

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

HOUSE BILL 2128

By: McEntire

AS INTRODUCED

An Act relating to tobacco; amending 37 O.S. 2011, Section 600.4, as renumbered by Section 28, Chapter 404, O.S.L. 2013, and as last amended by Section 1, Chapter 70, O.S.L. 2020 (10A O.S. Supp. 2020, Section 2-8-224), which relates to the purchase, receipt, or possession of tobacco or vapor products by those under twenty-one years of age; amending penalties; removing restrictions on local ordinances; amending 37 O.S. 2011, Section 600.2, as renumbered by Section 171, Chapter 366, O.S.L. 2016, and as last amended by Section 4, Chapter 70, O.S.L. 2020 (63 O.S. Supp. 2020, Section 1-229.12), which relates to the Prevention of Youth Access to Tobacco Act; defining terms; amending 37 O.S. 2011, Section 600.3, as renumbered by Section 172, Chapter 366, O.S.L. 2016, and as last amended by Section 5, Chapter 70, O.S.L. 2020 (63 O.S. Supp. 2020, Section 1-229.13), which relates to furnishing tobacco or vapor products to persons under twenty-one years of age; updating age reference; modifying penalties; amending 37 O.S. 2011, Section 600.5, as renumbered by Section 173, Chapter 366, O.S.L. 2016, and as last amended by Section 6, Chapter 70, O.S.L. 2020 (63 O.S. Supp. 2020, Section 1-229.15), which relates to signage; updating reference; amending 37 O.S. 2011, Section 600.6, as renumbered by Section 174, Chapter 366, O.S.L. 2016, and as last amended by Section 7, Chapter 70, O.S.L. 2020 (63 O.S. Supp. 2020, Section 1-229.16), which relates to notice to retail employees; updating age references; requiring tobacco retail employees to review certain training; amending 37 O.S. 2011, Section 600.8, as renumbered by Section 176, Chapter 366, O.S.L. 2016, and as last amended by Section 9, Chapter 70, O.S.L. 2020 (63 O.S. Supp. 2020, Section 1-229.18), which relates to

1 distribution of tobacco or vapor products and
2 samples; updating terminology; modifying penalties;
3 removing preemption; amending 37 O.S. 2011, Section
4 600.10A, as renumbered by Section 179, Chapter 366,
5 O.S.L. 2016, and as last amended by Section 10,
6 Chapter 70, O.S.L. 2020 (63 O.S. Supp. 2020, Section
7 1-229.21), which relates to display or sale of
8 tobacco or vapor products; updating terminology;
9 modifying penalties; removing preemption; amending 37
10 O.S. 2011, Section 600.11, as renumbered by Section
11 180, Chapter 366, O.S.L. 2016, and as last amended by
12 Section 11, Chapter 70, O.S.L. 2020 (63 O.S. Supp.
13 2020, Section 1-229.22), which relates to enforcement
14 by the ABLE Commission; requiring certain compliance
15 checks; amending 37 O.S. 2011, Section 600.13, as
16 renumbered by Section 184, Chapter 366, O.S.L. 2016,
17 and as last amended by Section 12, Chapter 70, O.S.L.
18 2020 (63 O.S. Supp. 2020, Section 1-229.26), which
19 relates to the transfer of certain tobacco or vapor
20 products to persons under twenty-one years of age;
21 updating terminology; amending 68 O.S. 2011, Section
22 304, which relates to licenses and fees; increasing
23 certain fees and penalties; modifying duration of
24 license; providing for deposit of revenue; creating
the Youth Access to Tobacco Compliance Revolving
Fund; providing for deposit, appropriation, budgeting
and expenditure of certain monies; amending 68 O.S.
2011, Section 401, which relates to definitions;
defining terms; amending 68 O.S. 2011, Section 415,
which relates to licenses; increasing certain fees
and penalties; modifying duration of license;
requiring deposit of certain monies in the Youth
Access to Tobacco Compliance Revolving Fund;
providing for codification; and providing an
effective date.

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

SECTION 1. AMENDATORY 37 O.S. 2011, Section 600.4, as
renumbered by Section 28, Chapter 404, O.S.L. 2013, and as last

1 amended by Section 1, Chapter 70, O.S.L. 2020 (10A O.S. Supp. 2020,
2 Section 2-8-224), is amended to read as follows:

3 Section 2-8-224. A. It is unlawful for a person who is under
4 twenty-one (21) years of age to purchase, receive, or have in his or
5 her possession a tobacco product, or vapor product, or to present or
6 offer to any person any purported proof of age which is false or
7 fraudulent, for the purpose of purchasing or receiving any tobacco
8 product or vapor product. It shall not be unlawful for an employee
9 under twenty-one (21) years of age to handle tobacco products or
10 vapor products when required in the performance of the employee's
11 duties.

12 B. When a person violates subsection A of this section, the
13 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall ~~impose~~
14 ~~an administrative fine~~ require the violator to select one of the
15 following penalties:

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

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

21 ~~Upon failure of the individual to pay the administrative fine~~
22 ~~within ninety (90) days of the day of the fine, the ABLE Commission~~
23 ~~shall notify the Department of Public Safety, and the Department~~
24 ~~shall suspend or not issue a driver license to the individual until~~

~~proof of payment has been furnished to the Department of Public Safety.~~ A minimum of ten (10) hours of community service; or

2. Completion of an education or tobacco use cessation program approved by the Oklahoma State Department of Health.

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

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

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

SECTION 2. AMENDATORY 37 O.S. 2011, Section 600.2, as renumbered by Section 171, Chapter 366, O.S.L. 2016, and as last amended by Section 4, Chapter 70, O.S.L. 2020 (63 O.S. Supp. 2020, Section 1-229.12), is amended to read as follows:

Section 1-229.12 As used in the Prevention of Youth Access to Tobacco Act:

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

1 2. "Proof of age" means a driver license, license for
2 identification only, or other generally accepted means of
3 identification that describes the individual as twenty-one (21)
4 years of age or older and contains a photograph or other likeness of
5 the individual and appears on its face to be valid;

6 3. "Sample" means a tobacco product or vapor product
7 distributed to members of the public at no cost for the purpose of
8 promoting the product;

