STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 3104 By: Jackson

COMMITTEE SUBSTITUTE

An Act relating to tobacco products; amending 21 O.S. 2011, Section 1241, which relates to furnishing certain products to minors; amending 21 O.S. 2011, Section 1242, which relates to certain refusals; amending 37 O.S. 2011, Section 600.2, which relates to definitions; amending 37 O.S. 2011, Section 600.3, which relates to furnishing of tobacco products; amending 37 O.S. 2011, Section 600.4, as renumbered by Section 28, Chapter 404, O.S.L. 2013 (10A O.S. Supp. 2013, Section 2-8-224), which relates to purchase and receipt of tobacco products; amending 37 O.S. 2011, Section 600.5, which relates to signs in retail establishments; amending 37 O.S. 2011, Section 600.6, which relates to notice to retail employees; amending 37 O.S. 2011, Section 600.7, which relates to restrictions on vending machine sales; amending 37 O.S. 2011, Section 600.8, which relates to distribution of tobacco product samples; amending 37 O.S. 2011, Section 600.10, which relates to regulation by political subdivisions; amending 37 O.S. 2011, Section 600.10A, which relates to display or sale of tobacco products; amending 37 O.S. 2011, Section 600.11, which relates to enforcement of certain acts; amending 37 O.S. 2011, Section 600.13, which relates to prohibition of certain product transfers; providing definitions; adding alternative nicotine products and vapor products to certain laws relating to tobacco products; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2011, Section 1241, is amended to read as follows:

Section 1241. Any person who shall furnish to any minor by gift, sale or otherwise any cigarettes, cigarette papers, cigars, bidis, snuff, chewing tobacco, alternative nicotine products, vapor products or any other form of tobacco product shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine in the amount of not less than Twenty-five Dollars ($25.00) nor more than Two Hundred Dollars ($200.00) and by imprisonment in the county jail for a term of not less than ten (10) days nor more than ninety (90) days for each offense. For the purposes of this section, the terms "alternative nicotine product" and "vapor product" shall have the same meanings as provided in the Prevention of Youth Access to Tobacco Act.

SECTION 2. AMENDATORY 21 O.S. 2011, Section 1242, is amended to read as follows:

Section 1242. Any minor being in possession of cigarettes, cigarette papers, cigars, snuff, chewing tobacco, alternative nicotine products, vapor products or any other form of tobacco product and being by any police officer, constable, juvenile court officer, truant officer, or teacher in any school, asked where and from whom such cigarettes, cigarette papers, cigars, snuff, chewing tobacco, alternative nicotine products, vapor products or any other form of tobacco product were obtained, who shall refuse to furnish

such information, shall be guilty of a misdemeanor and upon conviction thereof before the district court, or any judge of the district court, such minor being of the age of sixteen (16) years or upwards shall be sentenced to pay a fine not exceeding Five Dollars ($5.00) or to undergo an imprisonment in the jail of the proper county not exceeding five (5) days, or both; if such minor shall be under the age of sixteen (16) years, he or she shall be certified by such magistrate or justice to the juvenile court of the county for such action as ~~said~~ the court shall deem proper. For the purposes of this section, the terms "alternative nicotine product" and "vapor product" shall have the same meanings as provided in the Prevention of Youth Access to Tobacco Act.

SECTION 3. AMENDATORY 37 O.S. 2011, Section 600.2, is amended to read as follows:

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

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

2. "Proof of age" means a driver license, license for identification only, or other generally accepted means of identification that describes the individual as eighteen (18) years of age or older and contains a photograph or other likeness of the individual and appears on its face to be valid;

3. "Sample" means a tobacco product, vapor product or alternative nicotine product distributed to members of the public at no cost for the purpose of promoting the product;

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

5. "Alternative nicotine product" shall mean any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved or ingested by any other means. Alternative nicotine products do not include any vapor product, tobacco products as defined by paragraph 6 of this section or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act;

6. "Tobacco product" means any product that contains tobacco and is intended for human consumption, but does not include alternative nicotine products or vapor products;

~~6.~~ 7. "Transaction scan" means the process by which a seller checks, by means of a transaction scan device, the validity of a driver license or other government-issued photo identification; ~~and~~

~~7.~~ 8. "Transaction scan device" means any commercial device or combination of devices used at a point of sale or entry that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver license or other government-issued photo identification; and

9. "Vapor product" shall mean noncombustible products, that may or may not contain nicotine, that employ a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce a vapor in a solution or other form. Vapor products shall include any vapor cartridge or other container with or without nicotine or other form that is intended to be used with an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of a solution, that may or may not contain nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo or electronic device. Vapor products do not include any products regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

SECTION 4. AMENDATORY 37 O.S. 2011, 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, alternative nicotine product or vapor product to another person who is under eighteen (18) years of age, or to purchase in any manner a tobacco product, alternative nicotine product or vapor product on behalf of any such person. It shall not be unlawful for an employee under eighteen (18) years of age to handle tobacco products, alternative nicotine

products or vapor products when required in the performance of the employee's duties.

