

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend amendment number 2 to HB2904
Page _____ Section _____ Lines _____
Of the printed Bill
Of the Engrossed Bill

By deleting all language and by inserting in lieu thereof the following:

(INSERT ATTACHED)

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Mike Jackson

Reading Clerk

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

3 Section 1241. Any person who shall furnish to any minor by
4 gift, sale or otherwise any cigarettes, cigarette papers, cigars,
5 bidis, snuff, chewing tobacco, vapor products or any other form of
6 tobacco product shall be guilty of a misdemeanor and, upon
7 conviction, shall be punished by a fine in the amount of not less
8 than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars
9 (\$200.00) and by imprisonment in the county jail for a term of not
10 less than ten (10) days nor more than ninety (90) days for each
11 offense. For the purposes of this section, the term "vapor product"
12 shall have the same meaning as provided in the Prevention of Youth
13 Access to Tobacco Act.

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

16 Section 1242. Any minor being in possession of cigarettes,
17 cigarette papers, cigars, snuff, chewing tobacco, vapor products or
18 any other form of tobacco product and being by any police officer,
19 constable, juvenile court officer, truant officer, or teacher in any
20 school, asked where and from whom such cigarettes, cigarette papers,
21 cigars, snuff, chewing tobacco, vapor products or any other form of
22 tobacco product were obtained, who shall refuse to furnish such
23 information, shall be guilty of a misdemeanor and upon conviction
24 thereof before the district court, or any judge of the district

1 court, such minor being of the age of sixteen (16) years or upwards
2 shall be sentenced to pay a fine not exceeding Five Dollars (\$5.00)
3 or to undergo an imprisonment in the jail of the proper county not
4 exceeding five (5) days, or both; if such minor shall be under the
5 age of sixteen (16) years, he or she shall be certified by such
6 magistrate or justice to the juvenile court of the county for such
7 action as ~~said~~ the court shall deem proper. For the purposes of
8 this section, the term "vapor product" shall have the same meaning
9 as provided in the Prevention of Youth Access to Tobacco Act.

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

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

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

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

21 3. "Sample" means a tobacco product or vapor product
22 distributed to members of the public at no cost for the purpose of
23 promoting the product;

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

3 5. "Tobacco product" means any product that contains tobacco
4 and is intended for human consumption, but does not include vapor
5 products;

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

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

14 8. "Vapor product" shall mean noncombustible products, that may
15 or may not contain nicotine, that employ a mechanical heating
16 element, battery, electronic circuit, or other mechanism, regardless
17 of shape or size, that can be used to produce a vapor in a solution
18 or other form. Vapor products shall include any vapor cartridge or
19 other container with or without nicotine or other form that is
20 intended to be used with an electronic cigarette, electronic cigar,
21 electronic cigarillo, electronic pipe, or similar product or device
22 and any vapor cartridge or other container of a solution, that may
23 or may not contain nicotine, that is intended to be used with or in
24 an electronic cigarette, electronic cigar, electronic cigarillo or

1 electronic device. Vapor products do not include any products
2 regulated by the United States Food and Drug Administration under
3 Chapter V of the Food, Drug, and Cosmetic Act.

4 SECTION 4. AMENDATORY 37 O.S. 2011, Section 600.3, is
5 amended to read as follows:

6 Section 600.3 A. It is unlawful for any person to sell, give
7 or furnish in any manner any tobacco product or vapor product to
8 another person who is under eighteen (18) years of age, or to
9 purchase in any manner a tobacco product or vapor product on behalf
10 of any such person. It shall not be unlawful for an employee under
11 eighteen (18) years of age to handle tobacco products or vapor
12 products when required in the performance of the employee's duties.

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

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

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 may be
13 suspended for a period not exceeding thirty (30) days,
14 or

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

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

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

- 9 a. the individual who purchased or received the tobacco
10 product or vapor product presented a driver license or
11 other government-issued photo identification
12 purporting to establish that such individual was
13 eighteen (18) years of age or older, and
- 14 b. the person cited for the violation confirmed the
15 validity of the driver license or other government-
16 issued photo identification presented by such
17 individual by performing a transaction scan by means
18 of a transaction scan device.

