

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 1970

By: Coody

4
5
6 AS INTRODUCED

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

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

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

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

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

22 2. "Proof of age" means a driver license, license for
23 identification only, or other generally accepted means of
24 nineteen (19) years of age or older and contains a photograph or
~~eighteen (18)~~

1 other likeness of the individual and appears on its face to be
2 valid;

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

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

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

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

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

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

19 Section 600.3 A. It is unlawful for any person to sell, give
20 or furnish in any manner any tobacco product to another person who
21 is under ~~eighteen (18)~~ nineteen (19) years of age, or to purchase in
22 any manner a tobacco product on behalf of any such person. It shall
23 not be unlawful for an employee under ~~eighteen (18)~~ nineteen (19)
24

1 years of age to handle tobacco products when required in the
2 performance of the employee's 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 nineteen (19) 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)~~ nineteen (19) years of age,
11 the failure to subsequently require proof of age shall not
12 constitute a violation of this subsection ~~B of this section~~.

13 C. 1. When a person violates subsection A or B of this
14 section, the Alcoholic Beverage Laws Enforcement (ABLE) Commission
15 shall 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
11 Tax Commission, and the Oklahoma Tax Commission shall suspend the
12 store's license to sell tobacco products at the location where the
13 offense occurred for the period of time prescribed by the ABLE
14 Commission.

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

21 a. the individual who purchased or received the tobacco
22 product presented a driver license or other
23 government-issued photo identification purporting to
24

1 establish that such individual was ~~eighteen (18)~~
2 nineteen (19) years of age or older, and

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

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

16 D. If the sale is made by an employee of the owner of a store
17 at which tobacco products are sold at retail, the employee shall be
18 guilty of the violation and shall be subject to the fine. Each
19 violation by any employee of an owner of a store licensed to sell
20 tobacco products shall be deemed a violation against the owner for
21 purposes of a license suspension pursuant to subsection C of this
22 section. An owner of a store licensed to sell tobacco products
23 shall not be deemed in violation of the provisions of the Prevention
24 of Youth Access to Tobacco Act for any acts constituting a violation

1 by any person, when the violation occurs prior to actual employment
2 of the person by the store owner or the violation occurs at a
3 location other than the owner's retail store. For purposes of
4 determining the liability of a person controlling franchises or
5 business operations in multiple locations, for any violations of
6 subsection A or B of this section, each individual franchise or
7 business location shall be deemed a separate entity.

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

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

19 2. Upon failure of a storeowner to pay the administrative fine
20 within ninety (90) days of the assessment of the fine, the ABLE
21 Commission shall notify the Oklahoma Tax Commission and the Oklahoma
22 Tax Commission shall suspend the store's license to sell tobacco
23 products until proof of payment has been furnished to the Oklahoma
24 Tax Commission.

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

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

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

11 Section 600.4 A. It is unlawful for a person who is under
12 ~~eighteen (18)~~ nineteen (19) years of age to purchase, receive, or
13 have in ~~their~~ his or her possession a tobacco product, or to present
14 or offer to any person any purported proof of age which is false or
15 fraudulent, for the purpose of purchasing or receiving any tobacco
16 product. It shall not be unlawful for an employee under ~~eighteen~~
17 ~~(18)~~ nineteen (19) years of age to handle tobacco products when
18 required in the performance of the employee's duties.

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

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

24

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 at retail shall post conspicuously and keep so posted at
23 the place of business a sign, as specified by the Alcoholic Beverage
24 Laws Enforcement (ABLE) Commission, stating the following: "IT'S

1 THE LAW. WE DO NOT SELL TOBACCO PRODUCTS TO PERSONS UNDER ~~18~~ 19
2 YEARS OF AGE." The sign shall also provide the toll-free number
3 operated by the Alcoholic Beverage Laws Enforcement (ABLE)
4 Commission for the purpose of reporting violations of the Prevention
5 of Youth Access to Tobacco Act.

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

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

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

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

23 2. Requires that proof of age be demanded from a prospective
24 purchaser or recipient if an ordinary person would conclude on the

1 basis of appearance that the prospective purchaser or recipient may
2 be under ~~eighteen (18)~~ nineteen (19) 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 to persons under ~~eighteen (18)~~ nineteen (19) years
9 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)~~ nineteen (19) years of age. I promise, as a
13 condition of my employment, to obey the law. I understand that
14 violations by me may be punishable by fines, suspension or
15 nonissuance of my driver license. In addition, I understand that
16 violations by me may subject the storeowner to fines or license
17 suspension."

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

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

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

1 2. In places that are open to the public, but to which persons
2 under ~~eighteen (18)~~ nineteen (19) years of age are not admitted.

3 SECTION 7. 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 or product samples to any
7 person under ~~eighteen (18)~~ nineteen (19) years of age.

8 B. No person shall distribute tobacco products or product
9 samples in or on any public street, sidewalk, or park that is within
10 three hundred (300) feet of any playground, school, or other
11 facility when the facility is being used primarily by persons under
12 ~~eighteen (18)~~ nineteen (19) 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 8. AMENDATORY 37 O.S. 2011, Section 600.10A, is
11 amended to read as follows:

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

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

23 C. Cities and towns may enact and municipal police officers may
24 enforce ordinances prohibiting and penalizing conduct under

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

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

7 Section 600.11 A. The Alcoholic Beverage Laws Enforcement
8 (ABLE) Commission is authorized and empowered to enforce the
9 provisions of ~~Sections~~ Section 600.1 et seq. of this title. The
10 ABLE Commission shall enforce those provisions in a manner that can
11 reasonably be expected to reduce the extent to which tobacco
12 products are sold or distributed to persons under ~~eighteen (18)~~
13 nineteen (19) years of age.

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

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

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

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

1 to test compliance shall be unlawful and punishable by the ABLE
2 Commission by assessment of an administrative fine of One Hundred
3 Dollars (\$100.00).

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

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

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

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

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

22 B. When a person violates subsection A of this section, the
23 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
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1 an administrative fine of not more than One Hundred Dollars
2 (\$100.00) for each offense.

3 SECTION 11. This act shall become effective November 1, 2014.
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