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

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

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

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

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

c. not more than Three Hundred Dollars ($300.00) for a third offense within a two-year period following the first offense. In addition to any other penalty, the

store's license to sell tobacco products may be suspended for a period not exceeding thirty (30) days, or

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

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

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

a. the individual who purchased or received the tobacco product, alternative nicotine product or vapor product presented a driver license or other government-issued photo identification purporting to establish that such

individual was eighteen (18) years of age or older, and

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

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

D. If the sale is made by an employee of the owner of a store at which tobacco products, alternative nicotine products or vapor products are sold at retail, the employee shall be guilty of the violation and shall be subject to the fine. Each violation by any employee of an owner of a store licensed to sell tobacco products or permitted to sell alternative nicotine products or vapor products shall be deemed a violation against the owner for purposes of a license suspension pursuant to subsection C of this section. Each violation by an employee of a store that predominately sells

alternative nicotine products or vapor products shall be deemed a violation against the owner for purposes of a sales tax permit suspension pursuant to the provisions of subsection C of this section. An owner of a store licensed to sell tobacco products or permitted to sell alternative nicotine products or vapor products shall not be deemed in violation of the provisions of the Prevention of Youth Access to Tobacco Act for any acts constituting a violation by any person, when the violation occurs prior to actual employment of the person by the store owner or the violation occurs at a location other than the owner's retail store. For purposes of determining the liability of a person controlling franchises or business operations in multiple locations, for any violations of subsection A or B of this section, each individual franchise or business location shall be deemed a separate entity.

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

F. 1. Upon failure of the employee to pay the administrative fine within ninety (90) days of the day of the assessment of such fine, the ABLE Commission shall notify the Department of Public Safety, and the Department shall suspend or not issue a driver

license to the employee until proof of payment has been furnished to the Department of Public Safety.

2. Upon failure of a storeowner to pay the administrative fine within ninety (90) days of the assessment of the fine, the ABLE Commission shall notify the Tax Commission, and the Tax Commission shall suspend the store's license to sell tobacco products or the store's sales tax permit in cases of offenses relating to alternative nicotine products or vapor products until proof of payment has been furnished to the Oklahoma Tax Commission.

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

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

SECTION 5. AMENDATORY 37 O.S. 2011, Section 600.4, as renumbered by Section 28, Chapter 404, O.S.L. 2013 (10A O.S. Supp. 2013, Section 2-8-224), is amended to read as follows:

Section 2-8-224. A. It is unlawful for a person who is under eighteen (18) years of age to purchase, receive, or have in ~~their~~ his or her possession a tobacco product, alternative nicotine product or vapor product, or to present or offer to any person any

purported proof of age which is false or fraudulent, for the purpose of purchasing or receiving any tobacco product, alternative nicotine product or vapor product. It shall not be unlawful for an employee under eighteen (18) years of age to handle tobacco products, alternative nicotine products or vapor products when required in the performance of the employee's duties.

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

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

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

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

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

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

E. For the purposes of this section, the terms "alternative nicotine product" and "vapor products" shall have the same meanings as provided in the Prevention of Youth Access to Tobacco Act.

SECTION 6. AMENDATORY 37 O.S. 2011, Section 600.5, is amended to read as follows:

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

B. When a person violates subsection A of this section, the Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose an administrative fine of not more than Fifty Dollars ($50.00) for

each day a violation occurs. Each day a violation is continuing shall constitute a separate offense. The notice required by subsection A of this section shall be the only notice required to be posted or maintained in any store that sells tobacco products, alternative nicotine products or vapor products at retail.

SECTION 7. AMENDATORY 37 O.S. 2011, Section 600.6, is amended to read as follows:

Section 600.6 A. Every person engaged in the business of selling tobacco products, alternative nicotine products or vapor products at retail shall notify each individual employed by that person as a retail sales clerk that state law:

1. Prohibits the sale or distribution of tobacco products, alternative nicotine products or vapor products to any person under eighteen (18) years of age and the purchase or receipt of tobacco products, alternative nicotine products or vapor products by any person under eighteen (18) years of age; and

2. Requires that proof of age be demanded from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser or recipient may be under eighteen (18) years of age.

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

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

SECTION 8. AMENDATORY 37 O.S. 2011, Section 600.7, is amended to read as follows:

Section 600.7 It shall be unlawful for any person to sell tobacco products, alternative nicotine products or vapor products through a vending machine unless the vending machine is located:

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

2. In places that are open to the public, but to which persons under eighteen (18) years of age are not admitted.

SECTION 9. AMENDATORY 37 O.S. 2011, Section 600.8, is amended to read as follows:

Section 600.8 A. It shall be unlawful for any person or retailer to distribute tobacco products, alternative nicotine

products, vapor products or product samples to any person under eighteen (18) years of age.

