

FIRST REGULAR SESSION

SENATE BILL NO. 124

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOUGH.

0780S.01H

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 191.765, 191.769, 191.776, 407.924, 407.925, 407.926, 407.927, 407.929, 407.931, 407.933, and 407.934, RSMo, and to enact in lieu thereof twelve new sections relating to tobacco products, with penalty provisions and a delayed effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 191.765, 191.769, 191.776, 407.924,
2 407.925, 407.926, 407.927, 407.929, 407.931, 407.933, and
3 407.934, RSMo, are repealed and twelve new sections enacted in
4 lieu thereof, to be known as sections 191.765, 191.769, 191.776,
5 407.924, 407.925, 407.926, 407.927, 407.929, 407.930, 407.931,
6 407.933, and 407.934, to read as follows:

191.765. As used in sections 191.765 to [191.773]
2 **191.777** and section 290.145, the following terms mean:

3 (1) "Bar" or "tavern", any licensed establishment
4 which serves liquor on the premises for which not more than
5 ten percent of the gross sales receipts of the business are
6 supplied by food purchases, either for consumption on the
7 premises or elsewhere;

8 (2) "Other person in charge", the agent of the
9 proprietor authorized to give administrative directions to
10 and general supervision of the activities within the public
11 place, work place or public meeting at any given time;

12 (3) "Proprietor", the party who ultimately controls,
13 governs or directs the activities within the public place,
14 work place or public meeting, regardless of whether he is

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

15 the owner or lessor of such place or site. The term does
16 not mean the owner of the property unless he ultimately
17 controls, governs or directs the activities within the
18 public place or public meeting. The term "proprietor" shall
19 apply to a corporation as well as an individual;

20 (4) "Public meeting", a gathering in person of members
21 of a governmental body, whether an open or closed session,
22 as defined in chapter 610;

23 (5) "Public place", any enclosed indoor area used by
24 the general public or serving as a place of work including,
25 but not limited to:

26 (a) Any retail or commercial establishments;

27 (b) Health care facilities, health clinics or
28 ambulatory care facilities including, but not limited to,
29 laboratories associated with health care treatment,
30 hospitals, nursing homes, physicians' offices and dentists'
31 offices;

32 (c) Any vehicle used for public transportation
33 including, but not limited to, buses, taxicabs and
34 limousines for hire;

35 (d) Rest rooms;

36 (e) Elevators;

37 (f) Libraries, educational facilities, day care
38 facilities, museums, auditoriums and art galleries;

39 (g) All public areas and waiting rooms of public
40 transportation facilities including, but not limited to, bus
41 and airport facilities;

42 (h) Any enclosed indoor place used for entertainment
43 or recreation including, but not limited to, gymnasiums,
44 theater lobbies, concert halls, arenas and swimming pools;

45 (i) Any other enclosed indoor areas used by the
46 general public including, but not limited to, corridors and
47 shopping malls;

48 (6) "Restaurant", any building, structure or area
49 used, maintained or advertised as or held out to the public
50 to be an enclosure where meals for consideration of payment
51 are made available to be consumed on the premises;

52 (7) "Smoking", possession of burning tobacco in the
53 form of a cigarette, cigar, pipe or other smoking equipment,
54 **or a vapor product;**

55 (8) **"Vapor product", the same meaning as in section**
56 **407.925.**

191.769. The following areas are not considered a
2 public place:

3 (1) An entire room or hall which is used for private
4 social functions, provided that the seating arrangements are
5 under the control of the sponsor of the function and not of
6 the proprietor or other person in charge;

7 (2) Limousines for hire and taxicabs, where the driver
8 and all passengers agree to smoking in such vehicle;

9 (3) Performers on the stage, provided that the smoking
10 is part of the production;

11 (4) A place where more than fifty percent of the
12 volume of trade or business carried on is that of the
13 blending of tobaccos or sale of tobaccos, cigarettes, pipes,
14 cigars [or], smoking sundries, **or vapor products;**

15 (5) Bars, taverns, restaurants that seat less than
16 fifty people, bowling alleys and billiard parlors, which
17 conspicuously post signs stating that "Nonsmoking Areas are
18 Unavailable";

19 (6) Private residences; and

20 (7) Any enclosed indoor arena, stadium or other
21 facility which may be used for sporting events and which has
22 a seating capacity of more than fifteen thousand persons.

