

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 53rd Legislature (2011)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2135

By: Steele, Liebmann and
Cannaday of the House

and

Myers of the Senate

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10 COMMITTEE SUBSTITUTE

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

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

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UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 SECTION 1. AMENDATORY 37 O.S. 2001, Section 600.3, as
2 amended by Section 1, Chapter 253, O.S.L. 2004 (37 O.S. Supp. 2010,
3 Section 600.3), is amended to read as follows:

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

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

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

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

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- 1 a. not more than One Hundred Dollars (\$100.00) for the
2 first offense,
- 3 b. not more than Two Hundred Dollars (\$200.00) for the
4 second offense within a two-year period following the
5 first offense,
- 6 c. not more than Three Hundred Dollars (\$300.00) for a
7 third offense within a two-year period following the
8 first offense. In addition to any other penalty, the
9 store's license to sell tobacco products may be
10 suspended for a period not exceeding thirty (30) days,
11 or
- 12 d. not more than Three Hundred Dollars (\$300.00) for a
13 fourth or subsequent offense within a two-year period
14 following the first offense. In addition to any other
15 penalty, the store's license to sell tobacco products
16 may be suspended for a period not exceeding sixty (60)
17 days.

18 2. When it has been determined that a penalty shall include a
19 license suspension, the ABLE Commission shall notify the Oklahoma
20 Tax Commission, and the Tax Commission shall suspend the store's
21 license to sell tobacco products at the location where the offense
22 occurred for the period of time prescribed by the ABLE Commission.
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1 3. Proof that the defendant demanded, was shown, and reasonably
2 relied upon proof of age shall be a defense to any action brought
3 pursuant to this section. A person cited for violating this section
4 shall be deemed to have reasonably relied upon proof of age, and
5 such person shall not be found guilty of such violation if such
6 person proves that:

7 a. the individual who purchased or received the tobacco
8 product presented a driver license or other government-
9 issued photo identification purporting to establish
10 that such individual was eighteen (18) years of age or
11 older, and

12 b. the person cited for the violation confirmed the
13 validity of the driver license or other government-
14 issued photo identification presented by such
15 individual by performing a transaction scan by means of
16 a transaction scan device.

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

3 D. If the sale is made by an employee of the owner of a store
4 at which tobacco products are sold at retail, the employee shall be
5 guilty of the violation and shall be subject to the fine. Each
6 violation by any employee of an owner of a store licensed to sell
7 tobacco products shall be deemed a violation against the owner for
8 purposes of a license suspension pursuant to subsection C of this
9 section. An owner of a store licensed to sell tobacco products
10 shall not be deemed in violation of the provisions of the Prevention
11 of Youth Access to Tobacco Act for any acts constituting a violation
12 by any person, when the violation occurs prior to actual employment
13 of the person by the store owner or the violation occurs at a
14 location other than the owner's retail store. For purposes of
15 determining the liability of a person controlling franchises or
16 business operations in multiple locations, for any violations of
17 subsection A or B of this section, each individual franchise or
18 business location shall be deemed a separate entity.

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

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

7 2. Upon failure of a storeowner to pay the administrative fine
8 within ninety (90) days of the assessment of the fine, the ABLE
9 Commission shall notify the Tax Commission and the Tax Commission
10 shall suspend the store's license to sell tobacco products until
11 proof of payment has been furnished to the Oklahoma Tax Commission.

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

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

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

22 Section 600.4 A. It is unlawful for a person who is under
23 eighteen (18) years of age to purchase, receive, or have in their
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1 possession a tobacco product, or to present or offer to any person
2 any purported proof of age which is false or fraudulent, for the
3 purpose of purchasing or receiving any tobacco product. It shall
4 not be unlawful for an employee under eighteen (18) years of age to
5 handle tobacco products when required in the performance of the
6 employee's duties.

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

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

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

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

21 C. The ABLE Commission shall establish rules to provide for
22 notification to a parent or guardian of any minor cited for a
23 violation of this section.

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1 ~~D. 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 such ordinances~~
4 ~~shall be the same as provided for in this section, and the~~
5 ~~enforcement provisions under such ordinances shall not be more~~
6 ~~stringent than those of this section.~~

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

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

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

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

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

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

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

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

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

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

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

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

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1 an administrative fine of not more than Two Hundred Dollars
2 (\$200.00) for each offense.

3 ~~C. 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 such ordinances~~
6 ~~shall be the same as provided for in this section, and the~~
7 ~~enforcement provisions under such ordinances shall not be more~~
8 ~~stringent than those of this section.~~

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

11 Section 600.10 ~~Ne~~ Any agency or other political subdivision of
12 the state, including, but not limited to, municipalities, counties
13 or any agency thereof, may adopt and enforce any order, ordinance,
14 rule or regulation concerning the sale, purchase, distribution,
15 advertising, sampling, promotion, display, possession, or licensing,
16 ~~or taxation~~ of tobacco products, ~~except~~; provided, the order,
17 ordinance, rule or regulation shall not be less stringent than the
18 Prevention of Youth Access to Tobacco Act, or as provided in Section
19 402 et seq. and Section 1511 of Title 68 of the Oklahoma Statutes,
20 Section 1-1521 et seq. of Title 63 of the Oklahoma Statutes and
21 Section 1247 of Title 21 of the Oklahoma Statutes. Provided,
22 ~~however~~ further, nothing in this section shall preclude or preempt
23 any agency or political subdivision from exercising its lawful

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1 authority to regulate zoning or land use or to enforce a fire code
2 regulation regulating smoking or tobacco products to the extent that
3 such regulation is substantially similar to nationally recognized
4 standard fire codes.

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

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

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

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

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1 ~~penalty provisions under such ordinances shall not be more stringent~~
2 ~~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. Nothing in the Smoking in Public Places and
6 Indoor Workplaces Act prohibits or preempts governmental
7 subdivisions from adopting and enforcing more stringent local
8 ordinances to protect individuals from secondhand smoke. The State
9 Legislature by adopting ~~this act intends to preempt any other~~
10 ~~regulation promulgated to control smoking in public places and to~~
11 ~~standardize laws that~~ the Smoking in Public Places and Indoor
12 Workplaces Act permits and authorizes governmental subdivisions may
13 to adopt and enforce local ordinances to further control smoking-
14 ~~Cities and towns may enact and enforce laws prohibiting and~~
15 ~~penalizing conduct under provisions of this act, but;~~ provided, the
16 provisions of such laws ordinances shall be the same as provided in
17 ~~this act and the enforcement provisions under such laws shall not be~~
18 ~~more stringent than those of this act~~ comply with at least the
19 minimum applicable standards set forth in the Smoking in Public
20 Places and Indoor Workplaces Act.

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

22 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 02-16-2011 -
23 DO PASS, As Amended and Coauthored.

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