

FLOOR AMENDMENT

HOUSE OF REPRESENTATIVES  
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2904 \_\_\_\_\_  
 Page 1 Section 1 Lines 20  
 Of the printed Bill  
 Of the Engrossed Bill

By striking sections 1 and 2 in their entirety and inserting in lieu thereof the following language:

(SEE ATTACHMENT)

And renumbering subsequent section.

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Adopted: \_\_\_\_\_

Amendment submitted by: Pat Ownbey \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

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

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

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

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

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

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

16 5. "Tobacco product" means any product that contains tobacco  
17 and is intended for human consumption. For the purposes of the  
18 Prevention of Youth Access to Tobacco Act, "tobacco" shall not  
19 include any electronic smoking device or any product specifically  
20 approved by the United States Food and Drug Administration for sale  
21 as a tobacco cessation product that is being marketed and sold  
22 solely for the approved purpose. Provided, nothing in the  
23 Prevention of Youth Access to Tobacco Act shall be construed to  
24 challenge, limit or in any other manner undermine the authority of

1 or affect any action by the United States Food and Drug  
2 Administration pertaining to the regulation of electronic smoking  
3 devices as tobacco products under the Family Smoking Prevention and  
4 Tobacco Control Act. Provided further, nothing in the Prevention of  
5 Youth Access to Tobacco Act shall be construed to challenge, limit  
6 or in any other manner undermine the authority of any agency or  
7 other political subdivision of the state, including, but not limited  
8 to, municipalities, counties or any agency thereof, to define  
9 electronic smoking devices as tobacco products;

10 6. "Electronic smoking device" means any product that may or  
11 may not contain or deliver nicotine intended for human consumption  
12 that can be used by a person to simulate smoking through inhalation  
13 of vapor or aerosol from the product. "Electronic smoking device"  
14 includes any component part of such product whether or not sold  
15 separately and does not include any product that has been approved  
16 by the United States Food and Drug Administration for sale as a  
17 tobacco cessation product and is being marketed and sold solely for  
18 the approved purpose;

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

22 ~~7.~~ 8. "Transaction scan device" means any commercial device or  
23 combination of devices used at a point of sale or entry that is  
24 capable of deciphering in an electronically readable format the

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

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

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

24

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

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

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

9 c. not more than Three Hundred Dollars (\$300.00) for a  
10 third offense within a two-year period following the  
11 first offense. In addition to any other penalty, the  
12 store's license to sell tobacco products or the  
13 store's sales tax permit in cases of offenses relating  
14 to electronic smoking devices may be suspended for a  
15 period not exceeding thirty (30) days, or

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

23 2. When it has been determined that a penalty shall include a  
24 license or sales tax permit suspension, the ABLE Commission shall

1 notify the Oklahoma Tax Commission, and the Tax Commission shall  
2 suspend the store's license to sell tobacco products or the store's  
3 sales tax permit in cases of offenses relating to electronic smoking  
4 devices at the location where the offense occurred for the period of  
5 time prescribed by the ABLE Commission.

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

12 a. the individual who purchased or received the tobacco  
13 product or electronic smoking device presented a  
14 driver license or other government-issued photo  
15 identification purporting to establish that such  
16 individual was eighteen (18) years of age or older,  
17 and

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

23 Provided, that this defense shall not relieve from liability any  
24 person cited for a violation of this section if ~~such~~ the person

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

7 D. If the sale is made by an employee of the owner of a store  
8 at which tobacco products or electronic smoking devices are sold at  
9 retail, the employee shall be guilty of the violation and shall be  
10 subject to the fine. Each violation by any employee of an owner of  
11 a store licensed to sell tobacco products or that sells electronic  
12 smoking devices shall be deemed a violation against the owner for  
13 purposes of a license suspension pursuant to subsection C of this  
14 section. Each violation by an employee of a store that sells  
15 electronic smoking devices shall be deemed a violation against the  
16 owner for purposes of a sales tax permit suspension pursuant to the  
17 provisions of subsection C of this section. An owner of a store  
18 licensed to sell tobacco products or permitted to sell electronic  
19 smoking devices shall not be deemed in violation of the provisions  
20 of the Prevention of Youth Access to Tobacco Act for any acts  
21 constituting a violation by any person, when the violation occurs  
22 prior to actual employment of the person by the store owner or the  
23 violation occurs at a location other than the owner's retail store.  
24 For purposes of determining the liability of a person controlling

1 franchises or business operations in multiple locations, for any  
2 violations of subsection A or B of this section, each individual  
3 franchise or business location shall be deemed a separate entity.