191.776. No person shall smoke or otherwise use
2 tobacco products **or vapor products** in any area of a child
3 care facility licensed by the department of health and
4 senior services pursuant to the provisions of sections
5 210.201 to 210.245 during the period of time when the
6 children cared for under that license are present. Any
7 person who violates the provisions of this section shall be
8 guilty of an infraction.

407.924. 1. The division of [liquor] **alcohol and**
2 **tobacco** control within the department of public safety shall
3 implement and enforce the provisions of sections [407.925]
4 **407.924** to 407.934. **The division may enter into agreements**
5 **with local public health agencies, including those**
6 **established under chapter 205, to enforce the provisions of**
7 **sections 407.924 to 407.934.**

8 2. Beginning January 1, 2003, the division [of liquor
9 control] shall submit an annual report to the general
10 assembly on the effectiveness of sections [407.925] **407.924**
11 to 407.934 in reducing tobacco possession by [minors]
12 **persons under twenty-one years of age** and the enforcement
13 activities by the division for violations of sections
14 [407.925] **407.924** to 407.934.

407.925. As used in sections [407.925] **407.924** to
2 407.934, the following terms mean:

3 (1) "Alternative nicotine product", any noncombustible
4 product containing nicotine that is intended for human
5 consumption, whether chewed, absorbed, dissolved, or
6 ingested by any other means. Alternative nicotine product
7 does not include any [vapor product,] tobacco product or any

8 product regulated as a drug or device by the [United States]
9 **U.S.** Food and Drug Administration under Chapter V of the
10 Food, Drug, and Cosmetic Act;

11 (2) ["Center of youth activities", any playground,
12 school or other facility, when such facility is being used
13 primarily by persons under the age of eighteen for
14 recreational, educational or other purposes;

15 (3)] "Distribute", a conveyance to the public by sale,
16 barter, gift, or sample;

17 [(4) "Minor", a person under the age of eighteen;]

18 (3) **"Division", the division of alcohol and tobacco
19 control within the department of public safety;**

20 [(5)] (4) "Municipality", the city, village or town
21 within which tobacco products[,] **or** alternative nicotine
22 products [or vapor products] are sold or distributed or, in
23 the case of tobacco products[,] **or** alternative nicotine
24 products [or vapor products] that are not sold or
25 distributed within a city, village or town, the county in
26 which they are sold or distributed;

27 (5) **"Nicotine liquid container", a bottle or other
28 container of liquid or other substance containing varying
29 amounts of nicotine, flavorings, or other chemicals that is
30 sold, marketed, or intended for use in a vapor product, but
31 does not include a liquid or other substance containing
32 nicotine in a cartridge that is sold, marketed, or intended
33 for use in a vapor product if such cartridge is prefilled
34 and sealed by the manufacturer and not intended to be opened
35 by the consumer;**

36 (6) "Person", an individual, partnership,
37 copartnership, firm, company, public or private corporation,
38 association, joint stock company, trust, estate, political
39 subdivision or any agency, board, department or bureau of

40 the state or federal government, or any other legal entity
41 which is recognized by law as the subject of rights and
42 duties;

43 (7) "Proof of age", a driver's license or other
44 [generally accepted] **government-issued** means of
45 identification that contains a picture of the individual and
46 appears on its face to be valid;

47 (8) "Rolling papers", paper designed, manufactured,
48 marketed, or sold for use primarily as a wrapping or
49 enclosure for tobacco, which enables a person to roll loose
50 tobacco into a smokable cigarette;

51 (9) "Sample", a tobacco product[,] **or** alternative
52 nicotine product[, or vapor product] distributed to members
53 of the general public at no cost or at nominal cost for
54 product promotional purposes;

55 (10) "Sampling", the distribution to members of the
56 general public of tobacco product[,] **or** alternative nicotine
57 product [or vapor product] samples;

58 (11) "Tobacco products", any substance [containing]
59 **made or derived from** tobacco [leaf] **that is intended for**
60 **human consumption**, including, but not limited to,
61 cigarettes, cigars, pipe tobacco, snuff, chewing tobacco,
62 **vapor products**, or dipping tobacco but does not include
63 alternative nicotine products[, or vapor products];

