store licensed to sell
18 tobacco products shall be deemed a violation against the owner for
19 purposes of a license suspension pursuant to subsection C of this
20 section. An owner of a store licensed to sell tobacco products shall
21 not be deemed in violation of the provisions of the Prevention of
22 Youth Access to Tobacco Act for any acts constituting a violation by
23 any person, when the violation occurs prior to actual employment of
24 the person by the store owner or the violation occurs at a location

1 other than the owner's retail store. For purposes of determining the
2 liability of a person controlling franchises or business operations
3 in multiple locations, for any violations of subsection A or B of
4 this section, each individual franchise or business location shall be
5 deemed a separate entity.

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

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

17 2. Upon failure of a storeowner to pay the administrative fine
18 within ninety (90) days of the assessment of the fine, the ABLE
19 Commission shall notify the Tax Commission and the Tax Commission
20 shall suspend the store's license to sell tobacco products until
21 proof of payment has been furnished to the ~~Oklahoma~~ Tax Commission.

22 G. Cities and towns may enact and municipal police officers may
23 enforce ordinances prohibiting and penalizing conduct under
24 provisions of this section, but the provisions of municipal

1 ~~ordinances shall be the same as provided for in this section, and the~~
2 ~~penalty provisions under such ordinances shall not be more less~~
3 stringent than those of this section.

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

6 SECTION 2. AMENDATORY 37 O.S. 2001, Section 600.4, is
7 amended to read as follows:

8 Section 600.4 A. It is unlawful for a person who is under
9 eighteen (18) years of age to purchase, receive, or have in ~~their~~ the
10 person's possession a tobacco product, or to present or offer to any
11 person any purported proof of age which is false or fraudulent, for
12 the purpose of purchasing or receiving any tobacco product. It shall
13 not be unlawful for an employee under eighteen (18) years of age to
14 handle tobacco products when required in the performance of the
15 employee's duties.

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

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

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

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

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

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

15 SECTION 3. AMENDATORY 37 O.S. 2001, Section 600.8, as
16 amended by Section 4, Chapter 253, O.S.L. 2004 (37 O.S. Supp. 2008,
17 Section 600.8), is amended to read as follows:

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

21 B. No person shall distribute tobacco products or product
22 samples in or on any public street, sidewalk, or park that is within
23 three hundred (300) feet of any playground, school, or other facility
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1 when the facility is being used primarily by persons under eighteen
2 (18) years of age.

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

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

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

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

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

18 E. Cities and towns may enact and municipal police officers may
19 enforce ordinances prohibiting and penalizing conduct under
20 provisions of this section, but the provisions of municipal
21 ordinances ~~shall be the same as provided for in this section, and the~~
22 ~~penalty provisions under such ordinances shall not be more~~ less
23 stringent than those of this section.

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1 SECTION 4. AMENDATORY 37 O.S. 2001, Section 600.9, is
2 amended to read as follows:

3 Section 600.9 A. It is unlawful for any person to sell
4 cigarettes except in the original, sealed package in which they were
5 placed by the manufacturer.

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

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

16 SECTION 5. AMENDATORY 37 O.S. 2001, Section 600.10, is
17 amended to read as follows:

18 Section 600.10 ~~No agency or other political subdivision of the~~
19 ~~state, including, but not limited to, municipalities, counties or any~~
20 ~~agency thereof, may adopt any order, ordinance, rule or regulation~~
21 ~~concerning the sale, purchase, distribution, advertising, sampling,~~
22 ~~promotion, display, possession, licensing, or taxation of tobacco~~
23 ~~products, except as provided in Section 1511 of Title 68 of the~~
24 ~~Oklahoma Statutes, Section 1-1521 et seq. of Title 63 of the Oklahoma~~

1 ~~Statutes and Section 1247 of Title 21 of the Oklahoma Statutes.~~
2 ~~Provided, however, Except as otherwise specified in this act, nothing~~
3 ~~in this section~~ shall preclude or preempt any agency or political
4 subdivision from exercising its lawful authority to further regulate
5 ~~zoning or land use or to enforce a fire code regulation regulating~~
6 ~~smoking or tobacco products to the extent that such regulation is~~
7 ~~substantially similar to nationally recognized standard fire codes.~~

8 SECTION 6. AMENDATORY Section 5, Chapter 253, O.S.L. 2004
9 (37 O.S. Supp. 2008, Section 600.10A), is amended to read as follows:

10 Section 600.10A A. It is unlawful for any person or retail
11 store to display or offer for sale tobacco products in any manner
12 that allows public access to the tobacco product without assistance
13 from the person displaying the tobacco product or an employee or the
14 owner of the store. The provisions of this subsection shall not
15 apply to retail stores which do not admit into the store persons
16 under eighteen (18) years of age.

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

21 C. Cities and towns may enact and municipal police officers may
22 enforce ordinances prohibiting and penalizing conduct under
23 provisions of this section, but the provisions of municipal
24 ordinances shall be the same as provided for in this section and the

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

3 SECTION 7. AMENDATORY 63 O.S. 2001, Section 1-1527, is
4 amended to read as follows:

5 Section 1-1527. The State Legislature by adopting this act
6 intends to not preempt any other regulation promulgated to control
7 smoking ~~in public places~~ and to ~~standardize laws that~~ permit
8 governmental subdivisions ~~may to~~ adopt local ordinances to further
9 control smoking. ~~Cities and towns may enact and enforce laws~~
10 ~~prohibiting and penalizing conduct under provisions of this act, but~~
11 the provisions of such laws shall be the same as provided in this act
12 and the enforcement provisions under such laws shall not be ~~more~~ less
13 stringent than those of this act.

14 SECTION 8. This act shall become effective November 1, 2009.

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16 52-1-1382 JM 3/6/2009 7:40:30 AM

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