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

11 5. "Tobacco product" means any product ~~that contains tobacco~~
12 ~~and is intended for human consumption~~ containing, made of, or
13 derived from tobacco or nicotine that is intended for human
14 consumption or is likely to be consumed, whether inhaled, absorbed,
15 or ingested by any other means, including, but not limited to,
16 cigarettes, cigars, pipe tobacco, chewing tobacco, snuff or snus.
17 Tobacco product also means any vapor product, any substance that may
18 be aerosolized or vaporized by a device, whether or not the
19 substance contains nicotine, and any component, part or accessory to
20 such a product or device, including, but not limited to, filters,
21 rolling papers, blunt or hemp wraps, and pipes. Tobacco product
22 shall not mean drugs, devices or combination products authorized for
23 sale by the United States Food and Drug Administration;
24

1 6. "Tobacco retail establishment" means any place of business
2 where tobacco products are available for sale to the general public,
3 including, but not limited to, grocery stores, tobacco product
4 shops, kiosks, convenience stores, gasoline service stations, bars
5 and restaurants;

6 7. "Tobacco retailer" means any person, partnership, joint
7 venture, society, club, trustee, trust, association, organization or
8 corporation that owns, operates or manages any tobacco retail
9 establishment. Tobacco retailer does not mean the nonmanagement
10 employees of any tobacco retail establishment;

11 ~~6.~~ 8. "Transaction scan" means the process by which a seller
12 checks, by means of a transaction scan device, the validity of a
13 driver license or other government-issued photo identification;

14 ~~7.~~ 9. "Transaction scan device" means any commercial device or
15 combination of devices used at a point of sale or entry that is
16 capable of deciphering in an electronically readable format the
17 information encoded on the magnetic strip or bar code of a driver
18 license or other government-issued photo identification; and

19 ~~8.~~ 10. "Vapor product" ~~shall mean~~ means any noncombustible
20 ~~products~~ product, that may or may not contain nicotine, that ~~employ~~
21 employs a mechanical heating element, battery, electronic circuit,
22 or other mechanism, regardless of shape or size, that can be used to
23 produce a vapor or aerosol in a solution or other form. "Vapor
24 ~~products~~ product" shall include any vapor cartridge or other

1 container with or without nicotine or other form of tobacco that is
2 intended to be used with an electronic cigarette, electronic cigar,
3 electronic cigarillo, electronic pipe, or similar product or device,
4 and any vapor cartridge or other container of a solution, that may
5 or may not contain nicotine, that is intended to be used with or in
6 an electronic cigarette, electronic cigar, electronic cigarillo or
7 electronic device. "Vapor ~~products~~ product" ~~do~~ does not include any
8 products regulated by the United States Food and Drug Administration
9 under Chapter V of the Food, Drug, and Cosmetic Act.

10 SECTION 3. AMENDATORY 37 O.S. 2011, Section 600.3, as
11 renumbered by Section 172, Chapter 366, O.S.L. 2016, and as last
12 amended by Section 5, Chapter 70, O.S.L. 2020 (63 O.S. Supp. 2020,
13 Section 1-229.13), is amended to read as follows:

14 Section 1-229.13 A. It is unlawful for any person or tobacco
15 retailer to sell, give or furnish in any manner any tobacco product
16 or vapor product to another person who is under twenty-one (21)
17 years of age, or to purchase in any manner a tobacco product or
18 vapor product on behalf of any such person. It shall not be
19 unlawful for an employee under twenty-one (21) years of age to
20 handle tobacco products or vapor products when required in the
21 performance of the employee's duties.

22 B. A person or tobacco retailer engaged in the sale or
23 distribution of tobacco products or vapor products shall demand
24 proof of age from a prospective purchaser or recipient if an

1 ordinary person would conclude on the basis of appearance that the
2 prospective purchaser may be under ~~twenty-one (21)~~ thirty (30) years
3 of age.

4 If ~~an individual~~ a person or tobacco retailer engaged in the
5 sale or distribution of tobacco products or vapor products has
6 demanded proof of age from a prospective purchaser or recipient who
7 is not under twenty-one (21) years of age, the failure to
8 subsequently require proof of age shall not constitute a violation
9 of this subsection.

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

- 13 a. not ~~more~~ less than ~~One Hundred Dollars (\$100.00)~~ Five
14 Hundred Dollars (\$500.00) for the first offense,
- 15 b. not ~~more~~ less than ~~Two Hundred Dollars (\$200.00)~~ Seven
16 Hundred Fifty Dollars (\$750.00) for the second offense
17 within a ~~two-year~~ three-year period following the
18 first offense. In addition to the fine imposed by
19 this subparagraph, the tobacco retail establishment's
20 tobacco retail license shall be suspended for a period
21 of not less than seven (7) days,
- 22 c. not ~~more~~ less than ~~Three Hundred Dollars (\$300.00)~~ One
23 Thousand Dollars (\$1,000.00) for a third offense
24 within a ~~two-year~~ three-year period following the

1 first offense. In addition to ~~any other penalty~~ the
2 fine imposed by this subparagraph, the ~~store's license~~
3 ~~to sell tobacco products or the store's sales tax~~
4 ~~permit for a store that is predominantly engaged in~~
5 ~~the sale of vapor products in which the sale of other~~
6 ~~products is merely incidental~~ may tobacco retail
7 establishment's tobacco retail license shall be
8 suspended for a period of at least fifteen (15) days
9 but not exceeding thirty (30) days, or

10 d. not ~~more~~ less than ~~Three Hundred Dollars (\$300.00)~~ One
11 Thousand Dollars (\$1,000.00) for a fourth or
12 subsequent offense within a ~~two-year~~ three-year period
13 following the first offense. In addition to ~~any other~~
14 ~~penalty~~ the fine imposed by this subparagraph, the
15 ~~store's license to sell tobacco products or the~~
16 ~~store's sales tax permit for a store that is~~
17 ~~predominantly engaged in the sale of vapor products in~~
18 ~~which the sale of other products is merely incidental~~
19 ~~may be suspended for a period not exceeding sixty (60)~~
20 ~~days~~ tobacco retail establishment's tobacco retail
21 license shall be revoked for a period of one (1) year.

