

1 Section 600.2 As used in the Prevention of Youth Access to
2 Tobacco Act:

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

5 2. "Proof of age" means a driver license, license for
6 identification only, or other generally accepted means of
7 identification that describes the individual ~~as eighteen (18) years~~
8 of the age described in subsection A of Section 600.3 of this title
9 or older and contains a photograph or other likeness of the
10 individual and appears on its face to be valid;

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

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

15 5. "Tobacco product" means any product that contains tobacco
16 and is intended for human consumption;

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

20 7. "Transaction scan device" means any commercial device or
21 combination of devices used at a point of sale or entry that is
22 capable of deciphering in an electronically readable format the
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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. 2011, Section 600.3, is
4 amended to read as follows:

5 Section 600.3 A. ~~It is~~ Beginning on November 1, 2013, it shall
6 be unlawful for any person to sell, give or furnish in any manner
7 any tobacco product to another person who is under ~~eighteen (18)~~
8 nineteen (19) years of age, or to purchase in any manner a tobacco
9 product on behalf of any such person. Beginning on November 1,
10 2014, it shall be unlawful for any person to sell, give or furnish
11 in any manner any tobacco product to another person who is under
12 twenty (20) years of age, or to purchase in any manner a tobacco
13 product on behalf of any such person. Beginning on November 1,
14 2015, it shall be unlawful for any person to sell, give or furnish
15 in any manner any tobacco product to another person who is under
16 twenty-one (21) years of age, or to purchase in any manner a tobacco
17 product on behalf of any such person. It shall not be unlawful for
18 an employee under ~~eighteen (18) years of the age~~ described in this
19 subsection to handle tobacco products when required in the
20 performance of the employee's duties.

21 B. A person engaged in the sale or distribution of tobacco
22 products shall demand proof of age from a prospective purchaser or
23 recipient if an ordinary person would conclude on the basis of
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1 appearance that the prospective purchaser may be under ~~eighteen (18)~~
2 ~~years of the age~~ described in subsection A of this section.

3 If an individual engaged in the sale or distribution of tobacco
4 products has demanded proof of age from a prospective purchaser or
5 recipient who is not under ~~eighteen (18) years of the age~~ described
6 in subsection A of this section, the failure to subsequently require
7 proof of age shall not constitute a violation of this subsection B
8 ~~of this section.~~

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

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

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

17 c. not more than Three Hundred Dollars (\$300.00) for a
18 third offense within a two-year period following the
19 first offense. In addition to any other penalty, the
20 store's license to sell tobacco products may be
21 suspended for a period not exceeding thirty (30) days,
22 or

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

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

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

19 a. the individual who purchased or received the tobacco
20 product presented a driver license or other
21 government-issued photo identification purporting to
22 establish that such individual was ~~eighteen (18) years~~
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1 ~~of~~ the age described in subsection A of this section
2 or older, and

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

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

16 D. If the sale is made by an employee of the owner of a store
17 at which tobacco products are sold at retail, the employee shall be
18 guilty of the violation and shall be subject to the fine. Each
19 violation by any employee of an owner of a store licensed to sell
20 tobacco products shall be deemed a violation against the owner for
21 purposes of a license suspension pursuant to subsection C of this
22 section. An owner of a store licensed to sell tobacco products
23 shall not be deemed in violation of the provisions of the Prevention

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

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1 products until proof of payment has been furnished to the Oklahoma
2 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 3. AMENDATORY 37 O.S. 2011, 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~~ the age described in subsection A of Section
15 600.3 of this title to purchase, receive, or have in ~~their~~ his or
16 her possession a tobacco product, or to present or offer to any
17 person any purported proof of age which is false or fraudulent, for
18 the purpose of purchasing or receiving any tobacco product. It
19 shall not be unlawful for an employee under ~~eighteen (18) years of~~
20 the age described in subsection A of Section 600.3 of this title to
21 handle tobacco products when required in the performance of the
22 employee's duties.

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

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

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

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

15 C. The ABLE Commission shall establish rules to provide for
16 notification to a parent or guardian of any minor cited for a
17 violation of this section.

18 D. 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 such ordinances
21 shall be the same as provided for in this section, and the
22 enforcement provisions under such ordinances shall not be more
23 stringent than those of this section.

