

An Act

ENROLLED SENATE
BILL NO. 1423

By: McCortney of the Senate

and

Wallace, Loring and Fugate
of the House

An Act relating to tobacco and vapor products; amending 37 O.S. 2011, Section 600.4, as renumbered by Section 28, Chapter 404, O.S.L. 2013, and as amended by Section 5, Chapter 162, O.S.L. 2014 (10A O.S. Supp. 2019, Section 2-8-224), which relates to purchase, receipt or possession of tobacco or vapor products by minors; amending 21 O.S. 2011, Sections 1241 and 1242, as amended by Sections 1 and 2, Chapter 162, O.S.L. 2014 (21 O.S. Supp. 2019, Sections 1241 and 1242), which relate to furnishing of tobacco or vapor products to minors; amending 37 O.S. 2011, Sections 600.2, 600.3, 600.5, 600.6, 600.7, 600.8, 600.10A, 600.11 and 600.13, as amended by Sections 3, 4, 6, 7, 8, 9, 11, 12 and 13, Chapter 162, O.S.L. 2014, and as renumbered by Sections 171, 172, 173, 174, 175, 176, 179, 180 and 184, Chapter 366, O.S.L. 2016 (63 O.S. Supp. 2019, Sections 1-229.12, 1-229.13, 1-229.15, 1-229.16, 1-229.17, 1-229.18, 1-229.21, 1-229.22 and 1-229.26), which relate to prevention of youth access to tobacco or vapor products; amending Section 6, Chapter 369, O.S.L. 2017 (63 O.S. Supp. 2019, Section 1-1530), which relates to development of strategies to prevent tobacco use by minors; increasing legal age limits related to purchase, receipt, possession, furnishing, sale or distribution of tobacco or vapor products; conforming provisions related to employees, proof of age, signage, employee notification, vending machines, display of tobacco or vapor products, the Alcoholic Beverage Laws Enforcement Commission and tobacco use prevention strategies; broadening

strategies to include vapor products; updating statutory reference; clarifying language; and declaring an emergency.

SUBJECT: Tobacco and vapor products

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 amended by Section 5, Chapter 162, O.S.L. 2014 (10A O.S. Supp. 2019, Section 2-8-224), is amended to read as follows:

Section 2-8-224. A. It is unlawful for a person who is under ~~eighteen (18)~~ twenty-one (21) years of age to purchase, receive, or have in his or her possession a tobacco product, or vapor product, or to present or offer to any person any purported proof of age which is false or fraudulent, for the purpose of purchasing or receiving any tobacco product or vapor product. It shall not be unlawful for an employee under ~~eighteen (18)~~ twenty-one (21) years of age to handle tobacco products or vapor products when required in the performance of the employee's duties.

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

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

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

Upon failure of the individual to pay the administrative fine within ninety (90) days of the day of the fine, the ABLE Commission shall notify the Department of Public Safety, and the Department shall suspend or not issue a driver license to the individual until proof of payment has been furnished to the Department of Public Safety.

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 21 O.S. 2011, Section 1241, as amended by Section 1, Chapter 162, O.S.L. 2014 (21 O.S. Supp. 2019, Section 1241), is amended to read as follows:

Section 1241. Any person who shall furnish to any ~~minor~~ person under the age of twenty-one (21) by gift, sale or otherwise any cigarettes, cigarette papers, cigars, bidis, snuff, chewing tobacco, or any other form of tobacco product, or vapor products shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine in the amount of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00) and by imprisonment in the county jail for a term of not less than ten (10) days nor more than ninety (90) days for each offense. For the purposes of this section, the term "vapor product" shall have the same meaning as provided in the Prevention of Youth Access to Tobacco Act.

SECTION 3. AMENDATORY 21 O.S. 2011, Section 1242, as amended by Section 2, Chapter 162, O.S.L. 2014 (21 O.S. Supp. 2019, Section 1242), is amended to read as follows:

Section 1242. Any ~~minor~~ person under the age of twenty-one (21) being in possession of cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product, or vapor products and being by any police officer, constable, juvenile court officer, truant officer, or teacher in any school, asked where and from whom such cigarettes, cigarette papers, cigars, snuff, chewing

tobacco, or any other form of tobacco product, or vapor products were obtained, who shall refuse to furnish such information, shall be guilty of a misdemeanor and upon conviction thereof before the district court, or any judge of the district court, such minor being of the age of sixteen (16) years or upwards shall be sentenced to pay a fine not exceeding Five Dollars (\$5.00) or to undergo an imprisonment in the jail of the proper county not exceeding five (5) days, or both; if such minor shall be under the age of sixteen (16) years, he or she shall be certified by such magistrate or justice to the juvenile court of the county for such action as the court shall deem proper. For the purposes of this section, the term "vapor product" shall have the same meaning as provided in the Prevention of Youth Access to Tobacco Act.