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

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

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

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

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

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

E. Cities and towns may enact and municipal police officers may enforce ordinances prohibiting and penalizing conduct under

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

SECTION 10. AMENDATORY 37 O.S. 2011, Section 600.10, is amended to read as follows:

Section 600.10 No agency or other political subdivision of the state, including, but not limited to, municipalities, counties or any agency thereof, may adopt any order, ordinance, rule or regulation concerning the sale, purchase, distribution, advertising, sampling, promotion, display, possession, licensing~~,~~ or taxation of tobacco products, alternative nicotine products or vapor products, except as provided in Section 1511 of Title 68 of the Oklahoma Statutes, Section 1-1521 et seq. of Title 63 of the Oklahoma Statutes and Section 1247 of Title 21 of the Oklahoma Statutes. Provided, however, nothing in this section shall preclude or preempt any agency or political subdivision from exercising its lawful authority to regulate zoning or land use or to enforce a fire code regulation regulating smoking or tobacco products to the extent that such regulation is substantially similar to nationally recognized standard fire codes.

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

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

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

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

SECTION 12. AMENDATORY 37 O.S. 2011, Section 600.11, is amended to read as follows:

Section 600.11 A. The Alcoholic Beverage Laws Enforcement (ABLE) Commission is authorized and empowered to enforce the

provisions of Sections 600.1 et seq. of this title. The ABLE Commission shall enforce those provisions in a manner that can reasonably be expected to reduce the extent to which tobacco products, alternative nicotine products or vapor products are sold or distributed to persons under eighteen (18) years of age.

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

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

D. For the purpose of determining second or subsequent violations, both the offenses penalized by the ABLE Commission as administrative fines and the offenses penalized by municipalities and towns and reported to the ABLE Commission, shall be considered together in such determination.

E. Persons under eighteen (18) years of age may be enlisted by the ABLE Commission, a municipality or town, or a county to assist in compliance checks and enforcement; provided, such persons may be used to test compliance only if written parental consent has been

provided and the testing is conducted under the direct supervision of the ABLE Commission or conducted by another law enforcement agency if such agency has given written notice to the ABLE Commission in the manner prescribed by the ABLE Commission. Municipalities which have enacted municipal ordinances in accordance with the Prevention of Youth Access to Tobacco Act may conduct, pursuant to rules of the ABLE Commission, compliance checks without prior notification to the ABLE Commission and shall be exempt from the written notice requirement in this subsection. This subsection shall not apply to the use of persons under eighteen (18) years of age to test compliance if the compliance test is being conducted by or on behalf of a retailer of cigarettes, as defined in Section 301 of Title 68 of the Oklahoma Statutes, at any location the retailer of cigarettes is authorized to sell cigarettes. Any other use of persons under eighteen (18) years of age to test compliance shall be unlawful and punishable by the ABLE Commission by assessment of an administrative fine of One Hundred Dollars ($100.00).

F. At the beginning of each month, the Oklahoma Tax Commission, pursuant to Section 205 of Title 68 of the Oklahoma Statutes, shall provide to the ABLE Commission and to each municipality which has ordinances concerning the Prevention of Youth Access to Tobacco Act, the location, name, and address of each licensee licensed to sell tobacco products, alternative nicotine products or vapor products at retail or otherwise furnish tobacco products, alternative nicotine

products or vapor products. Upon violation of an employee at a location, the ABLE Commission shall notify the storeowner for that location of the latest and all previous violations when one of their employees has been determined to be in violation of the Prevention of Youth Access to Tobacco Act by the ABLE Commission or convicted of a violation by a municipality. If the ABLE Commission fails to notify the licensee of a violation by an employee, that violation shall not apply against the licensee for the purpose of determining a license suspension pursuant to Section 600.3 of this title. For purposes of this subsection, notification shall be deemed given if the ABLE Commission mails, by mail with delivery confirmation, the notification to the address which is on file with the Oklahoma Tax Commission of the licensee or sales tax permit holder of the location at which the violation occurred and the ABLE Commission receives delivery confirmation from the U.S. Postal Service.

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

H. The ABLE Commission shall prepare for submission annually to the Secretary of the United States Department of Health and Human Services, the report required by Section 1926 of the federal Public Health Service Act (42 U.S.C. 300-26), and otherwise shall be

responsible for ensuring the state's compliance with that provision of federal law and any implementing of regulations promulgated by the United States Department of Health and Human Services.

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

Section 600.13 A. It is unlawful for any person to sell, give or furnish in any manner to another person who is under eighteen (18) years of age any material or device used in the smoking, chewing, or other method of consumption of tobacco <u>products, alternative nicotine products or vapor products</u>, including cigarette papers, pipes, holders of smoking materials of all types, and other items designed primarily for the smoking or ingestion of tobacco products<u>, alternative nicotine products or vapor products</u>.

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

SECTION 14. This act shall become effective November 1, 2014.

54-2-10442 EK 02/26/14