22 2. When it has been determined that a penalty shall include a
23 license or permit suspension, the ABLE Commission shall notify the
24 Oklahoma Tax Commission, and the Oklahoma Tax Commission shall

1 suspend the ~~store's~~ tobacco retail establishment's license to sell
2 tobacco products ~~or the store's sales tax permit for a store that is~~
3 ~~predominantly engaged in the sale of vapor products in which the~~
4 ~~sale of other products is merely incidental~~ at the location where
5 the offense occurred for the period of time prescribed by the ABLE
6 Commission.

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

- 13 a. the individual who purchased or received the tobacco
14 product or vapor product presented a driver license or
15 other government-issued photo identification
16 purporting to establish that such individual was
17 twenty-one (21) years of age or older, or
- 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 the person failed to

1 exercise reasonable diligence to determine whether the physical
2 description and picture appearing on the driver license or other
3 government-issued photo identification was that of the individual
4 who presented it. The availability of the defense described in this
5 subsection does not affect the availability of any other defense
6 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 vapor products are sold at retail, the~~
9 ~~employee shall be guilty of the violation and shall be subject to~~
10 ~~the fine. Each violation by any employee of an owner of a store~~
11 ~~licensed to sell tobacco products or permitted to sell vapor~~
12 ~~products shall be deemed a violation against the owner for purposes~~
13 ~~of a license suspension pursuant to subsection C of this section.~~
14 ~~Each violation by an employee of a store predominantly engaged in~~
15 ~~the sale of vapor products in which the sale of other products is~~
16 ~~merely incidental shall be deemed a violation against the owner for~~
17 ~~purposes of a sales tax permit suspension pursuant to the provisions~~
18 ~~of subsection C of this section. An owner of a store~~ tobacco retail
19 establishment ~~licensed to sell tobacco products or permitted to sell~~
20 ~~vapor products shall not be deemed in violation of the provisions of~~
21 ~~the Prevention of Youth Access to Tobacco Act for any acts~~
22 ~~constituting a violation by any person, when the violation occurs~~
23 ~~prior to actual employment of the person by the store owner~~ tobacco
24 retailer ~~or the violation occurs at a location other than the~~

1 ~~owner's retail store~~ tobacco retailer's establishment. For purposes
2 of determining the liability of a person controlling franchises or
3 business operations in multiple locations, for any violations of
4 subsection A or B of this section, each individual franchise or
5 business location shall be deemed a separate entity.

6 E. On or before December 15, 1997, the ABLE Commission shall
7 adopt rules establishing a method of notification of ~~storeowners~~
8 tobacco retailers when an employee of such ~~storeowner~~ tobacco
9 retailer has been determined to be in violation of this section by
10 the ABLE Commission or convicted of a violation by a municipality.

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

17 2. Upon failure of a ~~storeowner~~ tobacco retailer to pay the
18 administrative fine within ninety (90) days of the assessment of the
19 fine, the ABLE Commission shall notify the Oklahoma Tax Commission,
20 and the Oklahoma Tax Commission shall suspend the ~~store's~~ tobacco
21 retail establishment's license to sell tobacco products ~~or the~~
22 ~~store's sales tax permit for a store that is predominantly engaged~~
23 ~~in the sale of vapor products in which the sale of other products is~~
24

1 ~~merely incidental~~ until proof of payment has been furnished to the
2 Oklahoma Tax Commission.

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

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

11 SECTION 4. AMENDATORY 37 O.S. 2011, Section 600.5, as
12 renumbered by Section 173, Chapter 366, O.S.L. 2016, and as last
13 amended by Section 6, Chapter 70, O.S.L. 2020 (63 O.S. Supp. 2020,
14 Section 1-229.15), is amended to read as follows:

15 Section 1-229.15 A. Every ~~person~~ tobacco retailer who sells or
16 displays tobacco products or vapor products at retail shall post
17 conspicuously and keep so posted at the place of business a sign, as
18 specified by the Alcoholic Beverage Laws Enforcement (ABLE)
19 Commission, stating the following: "IT'S THE LAW. WE DO NOT SELL
20 TOBACCO PRODUCTS OR VAPOR PRODUCTS TO PERSONS UNDER 21 YEARS OF
21 AGE." The sign shall also provide the toll-free number operated by
22 the ~~Alcoholic Beverage Laws Enforcement (ABLE)~~ Commission for the
23 purpose of reporting violations of the Prevention of Youth Access to
24 Tobacco Act.

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

9 SECTION 5. AMENDATORY 37 O.S. 2011, Section 600.6, as
10 renumbered by Section 174, Chapter 366, O.S.L. 2016, and as last
11 amended by Section 7, Chapter 70, O.S.L. 2020 (63 O.S. Supp. 2020,
12 Section 1-229.16), is amended to read as follows:

13 Section 1-229.16 A. Every ~~person~~ tobacco retailer ~~engaged in~~
14 ~~the business of selling tobacco products or vapor products at retail~~
15 shall require each individual employed by that tobacco retailer as a
16 retail sales clerk to review the Alcoholic Beverage Laws Enforcement
17 Commission's approved tobacco retailer training and shall notify
18 each individual employed by that ~~person~~ tobacco retailer as a retail
19 sales clerk that state law:

20 1. Prohibits the sale or distribution of tobacco products or
21 vapor products to any person under twenty-one (21) years of age and
22 the purchase or receipt of tobacco products or vapor products by any
23 person under twenty-one (21) years of age; and
24

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 ~~twenty-one (21)~~ thirty (30) 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 vapor products to persons under twenty-one (21)
11 years of age and out-of-package sales, and requires proof of age of
12 purchaser or recipient if an ordinary person would conclude on the
13 basis of appearance that the prospective purchaser or recipient may
14 be under ~~twenty-one (21)~~ thirty (30) years of age. I promise, as a
15 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 or
19 permit suspension."