SECTION 4. AMENDATORY 37 O.S. 2011, Section 600.2, as amended by Section 3, Chapter 162, O.S.L. 2014, and as renumbered by Section 171, Chapter 366, O.S.L. 2016 (63 O.S. Supp. 2019, 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;
2. "Proof of age" means a driver license, license for identification only, or other generally accepted means of identification that describes the individual as ~~eighteen (18)~~ twenty-one (21) years of age or older and contains a photograph or other likeness of the individual and appears on its face to be valid;
3. "Sample" means a tobacco product or vapor product distributed to members of the public at no cost for the purpose of promoting the product;
4. "Sampling" means the distribution of samples to members of the public in a public place;
5. "Tobacco product" means any product that contains tobacco and is intended for human consumption;

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

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

8. "Vapor product" shall mean noncombustible products, that may or may not contain nicotine, that employ a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce a vapor in a solution or other form. "Vapor products" shall include any vapor cartridge or other container with or without nicotine or other form that is intended to be used with an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of a solution, that may or may not contain nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo or electronic device. "Vapor products" do not include any products regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

SECTION 5. AMENDATORY 37 O.S. 2011, Section 600.3, as amended by Section 4, Chapter 162, O.S.L. 2014, and as renumbered by Section 172, Chapter 366, O.S.L. 2016 (63 O.S. Supp. 2019, 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 or vapor product to another person who is under ~~eighteen (18)~~ twenty-one (21) years of age, or to purchase in any manner a tobacco product or vapor product on behalf of any such person. It shall not be unlawful for an employee under ~~eighteen (18)~~ twenty-one (21) years of age to handle tobacco products or vapor products when required in the performance of the employee's duties.

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

conclude on the basis of appearance that the prospective purchaser may be under ~~eighteen (18)~~ twenty-one (21) years of age.

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

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

- a. not more than One Hundred Dollars (\$100.00) for the first offense,
- b. not more than Two Hundred Dollars (\$200.00) for the second offense within a two-year period following the first offense,
- c. not more than Three Hundred Dollars (\$300.00) for a third offense within a two-year period following the first offense. In addition to any other penalty, the store's license to sell tobacco products or the store's sales tax permit for a store that is predominantly engaged in the sale of vapor products in which the sale of other products is merely incidental may be suspended for a period not exceeding thirty (30) days, or
- d. not more than Three Hundred Dollars (\$300.00) for a fourth or subsequent offense within a two-year period following the first offense. In addition to any other penalty, the store's license to sell tobacco products or the store's sales tax permit for a store that is predominantly engaged in the sale of vapor products in which the sale of other products is merely incidental may be suspended for a period not exceeding sixty (60) days.

2. When it has been determined that a penalty shall include a license or permit suspension, the ABLE Commission shall notify the

Oklahoma Tax Commission, and the Tax Commission shall suspend the store's license to sell tobacco products or the store's sales tax permit for a store that is predominantly engaged in the sale of vapor products in which the sale of other products is merely incidental at the location where the offense occurred for the period of time prescribed by the ABLE Commission.

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

- a. the individual who purchased or received the tobacco product or vapor product presented a driver license or other government-issued photo identification purporting to establish that such individual was ~~eighteen (18)~~ twenty-one (21) years of age or older, or
- b. the person cited for the violation confirmed the validity of the driver license or other government-issued photo identification presented by such individual by performing a transaction scan by means of a transaction scan device.

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

D. If the sale is made by an employee of the owner of a store at which tobacco products or vapor products are sold at retail, the employee shall be guilty of the violation and shall be subject to the fine. Each violation by any employee of an owner of a store licensed to sell tobacco products or permitted to sell vapor products shall be deemed a violation against the owner for purposes

of a license suspension pursuant to subsection C of this section. Each violation by an employee of a store predominantly engaged in the sale of vapor products in which the sale of other products is merely incidental shall be deemed a violation against the owner for purposes of a sales tax permit suspension pursuant to the provisions of subsection C of this section. An owner of a store licensed to sell tobacco products or permitted to sell vapor products shall not be deemed in violation of the provisions of the Prevention of Youth Access to Tobacco Act for any acts constituting a violation by any person, when the violation occurs prior to actual employment of the person by the store owner or the violation occurs at a location other than the owner's retail store. For purposes of determining the liability of a person controlling franchises or business operations in multiple locations, for any violations of subsection A or B of this section, each individual franchise or business location shall be deemed a separate entity.

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

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

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

G. 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 municipal

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

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

SECTION 6. AMENDATORY 37 O.S. 2011, Section 600.5, as amended by Section 6, Chapter 162, O.S.L. 2014, and as renumbered by Section 173, Chapter 366, O.S.L. 2016 (63 O.S. Supp. 2019, Section 1-229.15), is amended to read as follows:

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

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

SECTION 7. AMENDATORY 37 O.S. 2011, Section 600.6, as amended by Section 7, Chapter 162, O.S.L. 2014, and as renumbered by Section 174, Chapter 366, O.S.L. 2016 (63 O.S. Supp. 2019, Section 1-229.16), is amended to read as follows:

Section 1-229.16. A. Every person engaged in the business of selling tobacco products or vapor products at retail shall notify each individual employed by that person as a retail sales clerk that state law:

