

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 2897

By: Humphrey

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5
6 AS INTRODUCED

7 An Act relating to tobacco; amending 21 O.S. 2011,
8 Section 1247, as last amended by Section 1, Chapter
9 477, O.S.L. 2019 (21 O.S. Supp. 2019, Section 1247),
10 which relates to smoking in public places; providing
11 exemption for institutions and facilities of the
12 Department of Corrections; amending 57 O.S. 2011,
13 Section 21, as last amended by Section 2, Chapter
14 226, O.S.L. 2015 (57 O.S. Supp. 2019, Section 21),
15 which relates to penalties for possessing contraband
16 in jails or prisons; providing exception for inmates
17 who purchase and possess authorized tobacco products;
18 authorizing correctional facility canteens to sell
19 tobacco products to inmates; prohibiting the purchase
20 of tobacco products from unauthorized vendors or
21 sources; providing penalty; providing guidelines for
22 tobacco product sales and purchases; directing
23 transfer of profits to certain revolving fund;
24 defining term; amending 63 O.S. 2011, Section 1-1523,
as last amended by Section 2, Chapter 477, O.S.L.
2019 (63 O.S. Supp. 2019, Section 1-1523), which
relates to the Smoking in Public Places and Indoor
Workplaces Act; providing an exemption for
institutions of the Department of Corrections;
providing for codification; and providing an
effective date.

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

22 SECTION 1. AMENDATORY 21 O.S. 2011, Section 1247, as
23 last amended by Section 1, Chapter 477, O.S.L. 2019 (21 O.S. Supp.
24 2019, Section 1247), is amended to read as follows:

1 Section 1247. A. The possession of lighted tobacco in any form
2 is a public nuisance and dangerous to public health and is hereby
3 prohibited when such possession is in any indoor place used by or
4 open to the public, all parts of a zoo to which the public may be
5 admitted, whether indoors or outdoors, public transportation, or any
6 indoor workplace, except where specifically allowed by law.
7 Commercial airport operators may prohibit the use of lighted tobacco
8 or lighted marijuana or the vaping of marijuana in any area that is
9 open to or used by the public whether located indoors or outdoors,
10 provided that the outdoor area is within one hundred seventy-five
11 (175) feet from an entrance.

12 As used in this section, "indoor workplace" means any indoor
13 place of employment or employment-type service for or at the request
14 of another individual or individuals, or any public or private
15 entity, whether part-time or full-time and whether for compensation
16 or not. Such services shall include, without limitation, any
17 service performed by an owner, employee, independent contractor,
18 agent, partner, proprietor, manager, officer, director, apprentice,
19 trainee, associate, servant or volunteer. An indoor workplace
20 includes work areas, employee lounges, restrooms, conference rooms,
21 classrooms, employee cafeterias, hallways, any other spaces used or
22 visited by employees, and all space between a floor and ceiling that
23 is predominantly or totally enclosed by walls or windows, regardless
24 of doors, doorways, open or closed windows, stairways, or the like.

1 The provisions of this section shall apply to such indoor workplace
2 at any given time, whether or not work is being performed.

3 B. All buildings and other properties, or portions thereof,
4 owned or operated by this state shall be designated as nonsmoking.

5 The tobacco smoking provisions of this subsection shall not apply to
6 ~~veterans~~ the following:

7 1. Veterans centers operated by this state pursuant to the
8 provisions of Section 221 et seq. of Title 72 of the Oklahoma
9 Statutes, which shall be designated nonsmoking effective January 1,
10 2015, at which time veterans centers may establish outdoor
11 designated smoking areas for resident veterans only. Smoking
12 tobacco shall only be allowed in designated outdoor smoking areas;
13 and

14 2. Institutions and facilities under the jurisdiction of the
15 Department of Corrections. On or after November 1, 2020, the
16 Department of Corrections may establish outdoor designated smoking
17 areas for inmates who have been sentenced to the care and custody of
18 the Department of Corrections. Smoking tobacco shall only be
19 allowed in outdoor designated smoking areas.

20 C. All buildings and other properties, or portions thereof,
21 owned or operated by a county or municipal government, at the
22 discretion of the county or municipal governing body, may be
23 designated as entirely nonsmoking.