20 SECTION 6. AMENDATORY 37 O.S. 2011, Section 600.8, as
21 renumbered by Section 176, Chapter 366, O.S.L. 2016, and as last
22 amended by Section 9, Chapter 70, O.S.L. 2020 (63 O.S. Supp. 2020,
23 Section 1-229.18), is amended to read as follows:
24

1 Section 1-229.18 A. It shall be unlawful for any person or
2 tobacco retailer to distribute tobacco products, vapor products or
3 product samples to any person under twenty-one (21) years of age.

4 B. No person shall distribute tobacco products, vapor products
5 or product samples in or on any public street, sidewalk, or park
6 that is within three hundred (300) feet of any playground, school,
7 or other facility when the facility is being used primarily by
8 persons under twenty-one (21) years of age.

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

13 1. Not ~~more~~ less than ~~One Hundred Dollars (\$100.00)~~ Five
14 Hundred Dollars (\$500.00) for the first offense;

15 2. Not ~~more~~ less than ~~Two Hundred Dollars (\$200.00)~~ Seven
16 Hundred Fifty Dollars (\$750.00) for the second offense within a
17 three-year period following the first offense. In addition to the
18 fine imposed by this paragraph, the tobacco retail establishment's
19 tobacco retail license shall be suspended for not less than seven
20 (7) days; and

21 3. Not ~~more~~ less than ~~Three Hundred Dollars (\$300.00)~~ One
22 Thousand Dollars (\$1,000.00) for a third ~~or subsequent~~ offense
23 within a three-year period following the first offense. In addition
24 to the fine imposed by this paragraph, the tobacco retail

1 establishment's tobacco retail license shall be suspended for not
2 less than thirty (30) days; and

3 4. Not less than One Thousand Dollars (\$1,000.00) for a fourth
4 offense within a three-year period following the first offense. In
5 addition to the fine imposed by this paragraph, the tobacco retail
6 establishment's tobacco retail license shall be revoked.

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

13 ~~E. 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 municipal~~
16 ~~ordinances shall be the same as provided for in this section, and~~
17 ~~the penalty provisions under such ordinances shall not be more~~
18 ~~stringent than those of this section.~~

19 SECTION 7. AMENDATORY 37 O.S. 2011, Section 600.10A, as
20 renumbered by Section 179, Chapter 366, O.S.L. 2016, and as last
21 amended by Section 10, Chapter 70, O.S.L. 2020 (63 O.S. Supp. 2020,
22 Section 1-229.21), is amended to read as follows:

23 Section 1-229.21 A. It is unlawful for any ~~person or retail~~
24 ~~store~~ tobacco retailer to display or offer for sale tobacco products

1 ~~or vapor products~~ in any manner that allows public access to the
2 tobacco products ~~or vapor products without assistance from the~~
3 ~~person displaying the tobacco products or vapor products or an~~
4 ~~employee or the owner of the store~~ through self-service displays.

5 The provisions of this subsection shall not apply to retail stores
6 which do not admit into the store persons under twenty-one (21)
7 years of age.

8 B. When a ~~person~~ tobacco retailer violates subsection A of this
9 section, the Alcoholic Beverage Laws Enforcement (ABLE) Commission
10 shall impose an administrative fine of ~~not more~~ :

11 1. Not less than ~~Two Hundred Dollars (\$200.00)~~ Five Hundred
12 Dollars (\$500.00) for each the first offense;

13 2. Not less than Seven Hundred Fifty Dollars (\$750.00) for the
14 second offense within a three-year period following the first
15 offense. In addition to the fine imposed by this paragraph, the
16 tobacco retail establishment's tobacco retail license shall be
17 suspended for a period of not less than seven (7) days;

18 3. Not less than One Thousand Dollars (\$1,000.00) for a third
19 offense within a three-year period following the first offense. In
20 addition to the fine imposed by this paragraph, the tobacco retail
21 establishment's tobacco retail license shall be suspended for no
22 less than thirty (30) days; or

23 4. Not less than One Thousand Dollars (\$1,000.00) for a fourth
24 or subsequent offense within a three-year period following the first

1 offense. In addition to the fine imposed by this paragraph, the
2 tobacco retail establishment's tobacco retail license shall be
3 revoked for a period of not less than one (1) year.

4 C. 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 600.11, as
11 renumbered by Section 180, Chapter 366, O.S.L. 2016, and as last
12 amended by Section 11, Chapter 70, O.S.L. 2020 (63 O.S. Supp. 2020,
13 Section 1-229.22), is amended to read as follows:

14 Section 1-229.22 A. The Alcoholic Beverage Laws Enforcement
15 (ABLE) Commission is authorized and empowered to enforce the
16 provisions of Section 1-229.11 et seq. of this title. The ABLE
17 Commission shall enforce those provisions in a manner that can
18 reasonably be expected to reduce the extent to which tobacco
19 products or vapor products are sold or distributed to persons under
20 twenty-one (21) years of age.

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

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

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

13 E. Persons under twenty-one (21) years of age may be enlisted
14 by the ABLE Commission, a municipality or town, or a county to
15 assist in compliance checks and enforcement; provided, such persons
16 may be used to test compliance only if written parental consent has
17 been provided and the testing is conducted under the direct
18 supervision of the ABLE Commission or conducted by another law
19 enforcement agency if such agency has given written notice to the
20 ABLE Commission in the manner prescribed by the ABLE Commission.
21 Municipalities which have enacted municipal ordinances in accordance
22 with the Prevention of Youth Access to Tobacco Act may conduct,
23 pursuant to rules of the ABLE Commission, compliance checks without
24 prior notification to the ABLE Commission and shall be exempt from

1 the written notice requirement in this subsection. This subsection
2 shall not apply to the use of persons under twenty-one (21) years of
3 age to test compliance if the compliance test is being conducted by
4 or on behalf of a retailer of cigarettes, as defined in Section 301
5 of Title 68 of the Oklahoma Statutes, at any location the retailer
6 of cigarettes is authorized to sell cigarettes. Any other use of
7 persons under twenty-one (21) years of age to test compliance shall
8 be unlawful and punishable by the ABLE Commission by assessment of
9 an administrative fine of One Hundred Dollars (\$100.00).