1 SECTION 4. AMENDATORY 37 O.S. 2011, Section 600.5, is
2 amended to read as follows:

3 Section 600.5 A. Every person who sells or displays tobacco
4 products at retail shall post conspicuously and keep so posted at
5 the place of business a sign, as specified by the Alcoholic Beverage
6 Laws Enforcement (ABLE) Commission, stating the following: "IT'S
7 THE LAW. WE DO NOT SELL TOBACCO PRODUCTS TO PERSONS UNDER ~~18 YEARS~~
8 ~~OF THE AGE~~ PRESCRIBED BY LAW". The sign shall also provide the
9 toll-free number operated by the Alcoholic Beverage Laws Enforcement
10 (ABLE) Commission for the purpose of reporting violations of the
11 Prevention of Youth Access to Tobacco Act.

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 Fifty Dollars (\$50.00) for
15 each day a violation occurs. Each day a violation is continuing
16 shall constitute a separate offense. The notice required by
17 subsection A of this section shall be the only notice required to be
18 posted or maintained in any store that sells tobacco products at
19 retail.

20 SECTION 5. AMENDATORY 37 O.S. 2011, Section 600.6, is
21 amended to read as follows:

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1 Section 600.6 A. Every person engaged in the business of
2 selling tobacco products at retail shall notify each individual
3 employed by that person as a retail sales clerk that state law:

4 1. Prohibits the sale or distribution of tobacco products to
5 any person under ~~eighteen (18) years of~~ the age described in
6 subsection A of Section 600.3 of this title and the purchase or
7 receipt of tobacco products by any person under ~~eighteen (18) years~~
8 ~~of~~ the age described in subsection A of Section 600.3 of this title;
9 and

10 2. Requires that proof of age be demanded from a prospective
11 purchaser or recipient if an ordinary person would conclude on the
12 basis of appearance that the prospective purchaser or recipient may
13 be under ~~eighteen (18) years of~~ the age described in subsection A of
14 Section 600.3 of this title.

15 B. This notice shall be provided before the individual
16 commences work as a retail sales clerk. The individual shall
17 signify that he or she has received the notice required by this
18 section by signing a form stating as follows:

19 "I understand that state law prohibits the sale or distribution of
20 tobacco products to persons under ~~eighteen (18) years of~~ age and
21 out-of-package sales, and requires proof of age of purchaser or
22 recipient if an ordinary person would conclude on the basis of
23 appearance that the prospective purchaser or recipient may be under

1 ~~eighteen (18) years of~~ age. I promise, as a condition of my
2 employment, to obey the law. I understand that violations by me may
3 be punishable by fines, suspension or nonissuance of my driver
4 license. In addition, I understand that violations by me may
5 subject the storeowner to fines or license suspension."

6 SECTION 6. AMENDATORY 37 O.S. 2011, Section 600.7, is
7 amended to read as follows:

8 Section 600.7 It shall be unlawful for any person to sell
9 tobacco products through a vending machine unless the vending
10 machine is located:

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

13 2. In places that are open to the public, but to which persons
14 under ~~eighteen (18) years of~~ the age described in subsection A of
15 Section 600.3 of this title are not admitted.

16 SECTION 7. AMENDATORY 37 O.S. 2011, Section 600.8, is
17 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~~ the age described in subsection
21 A of Section 600.3 of this title.

22 B. No person shall distribute tobacco products or product
23 samples in or on any public street, sidewalk, or park that is within
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1 three hundred (300) feet of any playground, school, or other
2 facility when the facility is being used primarily by persons under
3 ~~eighteen (18) years of the~~ age described in subsection A of Section
4 600.3 of this title.

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

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

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

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

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

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

3 SECTION 8. AMENDATORY 37 O.S. 2011, Section 600.10A, is
4 amended to read as follows:

5 Section 600.10A A. It is unlawful for any person or retail
6 store to display or offer for sale tobacco products in any manner
7 that allows public access to the tobacco product without assistance
8 from the person displaying the tobacco product or an employee or the
9 owner of the store. The provisions of this subsection shall not
10 apply to retail stores which do not admit into the store persons
11 under ~~eighteen (18) years of~~ the age described in subsection A of
12 Section 600.3 of this title.

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

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

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1 SECTION 9. AMENDATORY 37 O.S. 2011, Section 600.11, is
2 amended to read as follows:

3 Section 600.11 A. The Alcoholic Beverage Laws Enforcement
4 (ABLE) Commission is authorized and empowered to enforce the
5 provisions of ~~Sections~~ Section 600.1 et seq. of this title. The
6 ABLE Commission shall enforce those provisions in a manner that can
7 reasonably be expected to reduce the extent to which tobacco
8 products are sold or distributed to persons under ~~eighteen (18)~~
9 ~~years of the age~~ described in subsection A of Section 600.3 of this
10 title.