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1 D. All educational facilities, or portions thereof, as defined
2 in the Smoking in Public Places and Indoor Workplaces Act and all
3 educational facilities as defined in the 24/7 Tobacco-free Schools
4 Act shall be designated as nonsmoking as provided for in Section 1-
5 1523 of Title 63 of the Oklahoma Statutes. All campuses, buildings
6 and grounds, or portions thereof, owned or operated by an
7 institution within The Oklahoma State System of Higher Education may
8 be designated as tobacco and marijuana free, including smoking or
9 smokeless tobacco or smokable or vaporable marijuana, by the
10 institution upon adoption of a policy stating the restrictions for
11 the institution and an intent to enforce the penalty for violations
12 as set forth in subsection M of this section.

13 E. No tobacco or marijuana smoking or marijuana vaping shall be
14 allowed within twenty-five (25) feet of the entrance or exit of any
15 building specified in subsection B, C or D of this section.

16 F. The restrictions on tobacco smoking provided in this section
17 shall not apply to stand-alone bars, stand-alone taverns and cigar
18 bars as defined in Section 1-1522 of Title 63 of the Oklahoma
19 Statutes.

20 G. The restrictions on tobacco smoking provided in this section
21 shall not apply to the following:

22 1. The room or rooms where licensed charitable bingo games are
23 being operated, but only during the hours of operation of such
24 games;

- 1 2. Up to twenty-five percent (25%) of the guest rooms at a
2 hotel or other lodging establishment;
- 3 3. Retail tobacco stores predominantly engaged in the sale of
4 tobacco products and accessories and in which the sale of other
5 products is merely incidental and in which no food or beverage is
6 sold or served for consumption on the premises;
- 7 4. Workplaces where only the owner or operator of the
8 workplace, or the immediate family of the owner or operator,
9 performs any work in the workplace, and the workplace has only
10 incidental public access. "Incidental public access" means that a
11 place of business has only an occasional person, who is not an
12 employee, present at the business to transact business or make a
13 delivery. It does not include businesses that depend on walk-in
14 customers for any part of their business;
- 15 5. Workplaces occupied exclusively by one or more tobacco
16 smokers, if the workplace has only incidental public access;
- 17 6. Private offices occupied exclusively by one or more smokers;
- 18 7. Workplaces within private residences, except that smoking
19 tobacco or marijuana or vaping marijuana shall not be allowed inside
20 any private residence that is used as a licensed child care facility
21 during hours of operation;
- 22 8. Medical research or treatment centers, if tobacco smoking is
23 integral to the research or treatment. Furthermore, the
24 restrictions on smoking or vaping of marijuana provided in this

1 section shall not apply to medical research or treatment centers, if
2 marijuana smoking or vaping is integral to the research or
3 treatment;

4 9. A facility operated by a post or organization of past or
5 present members of the Armed Forces of the United States which is
6 exempt from taxation pursuant to Section 501(c)(8), 501(c)(10) or
7 501(c)(19) of the Internal Revenue Code, 26 U.S.C., Section
8 501(c)(8), 501(c)(10) or 501(c)(19), when such facility is utilized
9 exclusively by its members and their families and for the conduct of
10 post or organization nonprofit operations except during an event or
11 activity which is open to the public; and

12 10. Any outdoor seating area of a restaurant; provided, smoking
13 tobacco or smoking or vaping marijuana shall not be allowed within
14 fifteen (15) feet of any exterior public doorway or any air intake
15 of a restaurant.

16 H. An employer not otherwise restricted from doing so may elect
17 to provide tobacco smoking rooms where no work is performed except
18 for cleaning and maintenance during the time the room is not in use
19 for tobacco smoking, provided each tobacco smoking room is fully
20 enclosed and exhausted directly to the outside in such a manner that
21 no tobacco smoke can drift or circulate into a nonsmoking area. No
22 exhaust from a tobacco smoking room shall be located within fifteen
23 (15) feet of any entrance, exit or air intake.