10 F. At the beginning of each month, the Oklahoma Tax Commission,
11 pursuant to Section 205 of Title 68 of the Oklahoma Statutes, shall
12 provide to the ABLE Commission and to each municipality which has
13 ordinances concerning the Prevention of Youth Access to Tobacco Act,
14 the location, name, and address of each licensee licensed to sell
15 tobacco products or vapor products at retail or otherwise furnish
16 tobacco products or vapor products. Upon violation of an employee
17 at a location, the ABLE Commission shall notify the storeowner for
18 that location of the latest and all previous violations when one of
19 their employees has been determined to be in violation of the
20 Prevention of Youth Access to Tobacco Act by the ABLE Commission or
21 convicted of a violation by a municipality. If the ABLE Commission
22 fails to notify the licensee of a violation by an employee, that
23 violation shall not apply against the licensee for the purpose of
24 determining a license suspension pursuant to Section ~~600.3~~ 1-229.13

1 of this title. For purposes of this subsection, notification shall
2 be deemed given if the ABLE Commission mails, by mail with delivery
3 confirmation, the notification to the address which is on file with
4 the Oklahoma Tax Commission of the licensee or sales tax permit
5 holder of the location at which the violation occurred and the ABLE
6 Commission receives delivery confirmation from the U.S. Postal
7 Service.

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

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

21 I. The ABLE Commission shall complete at least one unannounced
22 compliance check per tobacco retail establishment per year. If a
23 tobacco retail establishment fails a compliance check, the ABLE
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1 Commission shall conduct an additional compliance check within six
2 (6) months of the initial compliance check.

3 SECTION 9. AMENDATORY 37 O.S. 2011, Section 600.13, as
4 renumbered by Section 184, Chapter 366, O.S.L. 2016, and as last
5 amended by Section 12, Chapter 70, O.S.L. 2020 (63 O.S. Supp. 2020,
6 Section 1-229.26), is amended to read as follows:

7 Section 1-229.26 A. It is unlawful for any person or tobacco
8 retailer to sell, give or furnish in any manner to another person
9 who is under twenty-one (21) years of age any material or device
10 used in the smoking, chewing, or other method of consumption of
11 tobacco products or vapor products, including cigarette papers,
12 pipes, holders of smoking materials of all types, and other items
13 designed primarily for the smoking or ingestion of tobacco products
14 or vapor products.

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

19 SECTION 10. AMENDATORY 68 O.S. 2011, Section 304, is
20 amended to read as follows:

21 Section 304. A. Every manufacturer and wholesaler of
22 cigarettes in this state, as a condition of carrying on such
23 business, shall annually secure from the Oklahoma Tax Commission a
24 written license, and shall pay therefor an annual fee of Two Hundred

1 Fifty Dollars (\$250.00). Application for such license, which shall
2 be made upon such forms as prescribed by the Oklahoma Tax
3 Commission, shall include the following:

4 1. The applicant's agreement to the jurisdiction of the Tax
5 Commission and the courts of this state for the purpose of
6 enforcement of the provisions of Section 301 et seq. of this title;

7 2. The applicant's agreement to abide by the provisions of
8 Section 301 et seq. of this title and the rules promulgated by the
9 Tax Commission with reference thereto;

10 3. The wholesaler applicant's agreement to sell cigarettes only
11 to licensed retailers or Indian tribal entities or licensees of
12 Indian tribal entities; and

13 4. The manufacturer applicant's agreement to sell cigarettes
14 only to a licensed wholesaler.

15 This license, which will be for the ensuing year, must at all
16 times be displayed in a conspicuous place so that it can be seen.
17 Persons operating more than one place of business must secure a
18 license for each place of business. "Place of business" shall be
19 construed to include the place where orders are received, or where
20 cigarettes are sold. If cigarettes are sold on or from any vehicle,
21 the vehicle shall constitute a place of business and the regular
22 license fee shall be paid with respect thereto. However, if the
23 vehicle is owned or operated by a place of business for which the
24 regular fee is paid, the annual fee for the license with respect to

1 such vehicle shall be only Ten Dollars (\$10.00). The expiration for
2 such vehicle license shall expire on the same date as the current
3 license of the place of business.

4 Provided, that the Tax Commission shall not authorize the use of
5 a stamp-metering device by any manufacturer or wholesaler who does
6 not maintain a warehouse or wholesale establishment or place of
7 business within the State of Oklahoma from which cigarettes are
8 received, stocked and sold and where such metering device is kept
9 and used; but the Tax Commission may, in its discretion, permit the
10 use of such metering device by manufacturers and wholesalers of
11 cigarettes residing wholly within another state where such state
12 permits a licensed Oklahoma resident, manufacturer or wholesaler of
13 cigarettes the use of the metering device of such state without
14 first requiring that such manufacturer or wholesaler establish a
15 place of business in such other state. The provisions of this
16 subsection relating to metering devices shall not apply to states
17 which do not require the affixing of tax stamps to packages of
18 cigarettes before same are offered for sale in such states.

19 B. Every retailer in this state, except Indian tribal entities
20 or licenses of Indian tribal entities, as a condition of carrying on
21 such business, shall secure from the Tax Commission a license and
22 shall pay therefor a fee of ~~Thirty Dollars (\$30.00)~~ Three Hundred
23 Dollars (\$300.00). Application for such license, which shall be
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1 made upon such forms as prescribed by the Tax Commission, shall
2 include the following:

3 1. The applicant's agreement to the jurisdiction of the Tax
4 Commission and the courts of this state for the purpose of
5 enforcement of the provisions of Section 301 et seq. of this title;

6 2. The applicant's agreement to abide by the provisions of
7 Section 301 et seq. of this title and the rules promulgated by the
8 Tax Commission with reference thereto;

9 3. The applicant's agreement that it shall not purchase any
10 cigarettes for resale from a supplier that does not hold a current
11 wholesaler's license issued pursuant to this section; and

12 4. The applicant's agreement to sell cigarettes only to
13 consumers.