64 (12) "Vapor product", any noncombustible product
65 containing nicotine, **whether natural or synthetic**, that
66 employs a heating element, power source, electronic circuit,
67 or other electronic, chemical or mechanical means,
68 regardless of shape or size, that can be used to produce
69 vapor from nicotine in a solution or other form. Vapor
70 product includes any electronic cigarette, electronic cigar,
71 electronic cigarillo, electronic pipe, or similar product or

72 device and any vapor cartridge or other container of
73 nicotine, **flavorings, or other chemicals** in a solution or
74 other form that is intended to be used with or in an
75 electronic cigarette, electronic cigar, electronic
76 cigarillo, electronic pipe, or similar product or device.
77 **Vapor product also includes any device classified by the**
78 **U.S. Food and Drug Administration as an electronic nicotine**
79 **delivery system.** Vapor product does not include any
80 alternative nicotine product [or tobacco product];

81 (13) "Vending machine", any mechanical electric or
82 electronic, self-service device which, upon insertion of
83 money, tokens, or any other form of payment, dispenses
84 tobacco products[,] **or** alternative nicotine products[, or
85 vapor products].

407.926. 1. Any person or entity who sells tobacco
2 products[,] **or** alternative nicotine products[, or vapor
3 products] shall deny the sale of such tobacco products to
4 any person who is less than [eighteen] **twenty-one** years of
5 age.

6 2. [Any person] **The owner of the establishment** or
7 entity [who] **that** sells or distributes tobacco products[,]
8 **or** alternative nicotine products[, or vapor products] by
9 mail or through the internet in this state in violation of
10 subsection 1 of this section shall be assessed a fine of
11 [two] **five** hundred [fifty] dollars for the first violation
12 and [five hundred dollars for] **shall be prohibited from**
13 **selling or distributing tobacco products and alternative**
14 **nicotine products for a period of one month for** each
15 subsequent violation, **with a five hundred dollar per day**
16 **fine for any violation of such sales or distribution**
17 **prohibition.**

18 3. Alternative nicotine products and vapor products
19 shall only be sold to persons [eighteen] **twenty-one** years of
20 age or older, **and** shall be subject to local and state sales
21 tax[, but shall not be otherwise taxed or]. **Vapor products**
22 **shall be** regulated as tobacco products.

23 4. (1) Any nicotine liquid container that is sold at
24 retail in this state shall satisfy the child-resistant
25 effectiveness standards set forth in 16 CFR 1700.15(b) as in
26 effect on August 28, 2015, when tested in accordance with
27 the method described in 16 CFR 1700.20 as in effect on
28 August 28, 2015.

29 (2) [For the purposes of this subsection, "nicotine
30 liquid container" shall mean a bottle or other container of
31 liquid or other substance containing nicotine if the liquid
32 or substance is sold, marketed, or intended for use in a
33 vapor product. A "nicotine liquid container" shall not
34 include a liquid or other substance containing nicotine in a
35 cartridge that is sold, marketed, or intended for use in a
36 vapor product, provided that such cartridge is prefilled and
37 sealed by the manufacturer and not intended to be opened by
38 the consumer.

39 (3) Any person who engages in retail sales of liquid
40 nicotine containers in this state in violation of this
41 subsection shall be assessed a fine of two hundred fifty
42 dollars for the first violation and five hundred dollars for
43 each subsequent violation.

44 [(4)] (3) The department of health and senior services
45 may adopt rules necessary to carry out the provisions of
46 this subsection. Any rule or portion of a rule, as that
47 term is defined in section 536.010, that is created under
48 the authority delegated in this section shall become
49 effective only if it complies with and is subject to all of

50 the provisions of chapter 536 and, if applicable, section
51 536.028. This section and chapter 536 are nonseverable and
52 if any of the powers vested with the general assembly under
53 chapter 536 to review, to delay the effective date, or to
54 disapprove and annul a rule are subsequently held
55 unconstitutional, then the grant of rulemaking authority and
56 any rule proposed or adopted after August 28, 2015, shall be
57 invalid and void.

58 [(5) The provisions of this subsection and any rules
59 adopted hereunder shall be null, void, and of no force and
60 effect upon the effective date of the final regulations
61 issued by the federal Food and Drug Administration or from
62 any other federal agency if such regulations mandate child-
63 resistant effectiveness standards for nicotine liquid
64 containers.]