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1 I. If tobacco smoking is to be permitted in any space exempted
2 in subsection F or G of this section or in a tobacco smoking room
3 pursuant to subsection H of this section, such tobacco smoking space
4 must either occupy the entire enclosed indoor space or, if it shares
5 the enclosed space with any nonsmoking areas, the tobacco smoking
6 space shall be fully enclosed, exhausted directly to the outside
7 with no air from the tobacco smoking space circulated to any
8 nonsmoking area, and under negative air pressure so that no tobacco
9 smoke can drift or circulate into a nonsmoking area when a door to
10 an adjacent nonsmoking area is opened. Air from a tobacco smoking
11 room shall not be exhausted within fifteen (15) feet of any
12 entrance, exit or air intake. Any employer may choose a more
13 restrictive tobacco smoking policy, including being totally tobacco
14 smoke free.

15 J. Notwithstanding any other provision of this section, until
16 March 1, 2006, restaurants may have designated tobacco smoking and
17 nonsmoking areas or may be designated as being a totally nonsmoking
18 area. Beginning March 1, 2006, restaurants shall be totally
19 nonsmoking or may provide nonsmoking areas and designated tobacco
20 smoking rooms. Food and beverage may be served in such designated
21 tobacco smoking rooms which shall be in a location which is fully
22 enclosed, directly exhausted to the outside, under negative air
23 pressure so tobacco smoke cannot escape when a door is opened, and
24 no air is recirculated to nonsmoking areas of the building. No

1 exhaust from such room shall be located within twenty-five (25) feet
2 of any entrance, exit or air intake. Such room shall be subject to
3 verification for compliance with the provisions of this subsection
4 by the State Department of Health.

5 K. The person who owns or operates a place where tobacco
6 smoking or use is prohibited by law shall be responsible for posting
7 a sign or decal, at least four (4) inches by two (2) inches in size,
8 at each entrance to the building indicating that the place is smoke-
9 free or tobacco-free.

10 L. Responsibility for posting signs or decals shall be as
11 follows:

12 1. In privately owned facilities, the owner or lessee, if a
13 lessee is in possession of the facilities, shall be responsible;

14 2. In corporately owned facilities, the manager and/or
15 supervisor of the facility involved shall be responsible; and

16 3. In publicly owned facilities, the manager and/or supervisor
17 of the facility shall be responsible.

18 M. Any person who knowingly violates the provisions of this
19 section shall be punished by a citation and fine of not more than
20 One Hundred Dollars (\$100.00).

21 SECTION 2. AMENDATORY 57 O.S. 2011, Section 21, as last
22 amended by Section 2, Chapter 226, O.S.L. 2015 (57 O.S. Supp. 2019,
23 Section 21), is amended to read as follows:

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1 Section 21. A. Any person who, without authority, brings into
2 or has in his or her possession in any jail or state penal
3 institution or other place where prisoners are located, any gun,
4 knife, bomb or other dangerous instrument, any controlled dangerous
5 substance as defined by Section 2-101 et seq. of Title 63 of the
6 Oklahoma Statutes, any ~~intoxicating beverage or low-point beer~~
7 alcoholic beverage as defined by ~~Sections 163.1 and 163.2~~ Section 1-
8 103 of Title ~~37~~ 37A of the Oklahoma Statutes, money or financial
9 documents for a person other than the inmate or a spouse of the
10 inmate, including but not limited to tax returns, shall be guilty of
11 a felony and, upon conviction, shall be punished by imprisonment in
12 the custody of the Department of Corrections for a term of not less
13 than one (1) year nor more than five (5) years, or by a fine of not
14 less than One Hundred Dollars (\$100.00) nor more than One Thousand
15 Dollars (\$1,000.00), or by both such fine and imprisonment.
16 Provided, the provisions of this subsection shall not prohibit any
17 Department of Corrections employee who has a valid handgun license
18 pursuant to the Oklahoma Self-Defense Act ~~to keep~~ from keeping a
19 firearm in a vehicle on any property set aside for the parking of
20 any vehicle, whether occupied or unoccupied, at any state-owned
21 prison facility, provided the employee has provided annual
22 notification to the Department of Corrections of the brand name,
23 model, serial number, and owner identification information of the
24 firearm, and the firearm is secured and stored in a locked metal

1 storage container located in a locked vehicle. The storage
2 container will be secured in the vehicle by a lockable chain or
3 cable or by utilizing hardware provided by the manufacturer.