19 Provided, that this defense shall not relieve from liability any
20 person cited for a violation of this section if ~~such~~ the person
21 failed to exercise reasonable diligence to determine whether the
22 physical description and picture appearing on the driver license or
23 other government-issued photo identification was that of the
24 individual who presented it. The availability of the defense

1 described in this subsection does not affect the availability of any
2 other defense under any other provision of law.

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

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

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

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

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

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

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

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

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

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

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

23 Upon failure of the individual to pay the administrative fine
24 within ninety (90) days of the day of the fine, the ABLE Commission

1 shall notify the Department of Public Safety, and the Department
2 shall suspend or not issue a driver license to the individual until
3 proof of payment has been furnished to the Department of Public
4 Safety.

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

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

14 E. For the purposes of this section, the term "vapor products"
15 shall have the same meaning as provided in the Prevention of Youth
16 Access to Tobacco Act.

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

19 Section 600.5 A. Every person who sells or displays tobacco
20 products or vapor products at retail shall post conspicuously and
21 keep so posted at the place of business a sign, as specified by the
22 Alcoholic Beverage Laws Enforcement (ABLE) Commission, stating the
23 following: "IT'S THE LAW. WE DO NOT SELL TOBACCO PRODUCTS OR VAPOR
24 PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE". The sign shall also

1 provide the toll-free number operated by the Alcoholic Beverage Laws
2 Enforcement (ABLE) Commission for the purpose of reporting
3 violations of the Prevention of Youth Access to Tobacco Act.

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

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

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

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

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

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

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

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

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

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

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

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

5 Section 600.8 A. It shall be unlawful for any person or
6 retailer to distribute tobacco products, vapor products or product
7 samples to any person under eighteen (18) years of age.

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

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

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

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

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

22 D. Upon failure of any person to pay an administrative fine
23 within ninety (90) days of the assessment of the fine, the ABLE
24 Commission shall notify the Department of Public Safety, and the

1 Department shall suspend or not issue a driver license to the person
2 until proof of payment has been furnished to the Department of
3 Public Safety.

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

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

12 Section 600.10 No agency or other political subdivision of the
13 state, including, but not limited to, municipalities, counties or
14 any agency thereof, may adopt any order, ordinance, rule or
15 regulation concerning the sale, purchase, distribution, advertising,
16 sampling, promotion, display, possession, licensing, or taxation of
17 tobacco products or vapor products, except as provided in Section
18 1511 of Title 68 of the Oklahoma Statutes, Section 1-1521 et seq. of
19 Title 63 of the Oklahoma Statutes and Section 1247 of Title 21 of
20 the Oklahoma Statutes. Provided, however, nothing in this section
21 shall preclude or preempt any agency or political subdivision from
22 exercising its lawful authority to regulate zoning or land use or to
23 enforce a fire code regulation regulating smoking or tobacco
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1 products to the extent that such regulation is substantially similar
2 to nationally recognized standard fire codes.

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

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

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

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

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

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

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

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

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

23 E. Persons under eighteen (18) years of age may be enlisted by
24 the ABLE Commission, a municipality or town, or a county to assist

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

20 F. At the beginning of each month, the Oklahoma Tax Commission,
21 pursuant to Section 205 of Title 68 of the Oklahoma Statutes, shall
22 provide to the ABLE Commission and to each municipality which has
23 ordinances concerning the Prevention of Youth Access to Tobacco Act,
24 the location, name, and address of each licensee licensed to sell

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

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

23 H. The ABLE Commission shall prepare for submission annually to
24 the Secretary of the United States Department of Health and Human

1 Services, the report required by Section 1926 of the federal Public
2 Health Service Act (42 U.S.C. 300-26), and otherwise shall be
3 responsible for ensuring the state's compliance with that provision
4 of federal law and any implementing of regulations promulgated by
5 the United States Department of Health and Human Services.

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

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

15 B. When a person violates subsection A of this section, the
16 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
17 an administrative fine of not more than One Hundred Dollars
18 (\$100.00) for each offense.

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