14 Such license, which will be for the ensuing ~~three (3) years~~
15 year, must at all times be displayed in a conspicuous place so that
16 it can be seen. Upon expiration of such license, the retailer to
17 whom such license was issued may obtain a renewal license which
18 shall be valid for ~~three (3) years~~ one (1) year. The manner and
19 prorated fee for renewals shall be prescribed by the Tax Commission.
20 Every person operating under such license as a retailer and who owns
21 or operates more than one place of business must secure a license
22 for each place of business. "Place of business" shall be construed
23 to include places where orders are received or where cigarettes are
24 sold.

1 C. Every distributing agent shall, as a condition of carrying
2 on such business, pursuant to written application on a form
3 prescribed by and in such detailed form as the Tax Commission may
4 require, annually secure from the Tax Commission a license, and
5 shall pay therefor an annual fee of One Hundred Dollars (\$100.00).
6 An application shall be filed and a license obtained for each place
7 of business owned or operated by a distributing agent. The license,
8 which will be for the ensuing year, shall be consecutively numbered,
9 nonassignable and nontransferable, and shall authorize the storing
10 and distribution of unstamped cigarettes within this state when such
11 distribution is made upon interstate orders only.

12 D. 1. All wholesale, retail, and distributing agent's licenses
13 shall be nonassignable and nontransferable from one person to
14 another person. Such licenses may be transferred from one location
15 to another location after an application has been filed with the Tax
16 Commission requesting such transfer and after the approval of the
17 Tax Commission.

18 2. Wholesale, retail, and distributing agent's licenses shall
19 be applied for on a form prescribed by the Tax Commission. Any
20 person operating as a wholesaler, retailer, or distributing agent
21 must at all times have a valid license which has been issued by the
22 Tax Commission. If any such person or licensee continues to operate
23 as such on a license issued by the Tax Commission which has expired,
24 or operates without ever having obtained from the Tax Commission

1 such license, such person or licensee shall, after becoming
2 delinquent for a period in excess of fifteen (15) days, pay to the
3 Tax Commission, in addition to the annual license fee, a penalty of
4 ~~twenty-five cents (\$0.25)~~ Twenty-five Dollars (\$25.00) per day on
5 each delinquent license for each day so operated in excess of
6 fifteen (15) days. The penalty provided for herein shall not exceed
7 ~~the annual license fee for such license~~ Three Thousand Dollars
8 (\$3,000.00).

9 E. No license may be granted, maintained or renewed if any of
10 the following conditions applies to the applicant. For purposes of
11 this section, "applicant" includes any combination of persons owning
12 directly or indirectly, in the aggregate, more than ten percent
13 (10%) of the ownership interests in the applicant:

14 1. The applicant owes Five Hundred Dollars (\$500.00) or more in
15 delinquent cigarette taxes;

16 2. The applicant had a cigarette manufacturer, wholesaler,
17 retailer or distributor license revoked by the Tax Commission within
18 the past two (2) years;

19 3. The applicant has been convicted of a crime relating to
20 stolen or counterfeit cigarettes, or receiving stolen or counterfeit
21 cigarettes or has been convicted of or has entered a plea of guilty
22 or nolo contendere to any felony;

23 4. If the applicant is a cigarette manufacturer, the applicant
24 is neither:

- 1 a. a participating manufacturer as defined in Section II
2 (jj) of the Master Settlement Agreement as defined in
3 Section 600.22 of Title 37 of the Oklahoma Statutes,
4 nor
5 b. in full compliance with the provisions of paragraph 2
6 of subsection A of Section 600.23 of Title 37 of the
7 Oklahoma Statutes;

8 5. If the applicant is a cigarette manufacturer, if any
9 cigarette imported by such applicant is imported into the United
10 States in violation of 19 U.S.C., Section 1681a; or

11 6. If the applicant is a cigarette manufacturer, if any
12 cigarette imported or manufactured by the applicant does not fully
13 comply with the Federal Cigarette Labeling and Advertising Act, 15
14 U.S.C., Section 1331 et seq.

15 F. No person or entity licensed pursuant to the provisions of
16 this section shall purchase cigarettes from or sell cigarettes to a
17 person or entity required to obtain a license unless such person or
18 entity has obtained such license.

19 G. No person licensed as a retailer in this state shall:

20 1. Sell any cigarettes to any other person licensed as a
21 retailer in this state unless such sale is for the purpose of moving
22 inventory between stores which are part of the same company; or

23 2. Purchase any cigarettes from any person or entity other than
24 a wholesaler licensed pursuant to Section 301 et seq. of this title.

1 H. In addition to any civil or criminal penalty provided by
2 law, upon a finding that a licensee has violated any provision of
3 Section 301 et seq. of this title, the Tax Commission may revoke or
4 suspend the license or licenses of the licensee pursuant to the
5 procedures applicable to revocation of a license set forth in
6 Section 316 of this title.

7 I. The Tax Commission shall create and maintain a ~~web-site~~
8 website setting forth all current valid licenses and the identity of
9 licensees holding such licenses, and shall update the site no less
10 frequently than once per month.

11 J. Licensing revenue generated by this section shall be
12 deposited in the Youth Access to Tobacco Compliance Revolving Fund
13 pursuant to Section 11 of this act.

14 SECTION 11. NEW LAW A new section of law to be codified in
15 the Oklahoma Statutes as Section 304.1 of Title 68, unless there is
16 created a duplication in numbering, reads as follows:

17 There is hereby created in the State Treasury a revolving fund
18 for the Alcoholic Beverage Laws Enforcement Commission to be
19 designated the "Youth Access to Tobacco Compliance Revolving Fund".
20 The fund shall be a continuing fund, not subject to fiscal year
21 limitations, and shall consist of all monies received by the
22 Oklahoma Tax Commission from licensing for manufacture and wholesale
23 of cigarettes and dealing and wholesale of tobacco products. All
24 monies accruing to the credit of said fund are hereby appropriated

1 and may be budgeted and expended by the ABLE Commission for the
2 purpose of conducting mandatory compliance checks and reporting.
3 Expenditures from said fund shall be made upon warrants issued by
4 the State Treasurer against claims filed as prescribed by law with
5 the Director of the Office of Management and Enterprise Services for
6 approval and payment.