65 **5. Any person who engages in the sale of liquid**
66 **nicotine containers or vapor products that contain any**
67 **amount of tetrahydrocannabinol or any other controlled**
68 **substance listed in section 195.017 shall be guilty of a**
69 **class A misdemeanor.**

407.927. The owner of an establishment at which
2 tobacco products, alternative nicotine products, [vapor
3 products,] or rolling papers are sold at retail or through
4 vending machines shall cause to be prominently displayed in
5 a conspicuous place at every display from which tobacco
6 products, alternative nicotine products, or [vapor products]
7 **rolling papers** are sold and on every vending machine where
8 tobacco products are purchased a sign that shall:

9 (1) Contain in red lettering at least one-half inch
10 high on a white background the following: "It is a
11 violation of state law for cigarettes, other tobacco
12 products, alternative nicotine products, or vapor products

13 to be sold or otherwise provided to any person under the age
14 of [eighteen] **twenty-one** or for such person to purchase,
15 attempt to purchase or possess cigarettes, other tobacco
16 products, alternative nicotine products or vapor products.";
17 and

18 (2) Include a depiction of a pack of cigarettes at
19 least two inches high defaced by a red diagonal diameter of
20 a surrounding red circle, and the words "Under [18] **21**".

407.929. 1. A person or entity selling tobacco
2 products, alternative nicotine products, [or vapor products]
3 or rolling papers or distributing tobacco product[,] **or**
4 alternative nicotine product[, or vapor product] samples
5 shall require proof of age from a prospective purchaser or
6 recipient if an ordinary person would conclude on the basis
7 of appearance that such prospective purchaser or recipient
8 may be under the age of [eighteen] **thirty**.

9 2. The operator's or chauffeur's license issued
10 pursuant to the provisions of section 302.177, or the
11 operator's or chauffeur's license issued pursuant to the
12 laws of any state or possession of the United States to
13 residents of those states or possessions, or an
14 identification card as provided for in section 302.181, or
15 the identification card issued by any uniformed service of
16 the United States, or a valid passport shall be presented by
17 the holder thereof upon request of any agent of the division
18 [of liquor control] **or local public health agency with an**
19 **enforcement agreement with the division** or any owner or
20 employee of an establishment that sells tobacco[,] **or**
21 alternative nicotine products[, or vapor products,] for the
22 purpose of aiding the [registrant,] agent, **owner**, or
23 employee to determine whether or not the person is at least
24 [eighteen] **twenty-one** years of age when such person desires

25 to purchase or possess tobacco products[,] **or** alternative
26 nicotine products[, or vapor products procured from a
27 registrant]. Upon such presentation, the owner or employee
28 of the establishment shall compare the photograph and
29 physical characteristics noted on the license,
30 identification card, or passport with the physical
31 characteristics of the person presenting the license,
32 identification card, or passport.

33 3. Any person who shall, without authorization from
34 the department of revenue, reproduce, alter, modify, or
35 misrepresent any chauffeur's license, motor vehicle
36 operator's license, or identification card shall be deemed
37 guilty of a misdemeanor and upon conviction shall be subject
38 to a fine of not more than one thousand dollars, and
39 confinement for not more than one year, or by both such fine
40 and imprisonment.

41 4. Reasonable reliance on proof of age or on the
42 appearance of the purchaser or recipient shall be a defense
43 to any action for a violation of subsections 1[,] **and** 2 [and
44 3] of section 407.931. [No person shall be liable for more
45 than one violation of subsections 2 and 3 of section 407.931
46 on any single day.]

407.930. 1. No person or entity shall sell
2 **cigarettes, tobacco products, alternative nicotine products,**
3 **or rolling papers unless the person has a retail sales tax**
4 **license.**

5 **2. In addition to the retail sales tax license**
6 **required under subsection 1 of this section, any person or**
7 **entity selling, providing, or distributing tobacco products,**
8 **alternative nicotine products, or rolling papers, in any**
9 **quantity, shall annually register with the department of**

10 revenue prior to such sale, provision, or distribution
11 through an online application on the department's website.

12 3. All persons or entities selling, providing, or
13 distributing tobacco products, alternative nicotine
14 products, or rolling papers, in any quantity, on or before
15 January 1, 2022, shall have forty-five days to register with
16 the department, during which time such persons or entities
17 may continue to sell, provide, or distribute such products;
18 provided, that such persons or entities shall be required to
19 register with the department by the end of the forty-five-
20 day period in order to continue to sell, provide, or
21 distribute such products. All other persons or entities
22 selling, providing, or distributing such products after
23 January 1, 2022, shall be required to register with the
24 department prior to engaging in such sale, provision, or
25 distribution in this state.

