

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2135

6 By: Steele

7 COMMITTEE SUBSTITUTE

8 An Act relating to tobacco; amending 37 O.S. 2001,
9 Sections 600.3, as amended by Section 1, Chapter 253,
10 O.S.L. 2004, 600.4, 600.8, as amended by Section 4,
11 Chapter 253, O.S.L. 2004, 600.9, 600.10, and Section
12 5, Chapter 253, O.S.L. 2004 (37 O.S. Supp. 2010,
13 Sections 600.3, 600.8 and 600.10A), which relate to
14 the regulation of tobacco use; removing requirements
15 that cities shall not enact more stringent
16 regulations than state law relating to tobacco use;
17 amending 63 O.S. 2001, Section 1-1527, which relates
18 to tobacco restriction preemption; providing for
19 certain interpretation; permitting governmental
20 subdivisions to adopt and enforce local ordinances to
21 further control smoking; providing that local
22 ordinances must comply with certain minimum
23 standards; and providing an effective date.

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

SECTION 1. AMENDATORY 37 O.S. 2001, Section 600.3, as
amended by Section 1, Chapter 253, O.S.L. 2004 (37 O.S. Supp. 2010,
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

1 is under eighteen (18) years of age, or to purchase in any manner a
2 tobacco product on behalf of any such person. It shall not be
3 unlawful for an employee under eighteen (18) years of age to handle
4 tobacco products when required in the performance of the employee's
5 duties.

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

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

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

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

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

24

1 c. not more than Three Hundred Dollars (\$300.00) for a
2 third offense within a two-year period following the
3 first offense. In addition to any other penalty, the
4 store's license to sell tobacco products may be
5 suspended for a period not exceeding thirty (30) days,
6 or

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

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

18 3. Proof that the defendant demanded, was shown, and reasonably
19 relied upon proof of age shall be a defense to any action brought
20 pursuant to this section. A person cited for violating this section
21 shall be deemed to have reasonably relied upon proof of age, and
22 such person shall not be found guilty of such violation if such
23 person proves that:
24

- 1 a. the individual who purchased or received the tobacco
2 product presented a driver license or other government-
3 issued photo identification purporting to establish
4 that such individual was eighteen (18) years of age or
5 older, and
- 6 b. the person cited for the violation confirmed the
7 validity of the driver license or other government-
8 issued photo identification presented by such
9 individual by performing a transaction scan by means of
10 a transaction scan device.

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

19 D. If the sale is made by an employee of the owner of a store
20 at which tobacco products are sold at retail, the employee shall be
21 guilty of the violation and shall be subject to the fine. Each
22 violation by any employee of an owner of a store licensed to sell
23 tobacco products shall be deemed a violation against the owner for
24 purposes of a license suspension pursuant to subsection C of this

1 section. An owner of a store licensed to sell tobacco products
2 shall not be deemed in violation of the provisions of the Prevention
3 of Youth Access to Tobacco Act for any acts constituting a violation
4 by any person, when the violation occurs prior to actual employment
5 of the person by the store owner or the violation occurs at a
6 location other than the owner's retail store. For purposes of
7 determining the liability of a person controlling franchises or
8 business operations in multiple locations, for any violations of
9 subsection A or B of this section, each individual franchise or
10 business location shall be deemed a separate entity.

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

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

22 2. Upon failure of a storeowner to pay the administrative fine
23 within ninety (90) days of the assessment of the fine, the ABLE
24 Commission shall notify the Tax Commission and the Tax Commission

1 shall suspend the store's license to sell tobacco products until
2 proof of payment has been furnished to the Oklahoma Tax Commission.

3 ~~G. Cities and towns may enact and municipal police officers may~~
4 ~~enforce ordinances prohibiting and penalizing conduct under~~
5 ~~provisions of this section, but the provisions of municipal~~
6 ~~ordinances shall be the same as provided for in this section, and~~
7 ~~the penalty provisions under such ordinances shall not be more~~
8 ~~stringent than those of this section.~~

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

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

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

21 B. When a person violates subsection A of this section, the
22 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
23 an administrative fine of:
24

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

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

6 Upon failure of the individual to pay the administrative fine
7 within ninety (90) days of the day of the fine, the ABLE Commission
8 shall notify the Department of Public Safety and the Department
9 shall suspend or not issue a driver license to the individual until
10 proof of payment has been furnished to the Department of Public
11 Safety.

