

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 2314

By: Coody

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6
7 AS INTRODUCED

8 An Act relating to tobacco; amending 37 O.S. 2011,
9 Sections 600.2, 600.3, 600.4, 600.5, 600.6, 600.7,
10 600.8, 600.10A, 600.11 and 600.13, which relate to
11 the Prevention of Youth Access to Tobacco Act;
12 modifying definition; prohibiting the sale of tobacco
13 products to persons under nineteen years of age
beginning on certain date; prohibiting the sale of
14 tobacco products to persons under twenty-one years of
15 age beginning on certain date; conforming references
16 to age; and providing an effective date.

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

18 SECTION 1. AMENDATORY 37 O.S. 2011, Section 600.2, is
19 amended to read as follows:

20 Section 600.2 As used in the Prevention of Youth Access to
21 Tobacco Act:

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

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

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

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

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

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

16 7. "Transaction scan device" means any commercial device or
17 combination of devices used at a point of sale or entry that is
18 capable of deciphering in an electronically readable format the
19 information encoded on the magnetic strip or bar code of a driver
20 license or other government-issued photo identification.

21 SECTION 2. AMENDATORY 37 O.S. 2011, Section 600.3, is
22 amended to read as follows:

23 Section 600.3 A. ~~It is~~ Beginning on November 1, 2013, it shall
24 be unlawful for any person to sell, give or furnish in any manner

1 any tobacco product to another person who is under ~~eighteen (18)~~
2 nineteen (19) years of age, or to purchase in any manner a tobacco
3 product on behalf of any such person. Beginning on November 1,
4 2014, it shall be unlawful for any person to sell, give or furnish
5 in any manner any tobacco product to another person who is under
6 twenty (20) years of age, or to purchase in any manner a tobacco
7 product on behalf of any such person. Beginning on November 1,
8 2015, it shall be unlawful for any person to sell, give or furnish
9 in any manner any tobacco product to another person who is under
10 twenty-one (21) years of age, or to purchase in any manner a tobacco
11 product on behalf of any such person. It shall not be unlawful for
12 an employee under ~~eighteen (18)~~ years of the age described in this
13 subsection to handle tobacco products when required in the
14 performance of the employee's duties.

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

20 If an individual engaged in the sale or distribution of tobacco
21 products has demanded proof of age from a prospective purchaser or
22 recipient who is not under ~~eighteen (18)~~ years of the age described
23 in subsection A of this section, the failure to subsequently require
24

1 proof of age shall not constitute a violation of this subsection B
2 ~~of this section.~~

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

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

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

11 c. not more than Three Hundred Dollars (\$300.00) for a
12 third offense within a two-year period following the
13 first offense. In addition to any other penalty, the
14 store's license to sell tobacco products may be
15 suspended for a period not exceeding thirty (30) days,
16 or

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

23 2. When it has been determined that a penalty shall include a
24 license suspension, the ABLE Commission shall notify the Oklahoma

1 Tax Commission, and the Oklahoma Tax Commission shall suspend the
2 store's license to sell tobacco products at the location where the
3 offense occurred for the period of time prescribed by the ABLE
4 Commission.

5 3. Proof that the defendant demanded, was shown, and reasonably
6 relied upon proof of age shall be a defense to any action brought
7 pursuant to this section. A person cited for violating this section
8 shall be deemed to have reasonably relied upon proof of age, and
9 such person shall not be found guilty of such violation if such
10 person proves that:

11 a. the individual who purchased or received the tobacco
12 product presented a driver license or other
13 government-issued photo identification purporting to
14 establish that such individual was ~~eighteen (18) years~~
15 ~~of~~ the age described in subsection A of this section
16 or older, and

17 b. the person cited for the violation confirmed the
18 validity of the driver license or other government-
19 issued photo identification presented by such
20 individual by performing a transaction scan by means
21 of a transaction scan device.

22 Provided, that this defense shall not relieve from liability any
23 person cited for a violation of this section if such person failed
24 to exercise reasonable diligence to determine whether the physical

1 description and picture appearing on the driver license or other
2 government-issued photo identification was that of the individual
3 who presented it. The availability of the defense described in this
4 subsection does not affect the availability of any other defense
5 under any other provision of law.

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

22 E. On or before December 15, 1997, the ABLE Commission shall
23 adopt rules establishing a method of notification of storeowners
24 when one of their employees has been determined to be in violation

1 of this section by the ABLE Commission or convicted of a violation
2 by a municipality.

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

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

15 G. 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 municipal
18 ordinances shall be the same as provided for in this section, and
19 the penalty provisions under such ordinances shall not be more
20 stringent than those of this section.