26 4. (1) All persons or entities shall register each
27 location at which tobacco products, alternative nicotine
28 products, or rolling papers shall be sold, provided, or
29 distributed. Each location registered shall be accompanied
30 by a fifty dollar registration charge.

31 (2) Upon receipt of a completed registration form and
32 registration charge, the department shall provide the
33 registrant a notice of registration that the registrant
34 shall prominently display at the location address for which
35 the registrant received such notice. The notice shall
36 clearly state the registered location address and the valid
37 registration time period on the face of the notice. Such
38 notice may be provided to the registrant electronically.

39 (3) The registration charge provided for under this
40 subsection shall be allocated as follows, after allocating
41 two dollars of every registration charge collected to the

42 department for administration and maintenance of the
43 registry:

44 (a) One-third to the division, or the local public
45 health agency in an enforcement agreement with the division
46 in the area in which the registered person or entity is
47 located, for the costs of enforcing the provisions of
48 sections 407.924 to 407.934;

49 (b) One-third to the department of health and senior
50 services for tobacco and smoking cessation activities; and

51 (c) One-third to the local public health agency in the
52 area in which the registered person or entity is located for
53 tobacco and smoking cessation activities.

54 (4) Any person or entity who fails to register in
55 accordance with the provisions of this section shall be
56 penalized as follows:

57 (a) For the first offense per location within twelve
58 months, the division or local public health agency shall
59 issue a written warning describing the failure and how to
60 address the failure within seven days and shall assess a
61 fine of five hundred dollars;

62 (b) For the second offense per location within twelve
63 months, the division or local public health agency shall
64 issue a citation prohibiting the location from selling,
65 providing, or distributing tobacco products, alternative
66 nicotine products, or rolling papers for a ten-day-period.
67 Any person or entity in violation of this citation shall be
68 assessed a fine of five hundred dollars per day such person
69 or entity sells, provides, or distributes such products;

70 (c) For the third offense per location within twelve
71 months, the division or local public health agency shall
72 issue a citation prohibiting the location from selling,
73 providing, or distributing tobacco products, alternative

74 nicotine products, or rolling papers for a sixty-day-
75 period. Any person or entity in violation of this citation
76 shall be assessed a fine of five hundred dollars per day
77 such person or entity sells, provides, or distributes such
78 products; and

79 (d) For the fourth offense per location within twelve
80 months, the division or local public health agency shall
81 issue a citation prohibiting the location from selling,
82 providing, or distributing tobacco products, alternative
83 nicotine products, or rolling papers permanently. Any
84 person or entity in violation of this citation shall be
85 assessed a fine of five hundred dollars per day such person
86 or entity sells, provides, or distributes such products.

87 5. Any person or entity adversely affected by this
88 section may file an appeal with the administrative hearing
89 commission, which shall be adjudicated pursuant to the
90 procedures established in chapter 621.

91 6. The department of revenue shall provide the
92 division and any local public health agencies in enforcement
93 agreements with the division access to a complete and
94 updated list of every registered person or entity under this
95 section for purposes of enforcing sections 407.924 to
96 407.934.

407.931. 1. It shall be unlawful for any person or
2 **entity** to sell, provide, or distribute tobacco products,
3 alternative nicotine products, or [vapor products] **rolling**
4 **papers** to persons under [eighteen] **twenty-one** years of age.

5 2. All vending machines that dispense tobacco
6 products[,] **or** alternative nicotine products[, or vapor
7 products] shall be located within the unobstructed line of
8 sight and under the direct supervision of an adult
9 responsible for preventing persons less than [eighteen]