12 C. The ABLE Commission shall establish rules to provide for
13 notification to a parent or guardian of any minor cited for a
14 violation of this section.

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

21 SECTION 3. AMENDATORY 37 O.S. 2001, Section 600.8, as
22 amended by Section 4, Chapter 253, O.S.L. 2004 (37 O.S. Supp. 2010,
23 Section 600.8), is amended to read as follows:

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

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

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

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

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

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

18 D. Upon failure of any person to pay an administrative fine
19 within ninety (90) days of the assessment of the fine, the ABLE
20 Commission shall notify the Department of Public Safety, and the
21 Department shall suspend or not issue a driver license to the person
22 until proof of payment has been furnished to the Department of
23 Public Safety.

1 ~~E. Cities and towns may enact and municipal police officers may~~
2 ~~enforce ordinances prohibiting and penalizing conduct under~~
3 ~~provisions of this section, but the provisions of municipal~~
4 ~~ordinances shall be the same as provided for in this section, and~~
5 ~~the penalty provisions under such ordinances shall not be more~~
6 ~~stringent than those of this section.~~

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

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

12 B. When a person violates subsection A of this section, the
13 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
14 an administrative fine of not more than Two Hundred Dollars
15 (\$200.00) for each offense.

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

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

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1 Section 600.10 ~~Ne~~ Any agency or other political subdivision of
2 the state, including, but not limited to, municipalities, counties
3 or any agency thereof, may adopt and enforce any order, ordinance,
4 rule or regulation concerning the sale, purchase, distribution,
5 advertising, sampling, promotion, display, possession, or licensing,
6 ~~or taxation~~ of tobacco products, ~~except~~; provided, the order,
7 ordinance, rule or regulation shall not be less stringent than the
8 Prevention of Youth Access to Tobacco Act, or as provided in Section
9 402 et seq. and Section 1511 of Title 68 of the Oklahoma Statutes,
10 Section 1-1521 et seq. of Title 63 of the Oklahoma Statutes and
11 Section 1247 of Title 21 of the Oklahoma Statutes. Provided,
12 ~~however~~ further, nothing in this section shall preclude or preempt
13 any agency or political subdivision from exercising its lawful
14 authority to regulate zoning or land use or to enforce a fire code
15 regulation regulating smoking or tobacco products to the extent that
16 such regulation is substantially similar to nationally recognized
17 standard fire codes.

18 SECTION 6. AMENDATORY Section 5, Chapter 253, O.S.L.
19 2004 (37 O.S. Supp. 2010, Section 600.10A), is amended to read as
20 follows:

21 Section 600.10A A. It is unlawful for any person or retail
22 store to display or offer for sale tobacco products in any manner
23 that allows public access to the tobacco product without assistance
24 from the person displaying the tobacco product or an employee or the

1 owner of the store. The provisions of this subsection shall not
2 apply to retail stores which do not admit into the store persons
3 under eighteen (18) years of age.

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

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

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

16 Section 1-1527. Nothing in the Smoking in Public Places and
17 Indoor Workplaces Act prohibits or preempts governmental
18 subdivisions from adopting and enforcing more stringent local
19 ordinances to protect individuals from secondhand smoke. The State
20 Legislature by adopting ~~this act intends to preempt any other~~
21 ~~regulation promulgated to control smoking in public places and to~~
22 ~~standardize laws that~~ the Smoking in Public Places and Indoor
23 Workplaces Act permits and authorizes governmental subdivisions ~~may~~
24 to adopt and enforce local ordinances to further control smoking-

1 ~~Cities and towns may enact and enforce laws prohibiting and~~
2 ~~penalizing conduct under provisions of this act, but; provided, the~~
3 ~~provisions of such laws ordinances shall be the same as provided in~~
4 ~~this act and the enforcement provisions under such laws shall not be~~
5 ~~more stringent than those of this act~~ comply with at least the
6 minimum applicable standards set forth in the Smoking in Public
7 Places and Indoor Workplaces Act.

8 SECTION 8. This act shall become effective November 1, 2011.

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