4 B. ~~If~~ With the exception of authorized tobacco products
5 available for purchase by an inmate from a canteen system operation
6 of a correctional facility as provided in Section 3 of this act, if
7 an inmate is found to be in possession of any item prohibited by
8 this section, upon conviction, such inmate shall be guilty of a
9 felony and shall be punished by imprisonment for a term of not less
10 than five (5) years nor more than twenty (20) years in the custody
11 of the Department of Corrections.

12 C. If the person found to be in possession of any item
13 prohibited by this section has committed, prior to the commission of
14 an offense in violation of this section, two or more felony
15 offenses, and the possession of contraband in violation of this
16 section is within ten (10) years of the completion of the execution
17 of the sentence for any prior offense, such person, upon conviction,
18 shall be guilty of a felony and shall be punished by imprisonment in
19 the custody of the Department of Corrections for a term of not less
20 than twenty (20) years. Felony offenses relied upon shall not have
21 arisen out of the same transaction or occurrence or series of events
22 closely related in time and location.

23 D. Any person who, without authority, brings into or has in his
24 or her possession in any jail or state penal institution or other

1 place where prisoners are located, cigarettes, cigars, snuff,
2 chewing tobacco or any other form of tobacco product shall, upon
3 conviction, be guilty of a misdemeanor punishable by imprisonment in
4 the county jail for a term not ~~to exceed~~ exceeding one (1) year, or
5 by a fine not exceeding Five Hundred Dollars (\$500.00), or by both
6 such fine and imprisonment.

7 E. Any person who knowingly, willfully and without authority
8 brings into or has in his or her possession in any secure area of a
9 jail or state penal institution or other secure place where
10 prisoners are located any cellular phone or electronic device
11 capable of sending or receiving any electronic communication shall,
12 upon conviction, be guilty of a felony punishable by imprisonment in
13 the custody of the Department of Corrections for a term not
14 exceeding two (2) years, or by a fine not exceeding Two Thousand
15 Five Hundred Dollars (\$2,500.00), or by both such fine and
16 imprisonment.

17 F. Any electronic communication device which has no
18 identifiable owner and which is seized as a result of a violation of
19 this section may be disposed of or sold by the agency that seized
20 the device.

21 G. "Electronic communication" means any transfer of signs,
22 signals, writings, images, sounds, data or intelligence of any
23 nature transmitted in whole or part by a wire, radio,
24 electromagnetic, photo-electronic or photo-optical system, and

1 includes, but is not limited to, the transfer of that communication
2 through the Internet.

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 537.2 of Title 57, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Each correctional facility that has a canteen system
7 operation may offer tobacco products for purchase by inmates of the
8 correctional facility. All sales of tobacco products at a
9 correctional facility shall be purchased from the canteen system
10 operation of the facility. Under no circumstances shall tobacco
11 products be purchased by an inmate from any unauthorized outside
12 vendor or any other source. Any unauthorized purchase of tobacco
13 products by an inmate shall result in disciplinary action and
14 confiscation of all tobacco products in the possession of the
15 inmate.

16 B. All profits generated from the sale of tobacco products at a
17 correctional facility canteen shall be subject to the guidelines
18 established by the Canteen System Board of Directors pursuant to
19 Section 537 of Title 57 of the Oklahoma Statutes and transferred
20 periodically from the canteen system account to the Department of
21 Corrections Inmate and Employee Welfare and Canteen System Support
22 Revolving Fund created in Section 537.1 of Title 57 of the Oklahoma
23 Statutes.

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1 C. As used in this section, "tobacco products" means any
2 product that contains tobacco and is intended for human consumption.