10 **twenty-one** years of age from purchasing any tobacco
11 product[,] **or** alternative nicotine product[, or vapor
12 product] from such machine or shall be equipped with a lock-
13 out device to prevent the machines from being operated until
14 the person responsible for monitoring sales from the
15 machines disables the lock. Such locking device shall be of
16 a design that prevents it from being left in an unlocked
17 condition and which will allow only a single sale when
18 activated. [A locking device shall not be required on
19 machines that are located in areas where persons less than
20 eighteen years of age are not permitted or prohibited by
21 law.] An owner of an establishment whose vending machine is
22 not in compliance with the provisions of this subsection
23 shall be subject to the penalties contained in subsection
24 [5] **3** of this section. A determination of noncompliance may
25 be made by a local law enforcement agency [or], the division
26 [of liquor control], **or a local public health agency in an**
27 **enforcement agreement with the division.** Nothing in this
28 section shall apply to a vending machine [if] located in [a
29 factory, private club or other location not generally] **an**
30 **area not** accessible to [the general public] **individuals who**
31 **are not twenty-one years of age.**

32 3. [No person or entity shall sell, provide or
33 distribute any tobacco product, alternative nicotine
34 product, or vapor product or rolling papers to any minor, or
35 sell any individual cigarettes to any person in this state.
36 This subsection shall not apply to the distribution by
37 family members on property that is not open to the public.

38 4. Any person including, but not limited to, a sales
39 clerk, owner or operator who violates subsection 1, 2 or 3
40 of this section or section 407.927 shall be penalized as
41 follows:

- 42 (1) For the first offense, twenty-five dollars;
43 (2) For the second offense, one hundred dollars;
44 (3) For a third and subsequent offense, two hundred
45 fifty dollars.

46 5.] Any owner of the establishment where tobacco
47 products, alternative nicotine products, or [vapor products]
48 **rolling papers** are available for sale who violates
49 [subsection 3 of this section, in addition to the penalties
50 established in subsection 4 of this section,] **any provision**
51 **of sections 407.927 to 407.929 or this section** shall be
52 penalized in the following manner:

53 (1) For the first violation per location within two
54 years, a reprimand shall be issued **and a fine of one hundred**
55 **and fifty dollars shall be assessed** by the division [of
56 liquor control] **or local public health agency;**

57 (2) For the second violation per location within two
58 years, the division [of liquor control] **or local public**
59 **health agency** shall issue a citation prohibiting the outlet
60 from selling tobacco products, alternative nicotine
61 products, or [vapor products] **rolling papers** for a [twenty-
62 four-hour] **seven-day** period; **and**

63 (3) For the third [violation] **and subsequent**
64 **violations** per location within two years, the division [of
65 liquor control] **or local public health agency** shall issue a
66 citation prohibiting the outlet from selling tobacco
67 products, alternative nicotine products, or [vapor products]
68 **rolling papers** for a [forty-eight-hour] **thirty-day** period[;

69 (4) For the fourth and any subsequent violations per
70 location within two years, the division of liquor control
71 shall issue a citation prohibiting the outlet from selling
72 tobacco products for a five-day period].

73 **Any owner of the establishment where tobacco products,**
74 **alternative nicotine products, or rolling papers are**
75 **available for sale who violates a prohibition of sale issued**
76 **under subdivision (2) or (3) of this subsection shall be**
77 **penalized five hundred dollars for each day tobacco**
78 **products, alternative nicotine products, or rolling papers**
79 **are sold in violation of the prohibition.**

80 [6. Any owner of the establishment where tobacco
81 products are available for sale who violates subsection 3 of
82 this section shall not be penalized pursuant to this section
83 if such person documents the following:

84 (1) An in-house or other tobacco compliance employee
85 training program was in place to provide the employee with
86 information on the state and federal regulations regarding
87 sales of tobacco products, alternative nicotine products, or
88 vapor products to minors. Such training program must be
89 attended by all employees who sell tobacco products,
90 alternative nicotine products, or vapor products to the
91 general public;

92 (2) A signed statement by the employee stating that
93 the employee has been trained and understands the state laws
94 and federal regulations regarding the sale of tobacco
95 products, alternative nicotine products, or vapor products
96 to minors; and

97 (3) Such in-house or other tobacco compliance training
98 meets the minimum training criteria, which shall not exceed
99 a total of ninety minutes in length, established by the
100 division of liquor control.

101 7. The exemption in subsection 6 of this section shall
102 not apply to any person who is considered the general owner
103 or operator of the outlet where tobacco products,

104 alternative nicotine products, or vapor products are
105 available for sale if:

106 (1) Four or more violations per location of subsection
107 3 of this section occur within a one-year period; or

108 (2) Such person knowingly violates or knowingly allows
109 his or her employees to violate subsection 3 of this section.