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

9 F. 1. Upon failure of the employee to pay the administrative  
10 fine within ninety (90) days of the day of the assessment of such  
11 fine, the ABLE Commission shall notify the Department of Public  
12 Safety, and the Department shall suspend or not issue a driver  
13 license to the employee until proof of payment has been furnished to  
14 the Department of Public Safety.

15 2. Upon failure of a storeowner to pay the administrative fine  
16 within ninety (90) days of the assessment of the fine, the ABLE  
17 Commission shall notify the Tax Commission, and the Tax Commission  
18 shall suspend the store's license to sell tobacco products or the  
19 store's sales tax permit in cases of offenses relating to electronic  
20 smoking devices until proof of payment has been furnished to the  
21 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  
2 the penalty provisions under such ordinances shall not be more  
3 stringent 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 3. AMENDATORY 37 O.S. 2011, Section 600.4, as  
7 renumbered by Section 28, Chapter 404, O.S.L. 2013 (10A O.S. Supp.  
8 2013, Section 2-8-224), is amended to read as follows:

9 Section 2-8-224. A. It is unlawful for a person who is under  
10 eighteen (18) years of age to purchase, receive, or have in ~~their~~  
11 his or her possession a tobacco product or electronic smoking  
12 device, or to present or offer to any person any purported proof of  
13 age which is false or fraudulent, for the purpose of purchasing or  
14 receiving any tobacco product or electronic smoking device. It  
15 shall not be unlawful for an employee under eighteen (18) years of  
16 age to handle tobacco products or electronic smoking devices when  
17 required in the performance of the employee's duties.

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

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

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

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

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

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

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

21 Section 600.5 A. Every person who sells or displays tobacco  
22 products or electronic smoking devices at retail shall post  
23 conspicuously and keep so posted at the place of business a sign, as  
24 specified by the Alcoholic Beverage Laws Enforcement (ABLE)

1 Commission, stating the following: "IT'S THE LAW. WE DO NOT SELL  
2 TOBACCO PRODUCTS OR ELECTRONIC SMOKING DEVICES TO PERSONS UNDER 18  
3 YEARS OF AGE". The sign shall also provide the toll-free number  
4 operated by the Alcoholic Beverage Laws Enforcement (ABLE)  
5 Commission for the purpose of reporting violations of the Prevention  
6 of Youth Access to Tobacco Act.

7 B. When a person violates subsection A of this section, the  
8 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose  
9 an administrative fine of not more than Fifty Dollars (\$50.00) for  
10 each day a violation occurs. Each day a violation is continuing  
11 shall constitute a separate offense. The notice required by  
12 subsection A of this section shall be the only notice required to be  
13 posted or maintained in any store that sells tobacco products or  
14 electronic smoking devices at retail.

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

17 Section 600.6 A. Every person engaged in the business of  
18 selling tobacco products or electronic smoking devices at retail  
19 shall notify each individual employed by that person as a retail  
20 sales clerk that state law:

21 1. Prohibits the sale or distribution of tobacco products or  
22 electronic smoking devices to any person under eighteen (18) years  
23 of age and the purchase or receipt of tobacco products or electronic  
24 smoking devices by any person under eighteen (18) years of age; and

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

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

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

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

22           Section 600.7 It shall be unlawful for any person to sell  
23 tobacco products or electronic smoking devices through a vending  
24 machine unless the vending machine is located:

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

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

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

7        Section 600.8 A. It shall be unlawful for any person or  
8 retailer to distribute tobacco products, electronic smoking devices  
9 or product samples to any person under eighteen (18) years of age.