7 SECTION 12. AMENDATORY 68 O.S. 2011, Section 401, is
8 amended to read as follows:

9 Section 401. For the purpose of this article:

10 (a) The word "person" shall mean any individual, company,
11 limited liability company, corporation, partnership, association,
12 joint adventure, estate, trust, or any other group, or combination
13 acting as a unit, and the plural as well as the singular, unless the
14 intention to give a more limited meaning is disclosed by the
15 context.

16 (b) The term "Tax Commission" shall mean the Oklahoma Tax
17 Commission.

18 (c) The word "wholesaler" shall include dealers whose principal
19 business is that of a wholesale dealer or jobber, and who is known
20 to the trade as such, who shall sell any cigars or tobacco products
21 to licensed retail dealers only for the purpose of resale, or giving
22 them away, or exposing the same where they may be taken or
23 purchased, or otherwise acquired by the retailer.

1 (d) The word "retailer" shall include every dealer, other than
2 a wholesale dealer as defined above, whose principal business is
3 that of selling merchandise at retail, who shall sell, or offer for
4 sale, cigars or tobacco products, irrespective of quantity, number
5 of sales, giving the same away or exposing the same where they may
6 be taken, or purchased, or otherwise acquired by the consumer.

7 (e) The word "consumer" shall mean a person who comes into
8 possession of tobacco for the purpose of consuming it, giving it
9 away, or disposing of it in any way by sale, barter or exchange.

10 (f) The words "first sale" shall mean and include the first
11 sale, or distribution, of cigars or tobacco products in intrastate
12 commerce, or the first use or consumption of cigars, or tobacco
13 products within this state.

14 (g) The words "tobacco products" shall mean any ~~cigars,~~
15 ~~cheroots, stogies, smoking tobacco (including granulated, plug cut,~~
16 ~~crimp cut, ready rubbed and any other kinds and forms of tobacco~~
17 ~~suitable for smoking in a pipe or cigarette), chewing tobacco~~
18 ~~(including cavendish, twist, plug, scrap and any other kinds and~~
19 ~~forms of tobacco suitable for chewing), however prepared; and shall~~
20 ~~include any other articles or products made of tobacco or any~~
21 ~~substitute therefor~~ product containing, made of, or derived from
22 tobacco or nicotine that is intended for human consumption or is
23 likely to be consumed, whether inhaled, absorbed, or ingested by any
24 other means, including, but not limited to, cigars, pipe tobacco,

1 chewing tobacco, snuff or snus. Tobacco products shall also mean
2 any vapor product, any substance that may be aerosolized or
3 vaporized by a device, whether or not the substance contains
4 nicotine, and any component, part or accessory to such a product or
5 device, including, but not limited to, filters, rolling papers,
6 blunt or hemp wraps, and pipes. Tobacco products shall not mean
7 drugs, devices or combination products authorized for sale by the
8 United States Food and Drug Administration.

9 (h) The term "distributing agent" shall mean and include every
10 person in this state who acts as an agent of any person outside the
11 state by receiving cigars and tobacco products in interstate
12 commerce and storing such items subject to distribution or delivery,
13 upon order from said person outside the state, to distributors,
14 wholesale dealers and retail dealers, or to consumers. The term
15 "distributing agent" shall also mean and include any person who
16 solicits or takes orders for cigars and tobacco products to be
17 shipped in interstate commerce to a person in this state by a person
18 residing outside of Oklahoma, the tax not having been paid on such
19 cigars and tobacco products.

20 (i) The term "stamp" shall mean the stamp or stamps by use of
21 which:

22 1. The tax levied pursuant to the provisions of Section 401 et
23 seq. of this title is paid;

1 2. The tax levied pursuant to the provisions of Section 426 of
2 this title is paid; or

3 3. The payment in lieu of taxes authorized pursuant to a
4 compact entered into by the State of Oklahoma and a federally
5 recognized Indian tribe or nation pursuant to the provisions of
6 subsection C of Section 346 of this title is paid.

7 (j) The term "drop shipment" shall mean and include any
8 delivery of cigars or tobacco products received by any person within
9 the state when payment for such cigars or tobacco products is made
10 to the shipper or seller by or through a person other than the
11 consignee.

12 (k) The term "cigars" shall include any roll of tobacco for
13 smoking, irrespective of size or shape and irrespective of the
14 tobacco being flavored, adulterated or mixed with any other
15 ingredients, where such roll has a wrapper made chiefly of tobacco.

16 (l) The word "dealer" shall include every person, firm,
17 corporation, or association of persons, who manufactures cigars or
18 tobacco products for distribution, sale, use or consumption in the
19 State of Oklahoma. The word "dealer" is also further defined to
20 mean any person, firm, corporation or association of persons, who
21 imports cigars or tobacco products from any state or foreign
22 country, for distribution, sale, use or consumption in the State of
23 Oklahoma.

1 (m) The words "vapor product" shall mean any noncombustible
2 product that may or may not contain nicotine, that employs a
3 mechanical heating element, battery, electronic circuit or other
4 mechanism, regardless of shape or size, and that can be used to
5 produce a vapor in a solution or other form. Vapor product shall
6 also mean any vapor cartridge or other container of a solution, with
7 or without nicotine in any form, that is intended to be used with an
8 electronic cigarette, electronic cigar, electronic cigarillo,
9 electronic pipe or similar product or device. Vapor product shall
10 not mean any products regulated by the United States Food and Drug
11 Administration.