110 8. If a sale is made by an employee of the owner of an
111 establishment in violation of sections 407.925 to 407.934,
112 the employee shall be guilty of an offense established in
113 subsections 1, 2 and 3 of this section. If a vending
114 machine is in violation of section 407.927, the owner of the
115 establishment shall be guilty of an offense established in
116 subsections 3 and 4 of this section. If a sample is
117 distributed by an employee of a company conducting the
118 sampling, such employee shall be guilty of an offense
119 established in subsections 3 and 4 of this section.

120 9. A person cited for selling, providing or
121 distributing any tobacco product, alternative nicotine
122 product, or vapor product to any individual less than
123 eighteen years of age in violation of subsection 1, 2 or 3
124 of this section shall conclusively be presumed to have
125 reasonably relied on proof of age of the purchaser or
126 recipient, and such person shall not be found guilty of such
127 violation if such person raises and proves as an affirmative
128 defense that such individual presented a driver's license or
129 other government-issued photo identification purporting to
130 establish that such individual was eighteen years of age or
131 older.

132 10.] 4. Any person adversely affected by this section
133 may file an appeal with the administrative hearing
134 commission which shall be adjudicated pursuant to the
135 procedures established in chapter 621.

407.933. 1. No person less than [eighteen] **twenty-one** years of age shall purchase, attempt to purchase, or possess cigarettes, other tobacco products, **or** alternative nicotine products[, or vapor products] unless such person is an employee of a seller of cigarettes, tobacco products, **or** alternative nicotine products[, or vapor products] and is in such possession to effect a sale in the course of employment, or an employee of the division [of liquor control] **or local public health agency** for enforcement purposes pursuant to [subsection 5 of] section 407.934.

2. Any person less than [eighteen] **twenty-one** years of age shall not misrepresent his or her age to purchase cigarettes, tobacco products, **or** alternative nicotine products[, or vapor products].

3. Any person who violates the provisions of this section shall be penalized as follows:

(1) For the first violation, the person is guilty of an infraction and shall have any cigarettes, tobacco products, **or** alternative nicotine products[, or vapor products] confiscated; **and**

(2) For a second violation and any subsequent violations, the person is guilty of an infraction, shall have any cigarettes, tobacco products, **or** alternative nicotine products[, or vapor products] confiscated and shall complete a tobacco education or smoking cessation program, if available.

407.934. 1. [No person shall sell cigarettes, tobacco products, alternative nicotine products, or vapor products unless the person has a retail sales tax license.

2. The department of revenue shall permit persons to designate through the internet or by including a place on all sales tax license applications for the applicant to

7 designate himself or herself as a seller of tobacco
8 products, alternative nicotine products, or vapor products
9 and to provide a list of all locations where the applicant
10 sells such products.

11 3. On or before July first of each year, the
12 department of revenue shall make available to the division
13 of liquor control and the department of mental health a
14 complete list of every establishment which sells cigarettes,
15 other tobacco products, alternative nicotine products, or
16 vapor products in this state.

17 4.] The division [of liquor control] **or local public**
18 **health agency with an enforcement agreement with the**
19 **division** shall have the authority to inspect stores [and],
20 tobacco outlets, **and any registered entity under section**
21 **407.930** for compliance with all laws related to access of
22 tobacco products[,] **or** alternative nicotine products[, or
23 vapor products] to [minors] **persons under twenty-one years**
24 **of age and the provisions of sections 407.924 to 407.934.**
25 The division **or local public health agency** may employ a
26 person **between** seventeen **and twenty** years of age, with
27 parental consent **for a person under eighteen years of age,**
28 to attempt to purchase tobacco **products or alternative**
29 **nicotine products** for the purpose of inspection or
30 enforcement of tobacco laws.

