

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1032

By: Simpson

4  
5  
6 AS INTRODUCED

7 An Act relating to tobacco; amending 37 O.S. 2011,  
8 Sections 600.3, 600.4, 600.8, 600.9, 600.10 and  
9 600.10A, which relate to the regulation of tobacco  
10 use; removing requirements that cities shall not  
11 enact more stringent regulations than state law  
12 relating to tobacco use; amending 63 O.S. 2011,  
13 Section 1-1527, which relates to tobacco restriction  
preemption; providing for certain interpretation;  
14 permitting governmental subdivisions to adopt and  
15 enforce local ordinances to further control smoking;  
16 providing that local ordinances must comply with  
17 certain minimum standards; and providing an effective  
18 date.

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

20 SECTION 1. AMENDATORY 37 O.S. 2011, Section 600.3, is  
21 amended to read as follows:

22 Section 600.3. A. It is unlawful for any person to sell, give  
23 or furnish in any manner any tobacco product to another person who  
24 is under eighteen (18) years of age, or to purchase in any manner a  
tobacco product on behalf of any such person. It shall not be  
unlawful for an employee under eighteen (18) years of age to handle

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~~ this subsection.

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 that  
23               such individual was eighteen (18) years of age or older,  
24               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 individual  
4           by performing a transaction scan by means of a  
5           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 stringent~~  
3 ~~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. 2011, 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  
10 possession a tobacco product, or to present or offer to any person  
11 any purported proof of age which is false or fraudulent, for the  
12 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  
18 an 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.

24

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  
4 shall suspend or not issue a driver license to the individual until  
5 proof of payment has been furnished to the Department of Public  
6 Safety.

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

10        ~~D. 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~~  
15 ~~stringent than those of this section.~~

16        SECTION 3.        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 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  
24

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 stringent~~  
23 ~~than those of this section.~~

24

1 SECTION 4. AMENDATORY 37 O.S. 2011, 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~~  
15 ~~stringent than those of this section.~~

16 SECTION 5. AMENDATORY 37 O.S. 2011, Section 600.10, is  
17 amended to read as follows:

18 Section 600.10 ~~No~~ Any agency or other political subdivision of  
19 the state, including, but not limited to, municipalities, counties  
20 or any agency thereof, may adopt and enforce any order, ordinance,  
21 rule or regulation concerning the sale, purchase, distribution,  
22 advertising, sampling, promotion, display, possession, or licensing,  
23 ~~or taxation~~ of tobacco products, ~~except;~~ provided, the order,  
24 ordinance, rule or regulation shall not be less stringent than the

1 Prevention of Youth Access to Tobacco Act, or as provided in Section  
2 402 et seq. and Section 1511 of Title 68 of the Oklahoma Statutes,  
3 Section 1-1521 et seq. of Title 63 of the Oklahoma Statutes and  
4 Section 1247 of Title 21 of the Oklahoma Statutes. Provided,  
5 ~~however~~ further, nothing in this section shall preclude or preempt  
6 any agency or political subdivision from exercising its lawful  
7 authority to regulate zoning or land use or to enforce a fire code  
8 regulation regulating smoking or tobacco products to the extent that  
9 such regulation is substantially similar to nationally recognized  
10 standard fire codes.

11 SECTION 6. AMENDATORY 37 O.S. 2011, Section 600.10A, is  
12 amended to read as follows:

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

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

24

1 ~~C. 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 the~~  
5 ~~penalty provisions under such ordinances shall not be more stringent~~  
6 ~~than those of this section.~~

7 SECTION 7. AMENDATORY 63 O.S. 2011, Section 1-1527, is  
8 amended to read as follows:

9 Section 1-1527. Nothing in the Smoking in Public Places and  
10 Indoor Workplaces Act prohibits or preempts governmental  
11 subdivisions from adopting and enforcing more stringent local  
12 ordinances to protect individuals from secondhand smoke. The State  
13 Legislature by adopting ~~this act intends to preempt any other~~  
14 ~~regulation promulgated to control smoking in public places and to~~  
15 ~~standardize laws that~~ the Smoking in Public Places and Indoor  
16 Workplaces Act permits and authorizes governmental subdivisions ~~may~~  
17 to adopt and enforce local ordinances to further control smoking.  
18 ~~Cities and towns may enact and enforce laws prohibiting and~~  
19 ~~penalizing conduct under provisions of this act, but; provided, the~~  
20 ~~provisions of such laws ordinances shall be the same as provided in~~  
21 ~~this act and the enforcement provisions under such laws shall not be~~  
22 ~~more stringent than those of this act~~ comply with at least the  
23 minimum applicable standards set forth in the Smoking in Public  
24 Places and Indoor Workplaces Act.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

SECTION 8. This act shall become effective November 1, 2012.

53-2-2434 JM 12/30/2011 11:54:56 AM