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

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

21 D. For the purpose of determining second or subsequent
22 violations, both the offenses penalized by the ABLE Commission as
23 administrative fines and the offenses penalized by municipalities

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1 and towns and reported to the ABLE Commission, shall be considered
2 together in such determination.

3 E. Persons under ~~eighteen (18) years of~~ the age described in
4 subsection A of Section 600.3 of this title may be enlisted by the
5 ABLE Commission, a municipality or town, or a county to assist in
6 compliance checks and enforcement; provided, such persons may be
7 used to test compliance only if written parental consent has been
8 provided and the testing is conducted under the direct supervision
9 of the ABLE Commission or conducted by another law enforcement
10 agency if such agency has given written notice to the ABLE
11 Commission in the manner prescribed by the ABLE Commission.
12 Municipalities which have enacted municipal ordinances in accordance
13 with the Prevention of Youth Access to Tobacco Act may conduct,
14 pursuant to rules of the ABLE Commission, compliance checks without
15 prior notification to the ABLE Commission and shall be exempt from
16 the written notice requirement in this subsection. This subsection
17 shall not apply to the use of persons under ~~eighteen (18) years of~~
18 the age described in subsection A of Section 600.3 of this title to
19 test compliance if the compliance test is being conducted by or on
20 behalf of a retailer of cigarettes, as defined in Section 301 of
21 Title 68 of the Oklahoma Statutes, at any location the retailer of
22 cigarettes is authorized to sell cigarettes. Any other use of
23 persons under ~~eighteen (18) years of~~ the age described in subsection

1 A of Section 600.3 of this title to test compliance shall be
2 unlawful and punishable by the ABLE Commission by assessment of an
3 administrative fine of One Hundred Dollars (\$100.00).

4 F. At the beginning of each month, the Oklahoma Tax Commission,
5 pursuant to Section 205 of Title 68 of the Oklahoma Statutes, shall
6 provide to the ABLE Commission and to each municipality which has
7 ordinances concerning the Prevention of Youth Access to Tobacco Act,
8 the location, name, and address of each licensee licensed to sell
9 tobacco products at retail or otherwise furnish tobacco products.
10 Upon violation of an employee at a location, the ABLE Commission
11 shall notify the storeowner for that location of the latest and all
12 previous violations when one of their employees has been determined
13 to be in violation of the Prevention of Youth Access to Tobacco Act
14 by the ABLE Commission or convicted of a violation by a
15 municipality. If the ABLE Commission fails to notify the licensee
16 of a violation by an employee, that violation shall not apply
17 against the licensee for the purpose of determining a license
18 suspension pursuant to Section 600.3 of this title. For purposes of
19 this subsection, notification shall be deemed given if the ABLE
20 Commission mails, by mail with delivery confirmation, the
21 notification to the address which is on file with the Oklahoma Tax
22 Commission of the licensee of the location at which the violation

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1 occurred and the ABLE Commission receives delivery confirmation from
2 the U.S. Postal Service.

3 G. Upon request of a storeowner or a municipality which has
4 enacted ordinances in accordance with the Prevention of Youth Access
5 to Tobacco Act, the ABLE Commission is hereby authorized to provide
6 information on any Prevention of Youth Access to Tobacco Act offense
7 of any applicant for employment or employee of the storeowner.

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

15 SECTION 10. AMENDATORY 37 O.S. 2011, Section 600.13, is
16 amended to read as follows:

17 Section 600.13 A. It is unlawful for any person to sell, give
18 or furnish in any manner to another person who is under ~~eighteen~~
19 ~~(18) years of~~ the age described in subsection A of Section 600.3 of
20 this title any material or device used in the smoking, chewing, or
21 other method of consumption of tobacco, including cigarette papers,
22 pipes, holders of smoking materials of all types, and other items
23 designed primarily for the smoking or ingestion of tobacco products.

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1 B. When a person violates subsection A of this section, the
2 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
3 an administrative fine of not more than One Hundred Dollars
4 (\$100.00) for each offense.

5 SECTION 11. This act shall become effective November 1, 2012.

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7 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 02/15/2012 -
8 DO PASS, As Coauthored.
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