31 [5.] 2. The [supervisor of the] division [of liquor
32 control] **or local public health agency** shall not use
33 [minors] **persons under twenty-one years of age** to enforce
34 the provisions of this chapter unless the [supervisor]
35 **division** promulgates rules that establish standards for the
36 use of [minors] **persons under twenty-one years of age.** The
37 [supervisor] **division** shall establish mandatory guidelines
38 for the use of [minors] **persons under twenty-one years of**

39 **age** in investigations by a state, county, municipal, or
40 other local **public health agency or** law enforcement
41 authority which shall be followed by such authority and
42 which shall, at a minimum, provide for the following:

43 (1) The [minor] **person** shall be **between** seventeen **and**
44 **twenty** years of age;

45 (2) The [minor] **person** shall have a youthful
46 appearance, and [the minor], if a male, shall not have
47 facial hair or a receding hairline, and if a female, shall
48 not wear excessive makeup or excessive jewelry;

49 (3) The state, county, municipal, or other local
50 **public health agency or** law enforcement agency shall obtain
51 the consent of the [minor's] **person's** parent or legal
52 guardian before the use of such [minor] **person** on a form
53 approved by the [supervisor] **division, if the person is**
54 **under eighteen years of age;**

55 (4) The state, county, municipal, or other local
56 **public health agency or** law enforcement agency shall make a
57 photocopy of the [minor's] **person's** valid identification
58 showing the [minor's] **person's** correct date of birth;

59 (5) Any attempt by such [minor] **person** to purchase
60 tobacco products[,] **or** alternative nicotine products[, or
61 vapor products] shall be videotaped or audiotaped with
62 equipment sufficient to record all statements made by the
63 [minor] **person** and the seller of the tobacco product **or**
64 **alternative nicotine product;**

65 (6) The [minor] **person** shall carry his or her own
66 identification showing [the minor's] **his or her** correct date
67 of birth and shall, upon request, produce such
68 identification to the seller of the tobacco product[,] **or**
69 **alternative nicotine product[, or vapor product];**

70 (7) The [minor] **person** shall answer truthfully any
71 questions about his or her age and shall not remain silent
72 when asked questions regarding his or her age;

73 (8) The [minor] **person** shall not lie to the seller of
74 the tobacco product[,] **or** alternative nicotine product[, or
75 vapor product] to induce a sale of tobacco products **or**
76 **alternative nicotine products;**

77 (9) The [minor] **person** shall not be employed by the
78 state, county, municipal or other local **public health agency**
79 **or** law enforcement agency on an incentive or quota basis;

80 (10) The state, county, municipal, or other local
81 **public health agency or** law enforcement agency shall, within
82 forty-eight hours, contact or take all reasonable steps to
83 contact the owner or manager of the establishment if a
84 violation occurs;

85 (11) The state, county, municipal, or other local
86 **public health agency or** law enforcement agency shall
87 maintain records of each visit to an establishment where a
88 [minor] **person under twenty-one years of age** is used by the
89 state, county, municipal, or other local **public health**
90 **agency or** law enforcement agency for a period of at least
91 one year following the incident, regardless of whether a
92 violation occurs at each visit, and such records shall, at a
93 minimum, include the following information:

94 (a) The signed consent form of the [minor's] **person's**
95 parent or legal guardian **if the person is under eighteen**
96 **years of age;**

97 (b) A [Polaroid] photograph of the [minor] **person;**

98 (c) A photocopy of the [minor's] **person's** valid
99 identification, showing the [minor's] **his or her** correct
100 date of birth;

101 (d) An information sheet completed by the [minor]
102 **person** on a form approved by the [supervisor] **division**; and

103 (e) The name of each establishment visited by the
104 [minor,] **person** and the date and time of each visit.

105 [6.] 3. If the state, county, municipal, or other
106 local **public health agency or** law enforcement authority uses
107 [minors] **persons under twenty-one years of age** in
108 investigations or in enforcing or determining violations of
109 [this chapter] **sections 407.924 to 407.934** or any local
110 ordinance and does not comply with the mandatory guidelines
111 established by the [supervisor of liquor control] **division**
112 in subsection [5] 2 of this section, the [supervisor of
113 liquor control] **division or local public health agency** shall
114 not take any disciplinary action against the establishment
115 or seller pursuant to [this chapter] **sections 407.924 to**
116 **407.934** based on an alleged violation discovered when using
117 a [minor] **person under twenty-one years of age** and shall not
118 cooperate in any way with the state, county, municipal, or
119 other local law enforcement authority in prosecuting any
120 alleged violation discovered when using a [minor] **person**
121 **under twenty-one years of age.**

Section B. The enactment of section 407.930 and the
2 repeal and reenactment of sections 191.765, 191.769,
3 191.776, 407.924, 407.925, 407.926, 407.927, 407.929,
4 407.931, 407.933, and 407.934 shall become effective January
5 1, 2022.

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