

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 HOUSE BILL 2317

By: Loring

4
5
6 AS INTRODUCED

7 An Act relating to tobacco; amending 37 O.S. 2011,
8 Sections 600.2, 600.3, 600.5, 600.6, 600.7, 600.8,
9 600.10A, 600.11 and 600.13, as amended by Sections 3,
10 4, 6, 7, 8, 9, 11, 12 and 13, Chapter 162, O.S.L.
11 2014 (37 O.S. Supp. 2015, Sections 600.2, 600.3,
12 600.5, 600.6, 600.7, 600.8, 600.10A, 600.11 and
13 600.13) and 37 O.S. 2011, Section 600.4, as
14 renumbered by Section 28, Chapter 404, O.S.L. 2013
15 and as amended by Section 5, Chapter 162, O.S.L. 2014
16 (10A O.S. Supp. 2015, Section 2-8-224), which relate
17 to the Prevention of Youth Access to Tobacco Act;
18 prohibiting the sale of tobacco products or vapor
19 products to persons under twenty-one years of age;
20 conforming references to age; and providing an
21 effective date.

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

23 SECTION 1. AMENDATORY 37 O.S. 2011, Section 600.2, as
24 amended by Section 3, Chapter 162, O.S.L. 2014 (37 O.S. Supp. 2015,
Section 600.2), is amended to read as follows:

Section 600.2 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 ~~eighteen (18)~~
4 twenty-one (21) years of age or older and contains a photograph or
5 other likeness of the individual and appears on its face to be
6 valid;

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

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

12 5. "Tobacco product" means any product that contains tobacco
13 and is intended for human consumption;

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

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

22 8. "Vapor product" ~~shall mean~~ means any noncombustible ~~products~~
23 product, that may or may not contain nicotine, that ~~employ~~ employs a
24 mechanical heating element, battery, electronic circuit, or other

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

13 SECTION 2. AMENDATORY 37 O.S. 2011, Section 600.3, as
14 amended by Section 4, Chapter 162, O.S.L. 2014 (37 O.S. Supp. 2015,
15 Section 600.3), is amended to read as follows:

16 Section 600.3 A. It is unlawful for any person to sell, give
17 or furnish in any manner any tobacco product or vapor product to
18 another person who is under ~~eighteen (18)~~ twenty-one (21) years of
19 age, or to purchase in any manner a tobacco product or vapor product
20 on behalf of any such person. It shall not be unlawful for an
21 employee under ~~eighteen (18)~~ twenty-one (21) years of age to handle
22 tobacco products or vapor products when required in the performance
23 of the employee's duties.

24

1 B. A person engaged in the sale or distribution of tobacco
2 products or vapor products shall demand proof of age from a
3 prospective purchaser or recipient if an ordinary person would
4 conclude on the basis of appearance that the prospective purchaser
5 may be under ~~eighteen (18)~~ twenty-one (21) years of age.

6 If an individual engaged in the sale or distribution of tobacco
7 products or vapor products has demanded proof of age from a
8 prospective purchaser or recipient who is not under ~~eighteen (18)~~
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) for the
15 first offense,
- 16 b. not more than Two Hundred Dollars (\$200.00) for the
17 second offense within a two-year period following the
18 first offense,
- 19 c. not more than Three Hundred Dollars (\$300.00) for a
20 third offense within a two-year period following the
21 first offense. In addition to any other penalty, the
22 store's license to sell tobacco products or the
23 store's sales tax permit for a store that is
24 predominantly engaged in the sale of vapor products in

1 which the sale of other products is merely incidental
2 may be suspended for a period not exceeding thirty
3 (30) days, or

4 d. not more than Three Hundred Dollars (\$300.00) for a
5 fourth or subsequent offense within a two-year period
6 following the first offense. In addition to any other
7 penalty, the store's license to sell tobacco products
8 or the store's sales tax permit for a store that is
9 predominantly engaged in the sale of vapor products in
10 which the sale of other products is merely incidental
11 may be suspended for a period not exceeding sixty (60)
12 days.

13 2. When it has been determined that a penalty shall include a
14 license or permit suspension, the ABLE Commission shall notify the
15 Oklahoma Tax Commission, and the Oklahoma Tax Commission shall
16 suspend the store's license to sell tobacco products or the store's
17 sales tax permit for a store that is predominantly engaged in the
18 sale of vapor products in which the sale of other products is merely
19 incidental at the location where the offense occurred for the period
20 of time prescribed by the ABLE Commission.