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

23 SECTION 3. AMENDATORY 37 O.S. 2011, Section 600.4, is
24 amended to read as follows:

1 Section 600.4 A. It is unlawful for a person who is under
2 ~~eighteen (18) years of~~ the age described in subsection A of Section
3 600.3 of this title to purchase, receive, or have in ~~their~~ his or
4 her possession a tobacco product, or to present or offer to any
5 person any purported proof of age which is false or fraudulent, for
6 the purpose of purchasing or receiving any tobacco product. It
7 shall not be unlawful for an employee under ~~eighteen (18) years of~~
8 the age described in subsection A of Section 600.3 of this title to
9 handle tobacco products when required in the performance of the
10 employee's duties.

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

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

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

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

1 C. The ABLE Commission shall establish rules to provide for
2 notification to a parent or guardian of any minor cited for a
3 violation of this section.

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

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

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

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 not more than Fifty Dollars (\$50.00) for
24 each day a violation occurs. Each day a violation is continuing

1 shall constitute a separate offense. The notice required by
2 subsection A of this section shall be the only notice required to be
3 posted or maintained in any store that sells tobacco products at
4 retail.

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

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

10 1. Prohibits the sale or distribution of tobacco products to
11 any person under ~~eighteen (18) years of~~ the age described in
12 subsection A of Section 600.3 of this title and the purchase or
13 receipt of tobacco products by any person under ~~eighteen (18) years~~
14 ~~of~~ the age described in subsection A of Section 600.3 of this title;
15 and

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

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

1 "I understand that state law prohibits the sale or distribution of
2 tobacco products to persons under ~~eighteen (18) years of age~~ and
3 out-of-package sales, and requires proof of age of purchaser or
4 recipient if an ordinary person would conclude on the basis of
5 appearance that the prospective purchaser or recipient may be under
6 ~~eighteen (18) years of age~~. I promise, as a condition of my
7 employment, to obey the law. I understand that violations by me may
8 be punishable by fines, suspension or nonissuance of my driver
9 license. In addition, I understand that violations by me may
10 subject the storeowner to fines or license suspension."

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

13 Section 600.7 It shall be unlawful for any person to sell
14 tobacco products through a vending machine unless the vending
15 machine is located:

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

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

21 SECTION 7. AMENDATORY 37 O.S. 2011, Section 600.8, is
22 amended to read as follows:

23 Section 600.8 A. It shall be unlawful for any person or
24 retailer to distribute tobacco products or product samples to any

1 person under ~~eighteen (18) years of~~ the age described in subsection
2 A of Section 600.3 of this title.

3 B. No person shall distribute tobacco products or product
4 samples in or on any public street, sidewalk, or park that is within
5 three hundred (300) feet of any playground, school, or other
6 facility when the facility is being used primarily by persons under
7 ~~eighteen (18) years of~~ the age described in subsection A of Section
8 600.3 of this title.

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.

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

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

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

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

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

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

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

23 D. For the purpose of determining second or subsequent
24 violations, both the offenses penalized by the ABLE Commission as

1 administrative fines and the offenses penalized by municipalities
2 and towns and reported to the ABLE Commission, shall be considered
3 together in such determination.

4 E. Persons under ~~eighteen (18) years of~~ the age described in
5 subsection A of Section 600.3 of this title may be enlisted by the
6 ABLE Commission, a municipality or town, or a county to assist in
7 compliance checks and enforcement; provided, such persons may be
8 used to test compliance only if written parental consent has been
9 provided and the testing is conducted under the direct supervision
10 of the ABLE Commission or conducted by another law enforcement
11 agency if such agency has given written notice to the ABLE
12 Commission in the manner prescribed by the ABLE Commission.
13 Municipalities which have enacted municipal ordinances in accordance
14 with the Prevention of Youth Access to Tobacco Act may conduct,
15 pursuant to rules of the ABLE Commission, compliance checks without
16 prior notification to the ABLE Commission and shall be exempt from
17 the written notice requirement in this subsection. This subsection
18 shall not apply to the use of persons under ~~eighteen (18) years of~~
19 the age described in subsection A of Section 600.3 of this title to
20 test compliance if the compliance test is being conducted by or on
21 behalf of a retailer of cigarettes, as defined in Section 301 of
22 Title 68 of the Oklahoma Statutes, at any location the retailer of
23 cigarettes is authorized to sell cigarettes. Any other use of
24 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
23 occurred and the ABLE Commission receives delivery confirmation from
24 the U.S. Postal Service.

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

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

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

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

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 One Hundred Dollars
2 (\$100.00) for each offense.

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