3 SECTION 4. AMENDATORY 63 O.S. 2011, Section 1-1523, as
4 last amended by Section 2, Chapter 477, O.S.L. 2019 (63 O.S. Supp.
5 2019, Section 1-1523), is amended to read as follows:

6 Section 1-1523. A. Except as specifically provided in the
7 Smoking in Public Places and Indoor Workplaces Act, no person shall
8 smoke tobacco or marijuana or vape marijuana in a public place, in
9 any part of a zoo to which the public may be admitted, whether
10 indoors or outdoors, in an indoor workplace, in any vehicle
11 providing public transportation, at a meeting of a public body, in a
12 nursing facility licensed pursuant to the Nursing Home Care Act, or
13 in a child care facility licensed pursuant to the Oklahoma Child
14 Care Facilities Licensing Act. A nursing facility licensed pursuant
15 to the Nursing Home Care Act may designate tobacco smoking rooms for
16 residents and their guests. Such rooms shall be fully enclosed,
17 directly exhausted to the outside, and shall be under negative air
18 pressure so that no tobacco smoke can escape when a door is opened
19 and no air is recirculated to nonsmoking areas of the building.

20 Commercial airport operators may prohibit the use of lighted tobacco
21 or lighted marijuana or the vaping of marijuana in any area that is
22 open to or used by the public whether located indoors or outdoors,
23 provided that the outdoor area is within one hundred seventy-five
24 (175) feet from an entrance.

1 B. 1. Except as otherwise provided in paragraph 2 of this
2 subsection, a technology center school district which offers an
3 early childhood education program or in which children in grades
4 kindergarten through twelve are educated shall prohibit tobacco or
5 marijuana smoking or marijuana vaping, the use of marijuana
6 products, snuff, chewing tobacco or any other form of tobacco
7 product in the educational facility buildings and on the grounds of
8 the facility by all persons including, but not limited to, full-
9 time, part-time, and contract employees, during the hours of 7:00
10 a.m. to 4:00 p.m., during the school session, or when class or any
11 program established for students is in session.

12 2. A technology center school district may designate tobacco
13 smoking areas outside of buildings, away from general traffic areas
14 and completely out of sight of children under eighteen (18) years of
15 age, for use by adults attending training courses, sessions,
16 meetings or seminars.

17 3. A technology center school district or college or university
18 may designate tobacco smoking areas outside the educational facility
19 buildings for the use of adults during certain activities or
20 functions, including, but not limited to, athletic contests.

21 4. Smoking tobacco or marijuana or vaping marijuana shall be
22 prohibited in an educational facility as defined in the 24/7
23 Tobacco-free Schools Act and as provided for in Section 1210.213 of
24 Title 70 of the Oklahoma Statutes.

1 C. Nothing in this section shall be construed to prohibit
2 educational facilities from having more restrictive policies
3 regarding tobacco or marijuana smoking or marijuana vaping and the
4 use of other marijuana or tobacco products in the buildings or on
5 the grounds of the facility.

6 D. A private residence is not a "public place" within the
7 meaning of the Smoking in Public Places and Indoor Workplaces Act
8 except that areas in a private residence that are used as a licensed
9 child care facility during hours of operation are "public places"
10 within the meaning of the Smoking in Public Places and Indoor
11 Workplaces Act.

12 E. Smoking tobacco or marijuana or vaping marijuana is
13 prohibited in all vehicles owned by the State of Oklahoma and all of
14 its agencies and instrumentalities.

15 F. 1. Veterans centers operated by this state pursuant to the
16 provisions of Section 221 et seq. of Title 72 of the Oklahoma
17 Statutes shall be designated nonsmoking effective January 1, 2015,
18 at which time veterans centers may establish outdoor designated
19 smoking areas for resident veterans only. Smoking tobacco shall
20 only be allowed in designated outdoor smoking areas.

21 2. Smoking tobacco shall be permitted at institutions and
22 facilities under the jurisdiction of the Department of Corrections.
23 On or after November 1, 2020, the Department of Corrections may
24 establish outdoor designated smoking areas for inmates who have been

1 sentenced to the care and custody of the Department of Corrections.

