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April 4, 2024

ENGROSSED HOUSE
BILL NO. 3331

By: Roe of the House

and

Dossett of the Senate

An Act relating to tobacco and vapor products; amending 63 O.S. 2021, Section 1-229.13, as amended by Section 34, Chapter 310, O.S.L. 2023 (63 O.S. Supp. 2023, Section 1-229.13), which relates to Prevention of Youth Access to Tobacco Act; modifying fines to include store owner when there is a sale to a minor; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2021, Section 1-229.13, as amended by Section 34, Chapter 310, O.S.L. 2023 (63 O.S. Supp. 2023, Section 1-229.13), is amended to read as follows:

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

1 B. A person engaged in the sale or distribution of tobacco
2 products, nicotine products or vapor products shall demand proof of
3 age from a prospective purchaser or recipient if an ordinary person
4 would conclude on the basis of appearance that the prospective
5 purchaser may be under twenty-one (21) years of age.

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

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

14 a. not more than ~~One Hundred Dollars (\$100.00)~~ Two
15 Hundred Fifty Dollars (\$250.00) for the first offense
16 to both the employee and the store owner,

17 b. not more than ~~Two Hundred Dollars (\$200.00)~~ Five
18 Hundred Dollars (\$500.00) for the second offense
19 within a two-year period following the first offense
20 to both the employee and the store owner,

21 c. not more than ~~Three Hundred Dollars (\$300.00)~~ One
22 Thousand Dollars (\$1,000.00) for a third offense
23 within a two-year period following the first offense
24 to both the employee and the store owner. In addition

1 to any other penalty, the store's license to sell
2 tobacco products or nicotine products or the store's
3 sales tax permit for a store that is predominantly
4 engaged in the sale of vapor products in which the
5 sale of other products is merely incidental may be
6 suspended for a period not exceeding thirty (30) days,
7 or

8 d. not more than ~~Three Hundred Dollars (\$300.00)~~ One
9 Thousand Dollars (\$1,000.00) for a fourth or
10 subsequent offense within a two-year period following
11 the first offense to both the employee and the store
12 owner. In addition to any other penalty, the store's
13 license to sell tobacco products or nicotine products
14 or the store's sales tax permit for a store that is
15 predominantly engaged in the sale of vapor products in
16 which the sale of other products is merely incidental
17 may be suspended for a period not exceeding sixty (60)
18 days.

19 2. When it has been determined that a penalty shall include a
20 license or permit suspension, the ABLE Commission shall notify the
21 Oklahoma Tax Commission, and the Tax Commission shall suspend the
22 store's license to sell tobacco products or nicotine products or the
23 store's sales tax permit for a store that is predominantly engaged
24 in the sale of vapor products in which the sale of other products is

1 merely incidental at the location where the offense occurred for the
2 period of time prescribed by the ABLE Commission.

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

- 9 a. the individual who purchased or received the tobacco
10 product, nicotine product or vapor product presented a
11 driver license or other government-issued photo
12 identification purporting to establish that such
13 individual was twenty-one (21) years of age or older,
14 or
- 15 b. the person cited for the violation confirmed the
16 validity of the driver license or other government-
17 issued photo identification presented by such
18 individual by performing a transaction scan by means
19 of a transaction scan device.

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

1 who presented it. The availability of the defense described in this
2 subsection does not affect the availability of any other defense
3 under any other provision of law.

4 D. If the sale is made by an employee of the owner of a store
5 at which tobacco products, nicotine products or vapor products are
6 sold at retail, the employee shall be guilty of the violation and
7 both the employee and the store owner shall be subject to the fine.

8 Each violation by any employee of an owner of a store licensed to
9 sell tobacco products or nicotine products or permitted to sell
10 vapor products shall be deemed a violation against the owner for
11 purposes of a license suspension pursuant to subsection C of this
12 section. Each violation by an employee of a store predominantly
13 engaged in the sale of vapor products in which the sale of other
14 products is merely incidental shall be deemed a violation against
15 the owner for purposes of a sales tax permit suspension pursuant to
16 the provisions of subsection C of this section. An owner of a store
17 licensed to sell tobacco products or nicotine products or permitted
18 to sell vapor products shall not be deemed in violation of the
19 provisions of the Prevention of Youth Access to Tobacco Act for any
20 acts constituting a violation by any person, when the violation
21 occurs prior to actual employment of the person by the storeowner or
22 the violation occurs at a location other than the owner's retail
23 store. For purposes of determining the liability of a person
24 controlling franchises or business operations in multiple locations,

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

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

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

14 2. Upon failure of a storeowner to pay the administrative fine
15 within ninety (90) days of the assessment of the fine, the ABLE
16 Commission shall notify the Tax Commission, and the Tax Commission
17 shall suspend the store's license to sell tobacco products or
18 nicotine products or the store's sales tax permit for a store that
19 is predominantly engaged in the sale of vapor products in which the
20 sale of other products is merely incidental until proof of payment
21 has been furnished to the Oklahoma Tax Commission.

22 G. Cities and towns may enact and municipal police officers may
23 enforce ordinances prohibiting and penalizing conduct under
24 provisions of this section, but the provisions of municipal

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

4 H. County sheriffs may enforce the provisions of the Prevention
5 of Youth Access to Tobacco Act.

6 SECTION 2. This act shall become effective November 1, 2024.

7 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
8 April 4, 2024 - DO PASS
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