12 SECTION 13. AMENDATORY 68 O.S. 2011, Section 415, is
13 amended to read as follows:

14 Section 415. A. Every dealer and wholesaler of tobacco
15 products in this state, as a condition of carrying on such business,
16 shall annually secure from the Oklahoma Tax Commission a written
17 license and shall pay an annual fee of Two Hundred Fifty Dollars
18 (\$250.00); provided, such fee shall not be applicable if paid
19 pursuant to Section 304 of this title. The Tax Commission shall
20 promulgate rules which provide a procedure for the issuance of a
21 joint license for any wholesaler making application pursuant to this
22 section and Section 304 of this title. Application for such
23 license, which shall be made upon such forms as prescribed by the
24 Tax Commission, shall include the following:

1 1. The applicant's agreement to the jurisdiction of the Tax
2 Commission and the courts of this state for purposes of enforcement
3 of the provisions of Section 301 et seq. of this title; and

4 2. The applicant's agreement to abide by the provisions of
5 Section 301 et seq. of this title and the rules promulgated by the
6 Tax Commission with reference thereto. This license, which will be
7 for the ensuing year, must at all times be displayed in a
8 conspicuous place so that it can be seen. Persons operating more
9 than one place of business must secure a license for each place of
10 business. "Place of business" shall be construed to include the
11 place where orders are received, or where tobacco products are sold.
12 If tobacco products are sold on or from any vehicle, the vehicle
13 shall constitute a place of business, and the license fee of Two
14 Hundred Fifty Dollars (\$250.00) shall be paid with respect thereto.
15 However, if the vehicle is owned or operated by a place of business
16 for which the regular license fee is paid, the annual fee for the
17 license with respect to such vehicle shall be only Ten Dollars
18 (\$10.00). The expiration for such vehicle license shall expire on
19 the same date as the current license of the place of business.

20 B. Every retailer in this state, as a condition of carrying on
21 such business, shall secure from the Tax Commission a license and
22 shall pay therefor a fee of ~~Thirty Dollars (\$30.00)~~ Three Hundred
23 Dollars (\$300.00). Application for such license, which shall be
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1 made upon such forms as prescribed by the Tax Commission, shall
2 include the following:

3 1. The applicant's agreement to the jurisdiction of the Tax
4 Commission and the courts of this state for purposes of enforcement
5 of the provisions of Section 301 et seq. of this title; and

6 2. The applicant's agreement to abide by the provisions of
7 Section 301 et seq. of this title and the rules promulgated by the
8 Tax Commission with reference thereto;

9 3. The applicant's agreement that it shall not purchase any
10 tobacco products for resale from a supplier that does not hold a
11 current wholesaler's license issued pursuant to this section; and

12 4. The applicant's agreement to sell tobacco products only to
13 consumers.

14 Such license, which will be for the ensuing ~~three (3) years~~
15 year, must at all times be displayed in a conspicuous place so that
16 it can be seen. Upon expiration of such license, the retailer to
17 whom such license was issued may obtain a renewal license which
18 shall be valid for ~~three (3) years~~ one (1) year or until expiration
19 of the retailer's sales tax permit, whichever is earlier, after
20 which a renewal license shall be valid for ~~three (3) years~~ one (1)
21 year. The manner and prorated fee for renewals shall be prescribed
22 by the Tax Commission. Every person operating under such license as
23 a retailer and who owns or operates more than one place of business
24 must secure a license for each place of business. "Place of

1 business" shall be construed to include places where orders are
2 received or where tobacco products are sold.

3 C. Nothing in this section shall be construed to prohibit any
4 person holding a retail license from also holding a wholesaler
5 license.

6 D. Every distributing agent shall, as a condition of carrying
7 on such business, pursuant to written application on a form
8 prescribed by and in such detailed form as the Tax Commission may
9 require, annually secure from the Tax Commission a license, and
10 shall pay therefor an annual fee of One Hundred Dollars (\$100.00).
11 An application shall be filed and a license obtained for each place
12 of business owned or operated by a distributing agent. The license,
13 which will be for the ensuing year, shall be consecutively numbered,
14 nonassignable and nontransferable, and shall authorize the storing
15 and distribution of unstamped tobacco products within this state
16 when such distribution is made upon interstate orders only.

17 E. 1. All wholesale, retail, and distributing agents' licenses
18 shall be nonassignable and nontransferable from one person to
19 another person. Such licenses may be transferred from one location
20 to another location after an application has been filed with the Tax
21 Commission requesting such transfer and after the approval of the
22 Tax Commission.

23 2. Wholesale, retail, and distributing agent's licenses shall
24 be applied for on a form prescribed by the Tax Commission. Any

1 person operating as a wholesaler, retailer, or distributing agent
2 must at all times have an effective unexpired license which has been
3 issued by the Tax Commission. If any such person or licensee
4 continues to operate as such on a license issued by the Tax
5 Commission which has expired, or operates without ever having
6 obtained from the Tax Commission such license, such person or
7 licensee shall, after becoming delinquent for a period in excess of
8 fifteen (15) days, pay to the Tax Commission, in addition to the
9 annual license fee, a penalty of ~~twenty-five cents (\$0.25)~~ Twenty-
10 five Dollars (\$25.00) per day on each delinquent license for each
11 day so operated in excess of fifteen (15) days. The penalty
12 provided for herein shall not exceed ~~the annual license fee for such~~
13 ~~license~~ Three Thousand Dollars (\$3,000.00).

14 F. No license may be granted, maintained or renewed if any of
15 the following conditions apply to the applicant. For purposes of
16 this section, "applicant" includes any combination of persons owning
17 directly or indirectly, in the aggregate, more than ten percent
18 (10%) of the ownership interests in the applicant:

19 1. The applicant owes Five Hundred Dollars (\$500.00) or more in
20 delinquent tobacco products taxes;

21 2. The applicant had a dealer, wholesaler, or retailer license
22 revoked by the Tax Commission within the past two (2) years; or
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1 3. The applicant has been convicted of a crime relating to
2 stolen or counterfeit tobacco products, or receiving stolen or
3 counterfeit tobacco products.

4 G. No person or entity licensed pursuant to the provisions of
5 this section shall purchase tobacco products from or sell tobacco
6 products to a person or entity required to obtain a license unless
7 such person or entity has obtained such license.

8 H. In addition to any civil or criminal penalty provided by
9 law, upon a finding that a licensee has violated any provision of
10 Section 301 et seq. of this title, the Tax Commission may revoke or
11 suspend the license or licenses of the licensee pursuant to the
12 procedures applicable to revocation of a license set forth in
13 Section 418 of this title.

14 I. Licensing revenue generated by this section shall be
15 deposited in the Youth Access to Tobacco Compliance Revolving Fund
16 pursuant to section 11 of this act.

17 SECTION 14. This act shall become effective November 1, 2021.

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19 58-1-7113 AB 12/21/20
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