2 Smoking tobacco shall only be allowed in outdoor designated smoking
3 areas.

4 G. An employer not otherwise restricted from doing so may elect
5 to provide tobacco smoking rooms where no work is performed except
6 for cleaning and maintenance during the time the room is not in use
7 for tobacco smoking, provided each tobacco smoking room is fully
8 enclosed and exhausted directly to the outside, in such manner that
9 no tobacco smoke can drift or circulate into a nonsmoking area. No
10 exhaust from a tobacco smoking room shall be located within fifteen
11 (15) feet of any entrance, exit or air intake. If tobacco smoking
12 is to be permitted in any space exempted in subsection H of this
13 section or in a tobacco smoking room pursuant to subsection I of
14 this section, such tobacco smoking space must either occupy the
15 entire enclosed indoor space or, if it shares the enclosed space
16 with any nonsmoking areas, the tobacco smoking space shall be fully
17 enclosed, exhausted directly to the outside with no air from the
18 tobacco smoking space circulated to any nonsmoking area, and under
19 negative air pressure so that no tobacco smoke can drift or
20 circulate into a nonsmoking area when a door to an adjacent
21 nonsmoking area is opened. Air from a tobacco smoking room shall
22 not be exhausted within fifteen (15) feet of any entrance, exit or
23 air intake.

1 H. The Smoking in Public Places and Indoor Workplaces Act shall
2 not prohibit tobacco smoking in:

3 1. Stand-alone bars, stand-alone taverns or cigar bars;

4 2. The room or rooms where licensed charitable bingo games are
5 being operated, but only during the hours of operation of such
6 games;

7 3. Up to twenty-five percent (25%) of the guest rooms at a
8 hotel or other lodging establishment;

9 4. Retail tobacco stores predominantly engaged in the sale of
10 tobacco products and accessories and in which the sale of other
11 products is merely incidental and in which no food or beverage is
12 sold or served for consumption on the premises;

13 5. Workplaces where only the owner or operator of the
14 workplace, or the immediate family of the owner or operator,
15 performs any work in the workplace, and the workplace has only
16 incidental public access;

17 6. Workplaces occupied exclusively by one or more tobacco
18 smokers, if the workplace has only incidental public access.

19 "Incidental public access" means that a place of business has only
20 an occasional person, who is not an employee, present at the
21 business to transact business or make a delivery. It does not
22 include businesses that depend on walk-in customers for any part of
23 their business;

24 7. Private offices occupied exclusively by one or more smokers;

1 8. Workplaces within private residences, except that smoking
2 tobacco or marijuana or vaping marijuana shall not be allowed inside
3 any private residence that is used as a licensed child care facility
4 during hours of operation;

5 9. A facility operated by a post or organization of past or
6 present members of the Armed Forces of the United States which is
7 exempt from taxation pursuant to Sections 501(c)(8), 501(c)(10) or
8 501(c)(19) of the Internal Revenue Code, 26 U.S.C., Section
9 501(c)(8), 501(c)(10) or 501(c)(19), when such facility is utilized
10 exclusively by its members and their families and for the conduct of
11 post or organization nonprofit operations except during an event or
12 activity which is open to the public;

13 10. Any outdoor seating area of a restaurant; provided, tobacco
14 or marijuana smoking or vaping marijuana shall not be allowed within
15 fifteen (15) feet of any exterior public doorway or any air intake
16 of a restaurant; and

17 11. Medical research or treatment centers, if tobacco smoking
18 is integral to the research or treatment. Furthermore, the
19 restrictions on smoking or vaping of marijuana provided in this
20 section shall not apply to medical research or treatment centers, if
21 marijuana smoking or vaping is integral to the research or
22 treatment.

23 I. Notwithstanding any other provision of the Smoking in Public
24 Places and Indoor Workplaces Act, until March 1, 2006, restaurants

1 may have designated tobacco smoking and nonsmoking areas or may be
2 designated as being a totally nonsmoking area. Beginning March 1,
3 2006, restaurants shall be totally nonsmoking or may provide
4 nonsmoking areas and designated tobacco smoking rooms. Food and
5 beverage may be served in such designated tobacco smoking rooms
6 which shall be in a location which is fully enclosed, directly
7 exhausted to the outside, under negative air pressure so tobacco
8 smoke cannot escape when a door is opened, and no air is
9 recirculated to nonsmoking areas of the building. No exhaust from
10 such room shall be located within twenty-five (25) feet of any
11 entrance, exit or air intake. Such room shall be subject to
12 verification for compliance with the provisions of this subsection
13 by the State Department of Health.

14 SECTION 5. This act shall become effective November 1, 2020.

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16 57-2-9875 GRS 12/19/19

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