21 3. Proof that the defendant demanded, was shown, and reasonably
22 relied upon proof of age shall be a defense to any action brought
23 pursuant to this section. A person cited for violating this section
24 shall be deemed to have reasonably relied upon proof of age, and

1 such person shall not be found guilty of the violation if such
2 person proves that:

3 a. the individual who purchased or received the tobacco
4 product or vapor product presented a driver license or
5 other government-issued photo identification
6 purporting to establish that such individual was
7 ~~eighteen (18)~~ twenty-one (21) years of age or older,
8 or

9 b. the person cited for the violation confirmed the
10 validity of the driver license or other government-
11 issued photo identification presented by such
12 individual by performing a transaction scan by means
13 of a transaction scan device.

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

22 D. If the sale is made by an employee of the owner of a store
23 at which tobacco products or vapor products are sold at retail, the
24 employee shall be guilty of the violation and shall be subject to

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

20 E. On or before December 15, 1997, the ABLE Commission shall
21 adopt rules establishing a method of notification of storeowners
22 when one of their employees has been determined to be in violation
23 of this section by the ABLE Commission or convicted of a violation
24 by a municipality.

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

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

15 G. Cities and towns may enact and municipal police officers may
16 enforce ordinances prohibiting and penalizing conduct under
17 provisions of this section, but the provisions of municipal
18 ordinances shall be the same as provided for in this section, and
19 the penalty provisions under such ordinances shall not be more
20 stringent than those of this section.

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

1 SECTION 3. AMENDATORY 37 O.S. 2011, Section 600.5, as
2 amended by Section 6, Chapter 162, O.S.L. 2014 (37 O.S. Supp. 2015,
3 Section 600.5), is amended to read as follows:

4 Section 600.5 A. Every person who sells or displays tobacco
5 products or vapor products at retail shall post conspicuously and
6 keep so posted at the place of business a sign, as specified by the
7 Alcoholic Beverage Laws Enforcement (ABLE) Commission, stating the
8 following: "IT'S THE LAW. WE DO NOT SELL TOBACCO PRODUCTS OR VAPOR
9 PRODUCTS TO PERSONS UNDER ~~18~~ 21 YEARS OF AGE". The sign shall also
10 provide the toll-free number operated by the ~~Alcoholic Beverage Laws~~
11 ~~Enforcement (ABLE)~~ Commission for the purpose of reporting
12 violations of the Prevention of Youth Access to Tobacco Act.

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

21 SECTION 4. AMENDATORY 37 O.S. 2011, Section 600.6, as
22 amended by Section 7, Chapter 162, O.S.L. 2014 (37 O.S. Supp. 2015,
23 Section 600.6), is amended to read as follows:

24

1 Section 600.6 A. Every person engaged in the business of
2 selling tobacco products or vapor products at retail shall notify
3 each individual employed by that person as a retail sales clerk that
4 state law:

5 1. Prohibits the sale or distribution of tobacco products or
6 vapor products to any person under ~~eighteen (18)~~ twenty-one (21)
7 years of age and the purchase or receipt of tobacco products or
8 vapor products by any person under ~~eighteen (18)~~ twenty-one (21)
9 years of age; and

10 2. Requires that proof of age be demanded from a prospective
11 purchaser or recipient if an ordinary person would conclude on the
12 basis of appearance that the prospective purchaser or recipient may
13 be under ~~eighteen (18)~~ twenty-one (21) years of age.

14 B. This notice shall be provided before the individual
15 commences work as a retail sales clerk. The individual shall
16 signify that he or she has received the notice required by this
17 section by signing a form stating as follows:

18 "I understand that state law prohibits the sale or distribution of
19 tobacco products or vapor products to persons under ~~eighteen (18)~~
20 twenty-one (21) years of age and out-of-package sales, and requires
21 proof of age of purchaser or recipient if an ordinary person would
22 conclude on the basis of appearance that the prospective purchaser
23 or recipient may be under ~~eighteen (18)~~ twenty-one (21) years of
24 age. I promise, as a condition of my employment, to obey the law.

1 I understand that violations by me may be punishable by fines,
2 suspension or nonissuance of my driver license. In addition, I
3 understand that violations by me may subject the storeowner to fines
4 or license or permit suspension."

5 SECTION 5. AMENDATORY 37 O.S. 2011, Section 600.7, as
6 amended by Section 8, Chapter 162, O.S.L. 2014 (37 O.S. Supp. 2015,
7 Section 600.7), is amended to read as follows:

8 Section 600.7 It shall be unlawful for any person to sell
9 tobacco products or vapor products through a vending machine unless
10 the vending machine is located:

11 1. In areas of factories, businesses, offices or other places
12 that are not open to the public; and

13 2. In places that are open to the public, but to which persons
14 under ~~eighteen (18)~~ twenty-one (21) years of age are not admitted.