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

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

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

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

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

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

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

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

15 Section 600.10 No agency or other political subdivision of the  
16 state, including, but not limited to, municipalities, counties or  
17 any agency thereof, may adopt any order, ordinance, rule or  
18 regulation concerning the sale, purchase, distribution, advertising,  
19 sampling, promotion, display, possession, licensing, or taxation of  
20 tobacco products or electronic smoking devices, except as provided  
21 in Section 1511 of Title 68 of the Oklahoma Statutes, Section 1-1521  
22 et seq. of Title 63 of the Oklahoma Statutes and Section 1247 of  
23 Title 21 of the Oklahoma Statutes. Provided, however, nothing in  
24 this section shall preclude or preempt any agency or political

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

5 SECTION 9. AMENDATORY 37 O.S. 2011, Section 600.10A, is  
6 amended to read as follows:

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

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 not more than Two Hundred Dollars  
19 (\$200.00) for each offense.

20 C. 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  
24

1 the penalty provisions under such ordinances shall not be more  
2 stringent than those of this section.

3 SECTION 10. 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 or electronic smoking devices are sold or distributed to  
11 persons under eighteen (18) years of age.

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

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

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

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 age may be enlisted by  
4 the ABLE Commission, a municipality or town, or a county to assist  
5 in compliance checks and enforcement; provided, such persons may be  
6 used to test compliance only if written parental consent has been  
7 provided and the testing is conducted under the direct supervision  
8 of the ABLE Commission or conducted by another law enforcement  
9 agency if such agency has given written notice to the ABLE  
10 Commission in the manner prescribed by the ABLE Commission.  
11 Municipalities which have enacted municipal ordinances in accordance  
12 with the Prevention of Youth Access to Tobacco Act may conduct,  
13 pursuant to rules of the ABLE Commission, compliance checks without  
14 prior notification to the ABLE Commission and shall be exempt from  
15 the written notice requirement in this subsection. This subsection  
16 shall not apply to the use of persons under eighteen (18) years of  
17 age to test compliance if the compliance test is being conducted by  
18 or on behalf of a retailer of cigarettes, as defined in Section 301  
19 of Title 68 of the Oklahoma Statutes, at any location the retailer  
20 of cigarettes is authorized to sell cigarettes. Any other use of  
21 persons under eighteen (18) years of age to test compliance shall be  
22 unlawful and punishable by the ABLE Commission by assessment of an  
23 administrative fine of One Hundred Dollars (\$100.00).

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

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

15 Section 1241. Any person who shall furnish to any minor by  
16 gift, sale or otherwise any cigarettes, cigarette papers, cigars,  
17 bidis, snuff, chewing tobacco, or any other form of tobacco product  
18 or electronic smoking device shall be guilty of a misdemeanor and,  
19 upon conviction, shall be punished by a fine in the amount of not  
20 less than Twenty-five Dollars (\$25.00) nor more than Two Hundred  
21 Dollars (\$200.00) and by imprisonment in the county jail for a term  
22 of not less than ten (10) days nor more than ninety (90) days for  
23 each offense. For the purposes of this section, the term  
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1 "electronic smoking device" shall have the same meaning as provided  
2 in the Prevention of Youth Access to Tobacco Act.

3 SECTION 12. AMENDATORY 21 O.S. 2011, Section 1242, is  
4 amended to read as follows:

5 Section 1242. Any minor being in possession of cigarettes,  
6 cigarette papers, cigars, snuff, chewing tobacco, or any other form  
7 of tobacco product or electronic smoking device and being by any  
8 police officer, constable, juvenile court officer, truant officer,  
9 or teacher in any school, asked where and from whom such cigarettes,  
10 cigarette papers, cigars, snuff, chewing tobacco, or any other form  
11 of tobacco product or electronic smoking device were obtained, who  
12 shall refuse to furnish such information, shall be guilty of a  
13 misdemeanor and upon conviction thereof before the district court,  
14 or any judge of the district court, such minor being of the age of  
15 sixteen (16) years or upwards shall be sentenced to pay a fine not  
16 exceeding Five Dollars (\$5.00) or to undergo an imprisonment in the  
17 jail of the proper county not exceeding five (5) days, or both; if  
18 such minor shall be under the age of sixteen (16) years, he or she  
19 shall be certified by such magistrate or justice to the juvenile  
20 court of the county for such action as ~~said~~ the court shall deem  
21 proper. For the purposes of this section, the term "electronic  
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1 smoking device" shall have the same meaning as provided in the  
2 Prevention of Youth Access to Tobacco Act."

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