15 SECTION 6. AMENDATORY 37 O.S. 2011, Section 600.8, as
16 amended by Section 9, Chapter 162, O.S.L. 2014 (37 O.S. Supp. 2015,
17 Section 600.8), is amended to read as follows:

18 Section 600.8 A. It shall be unlawful for any person or
19 retailer to distribute tobacco products, vapor products or product
20 samples to any person under ~~eighteen (18)~~ twenty-one (21) years of
21 age.

22 B. No person shall distribute tobacco products, vapor products
23 or product samples in or on any public street, sidewalk~~7~~ or park
24 that is within three hundred (300) feet of any playground, school~~7~~

1 or other facility when the facility is being used primarily by
2 persons under ~~eighteen (18)~~ twenty-one (21) years of age.

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

6 1. Not more than One Hundred Dollars (\$100.00) for the first
7 offense;

8 2. Not more than Two Hundred Dollars (\$200.00) for the second
9 offense; and

10 3. Not more than Three Hundred Dollars (\$300.00) for a third or
11 subsequent offense.

12 D. Upon failure of any person to pay an administrative fine
13 within ninety (90) days of the assessment of the fine, the ABLE
14 Commission shall notify the Department of Public Safety, and the
15 Department shall suspend or not issue a driver license to the person
16 until proof of payment has been furnished to the Department of
17 Public Safety.

18 E. Cities and towns may enact and municipal police officers may
19 enforce ordinances prohibiting and penalizing conduct under
20 provisions of this section, but the provisions of municipal
21 ordinances shall be the same as provided for in this section, and
22 the penalty provisions under such ordinances shall not be more
23 stringent than those of this section.

1 SECTION 7. AMENDATORY 37 O.S. 2011, Section 600.10A, as
2 amended by Section 11, Chapter 162, O.S.L. 2014 (37 O.S. Supp. 2015,
3 Section 600.10A), is amended to read as follows:

4 Section 600.10A A. It is unlawful for any person or retail
5 store to display or offer for sale tobacco products or vapor
6 products in any manner that allows public access to the tobacco
7 products or vapor products without assistance from the person
8 displaying the tobacco products or vapor products or an employee or
9 the owner of the store. The provisions of this subsection shall not
10 apply to retail stores which do not admit into the store persons
11 under ~~eighteen (18)~~ twenty-one (21) years of age.

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 of not more than Two Hundred Dollars
15 (\$200.00) for each offense.

16 C. Cities and towns may enact and municipal police officers may
17 enforce ordinances prohibiting and penalizing conduct under
18 provisions of this section, but the provisions of municipal
19 ordinances shall be the same as provided for in this section, and
20 the penalty provisions under such ordinances shall not be more
21 stringent than those of this section.

22 SECTION 8. AMENDATORY 37 O.S. 2011, Section 600.11, as
23 amended by Section 12, Chapter 162, O.S.L. 2014 (37 O.S. Supp. 2015,
24 Section 600.11), is amended to read as follows:

1 Section 600.11 A. The Alcoholic Beverage Laws Enforcement
2 (ABLE) Commission is authorized and empowered to enforce the
3 provisions of Sections 600.1 et seq. of this title. The ABLE
4 Commission shall enforce those provisions in a manner that can
5 reasonably be expected to reduce the extent to which tobacco
6 products or vapor products are sold or distributed to persons under
7 ~~eighteen (18)~~ twenty-one (21) years of age.

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

11 C. Any conviction for a violation of a municipal ordinance
12 authorized by the Prevention of Youth Access to Tobacco Act and any
13 compliance checks by a municipal police officer or a county sheriff
14 pursuant to subsection E of this section shall be reported in
15 writing to the ABLE Commission within thirty (30) days of such
16 conviction or compliance check. Such reports shall be compiled in
17 the manner prescribed by the ABLE Commission.

18 D. For the purpose of determining second or subsequent
19 violations, both the offenses penalized by the ABLE Commission as
20 administrative fines and the offenses penalized by municipalities
21 and towns and reported to the ABLE Commission, shall be considered
22 together in such determination.

23 E. Persons under ~~eighteen (18)~~ twenty-one (21) years of age may
24 be enlisted by the ABLE Commission, a municipality or town, or a

1 county to assist in compliance checks and enforcement; provided,
2 such persons may be used to test compliance only if written parental
3 consent has been provided and the testing is conducted under the
4 direct supervision of the ABLE Commission or conducted by another
5 law enforcement agency if such agency has given written notice to
6 the ABLE Commission in the manner prescribed by the ABLE Commission.
7 Municipalities which have enacted municipal ordinances in accordance
8 with the Prevention of Youth Access to Tobacco Act may conduct,
9 pursuant to rules of the ABLE Commission, compliance checks without
10 prior notification to the ABLE Commission and shall be exempt from
11 the written notice requirement in this subsection. This subsection
12 shall not apply to the use of persons under ~~eighteen (18)~~ twenty-one
13 (21) years of age to test compliance if the compliance test is being
14 conducted by or on behalf of a retailer of cigarettes, as defined in
15 Section 301 of Title 68 of the Oklahoma Statutes, at any location
16 the retailer of cigarettes is authorized to sell cigarettes. Any
17 other use of persons under ~~eighteen (18)~~ twenty-one (21) years of
18 age to test compliance shall be unlawful and punishable by the ABLE
19 Commission by assessment of an administrative fine of One Hundred
20 Dollars (\$100.00).

21 F. At the beginning of each month, the Oklahoma Tax Commission,
22 pursuant to Section 205 of Title 68 of the Oklahoma Statutes, shall
23 provide to the ABLE Commission and to each municipality which has
24 ordinances concerning the Prevention of Youth Access to Tobacco Act,

1 the location, name, and address of each licensee licensed to sell
2 tobacco products or vapor products at retail or otherwise furnish
3 tobacco products or vapor products. Upon violation of an employee
4 at a location, the ABLE Commission shall notify the storeowner for
5 that location of the latest and all previous violations when one of
6 their employees has been determined to be in violation of the
7 Prevention of Youth Access to Tobacco Act by the ABLE Commission or
8 convicted of a violation by a municipality. If the ABLE Commission
9 fails to notify the licensee of a violation by an employee, that
10 violation shall not apply against the licensee for the purpose of
11 determining a license suspension pursuant to Section 600.3 of this
12 title. For purposes of this subsection, notification shall be
13 deemed given if the ABLE Commission mails, by mail with delivery
14 confirmation, the notification to the address which is on file with
15 the Oklahoma Tax Commission of the licensee or sales tax permit
16 holder of the location at which the violation occurred and the ABLE
17 Commission receives delivery confirmation from the U.S. Postal
18 Service.

19 G. Upon request of a storeowner or a municipality which has
20 enacted ordinances in accordance with the Prevention of Youth Access
21 to Tobacco Act, the ABLE Commission is hereby authorized to provide
22 information on any Prevention of Youth Access to Tobacco Act offense
23 of any applicant for employment or employee of the storeowner.

24

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

8 SECTION 9. AMENDATORY 37 O.S. 2011, Section 600.13, as
9 amended by Section 13, Chapter 162, O.S.L. 2014 (37 O.S. Supp. 2015,
10 Section 600.13), is amended to read as follows:

11 Section 600.13 A. It is unlawful for any person to sell, give
12 or furnish in any manner to another person who is under ~~eighteen~~
13 ~~(18)~~ twenty-one (21) years of age any material or device used in the
14 smoking, chewing, or other method of consumption of tobacco products
15 or vapor products, including cigarette papers, pipes, holders of
16 smoking materials of all types, and other items designed primarily
17 for the smoking or ingestion of tobacco products or vapor products.

18 B. When a person violates subsection A of this section, the
19 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
20 an administrative fine of not more than One Hundred Dollars
21 (\$100.00) for each offense.

22 SECTION 10. AMENDATORY 37 O.S. 2011, Section 600.4, as
23 renumbered by Section 28, Chapter 404, O.S.L. 2013, and as amended
24

1 by Section 5, Chapter 162, O.S.L. 2014 (10A O.S. Supp. 2015, Section
2 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 ~~eighteen (18)~~ twenty-one (21) years of age to purchase, receive, or
5 have in his or her possession a tobacco product⁷ or vapor product,
6 or to present or offer to any person any purported proof of age
7 which is false or fraudulent⁷ for the purpose of purchasing or
8 receiving any tobacco product or vapor product. It shall not be
9 unlawful for an employee under ~~eighteen (18)~~ twenty-one (21) years
10 of age to handle tobacco products or vapor products when required in
11 the performance of the employee's 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 of:

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

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

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

1 proof of payment has been furnished to the Department of Public
2 Safety.

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

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

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

15 SECTION 11. This act shall become effective November 1, 2016.

16

17 55-2-7753 AM 12/22/15

18

19

20

21

22

23

24