

1 AN ACT relating to the sale of tobacco products.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 438.305 is amended to read as follows:

4 As used in KRS 438.305 to 438.340, unless the context requires otherwise:

- 5 (1) (a) "Alternative nicotine product" means a noncombustible product containing
6 nicotine that is intended for human consumption, whether chewed, absorbed,
7 dissolved, or ingested by any other means.
- 8 (b) "Alternative nicotine product" does not include any product regulated as a
9 drug or device by the United States Food and Drug Administration under
10 Chapter V of the Food, Drug, and Cosmetic Act;
- 11 (2) "Manufacturer" means any person who manufactures or produces tobacco products
12 within or without this Commonwealth;
- 13 (3) "Nonresident wholesaler" means any person who purchases cigarettes or other
14 tobacco products directly from the manufacturer and maintains a permanent
15 location or locations outside this state at which Kentucky cigarette tax evidence is
16 attached or from which Kentucky cigarette tax is reported and paid;
- 17 (4) "Proof of age" means a driver's license or other documentary or written evidence
18 that the individual is twenty-one (21)~~eighteen (18)~~ years of age or older;
- 19 (5) "Resident wholesaler" means any person who purchases at least seventy-five
20 percent (75%) of all cigarettes or other tobacco products purchased by that person
21 directly from the cigarette manufacturer on which the cigarette tax provided for in
22 KRS 138.130 to 138.205 is unpaid, and who maintains an established place of
23 business in this state at which the person attaches cigarette tax evidence or receives
24 untaxed cigarettes;
- 25 (6) "Sample" means a tobacco product, alternative nicotine product, or vapor product
26 distributed to members of the general public at no cost;
- 27 (7) "Subjobber" means any person who purchases tobacco products, on which the

1 Kentucky cigarette tax has been paid, from a wholesaler licensed pursuant to KRS
2 138.195, and makes them available to a retail establishment for resale;

3 (8) (a) "Tobacco product" means any cigarette, cigar, snuff, smokeless tobacco
4 product, smoking tobacco, chewing tobacco, and any kind or form of tobacco
5 prepared in a manner suitable for chewing or smoking, or both, or any kind or
6 form of tobacco that is suitable to be placed in a person's mouth.

7 (b) "Tobacco product" does not include any alternative nicotine product, vapor
8 product, or product regulated as a drug or device by the United States Food
9 and Drug Administration under Chapter V of the Food, Drug, and Cosmetic
10 Act; and

11 (9) (a) "Vapor product" means any noncombustible product that employs a heating
12 element, battery, power source, electronic circuit, or other electronic,
13 chemical, or mechanical means, regardless of shape or size and including the
14 component parts and accessories thereto, that can be used to deliver vaporized
15 nicotine or other substances to users inhaling from the device. "Vapor
16 product" includes but is not limited to any electronic cigarette, electronic
17 cigar, electronic cigarillo, electronic pipe, or similar product or device and
18 every variation thereof, regardless of whether marketed as such, and any vapor
19 cartridge or other container of a liquid solution or other material that is
20 intended to be used with or in an electronic cigarette, electronic cigar,
21 electronic cigarillo, electronic pipe, or other similar product or device.

22 (b) "Vapor product" does not include any product regulated as a drug or device by
23 the United States Food and Drug Administration under Chapter V of the Food,
24 Drug, and Cosmetic Act.

25 ➔Section 2. KRS 438.310 is amended to read as follows:

26 (1) No person shall sell or cause to be sold any tobacco product, alternative nicotine
27 product, or vapor product at retail to any person under the age of ***twenty-one***

1 ~~(18)~~], or solicit any person under the age of twenty-one (21)~~(18)~~
2 ~~(18)~~ to purchase any tobacco product, alternative nicotine product, or vapor
3 product at retail.

4 (2) Any person who sells tobacco products, alternative nicotine products, or vapor
5 products at retail shall cause to be posted in a conspicuous place in his
6 establishment a notice stating that it is illegal to sell tobacco products, alternative
7 nicotine products, or vapor products to persons under age twenty-one (21)~~(18)~~
8 ~~(18)~~.

9 (3) Any person selling tobacco products, alternative nicotine products, or vapor
10 products shall require proof of age from a prospective buyer or recipient if the
11 person has reason to believe that the prospective buyer or recipient is under the age
12 of twenty-one (21)~~(18)~~.

13 (4) A person who violates subsection (1) or (2) of this section shall be subject to a fine
14 of not less than one hundred dollars (\$100) nor more than five hundred dollars
15 (\$500) for a first violation and a fine of not less than five hundred dollars (\$500) nor
16 more than one thousand dollars (\$1,000) for any subsequent violation. The fine
17 shall be administered by the Department of Alcoholic Beverage Control using a
18 civil enforcement procedure.

19 ➔Section 3. KRS 438.311 is amended to read as follows:

20 (1) Except for the provisions of KRS 438.330, it shall be unlawful for a person who has
21 not attained the age of twenty-one(21)~~(18)~~ years to purchase or accept
22 receipt of or to attempt to purchase or accept receipt of a tobacco product,
23 alternative nicotine product, or vapor product, or to present or offer to any person
24 any purported proof of age which is false, fraudulent, or not actually his or her own,
25 for the purpose of purchasing or receiving any tobacco product, alternative nicotine
26 product, or vapor product. It shall not be unlawful for such a person to accept
27 receipt of a tobacco product, alternative nicotine product, or vapor product from an

1 employer when required in the performance of the person's duties.

2 (2) This offense shall be deemed a status offense and shall be under the jurisdiction of
3 the juvenile session of the District Court.

4 (3) All peace officers with general law enforcement authority and employees of the
5 Department of Alcoholic Beverage Control may issue a uniform citation, but not
6 make an arrest or take a child into custody, for a violation of this section. If a child
7 fails to appear in court in response to a uniform citation issued pursuant to the
8 section, the court may compel the attendance of the defendant in the manner
9 specified by law.

10 ➔Section 4. KRS 438.313 is amended to read as follows:

11 (1) No wholesaler, retailer, or manufacturer of cigarettes, tobacco products, alternative
12 nicotine products, or vapor products may distribute cigarettes, tobacco products,
13 alternative nicotine products, or vapor products, including samples thereof, free of
14 charge or otherwise, to any person under the age of twenty-one (21)~~eighteen (18)~~.

15 (2) Any person who distributes cigarettes, tobacco products, alternative nicotine
16 products, or vapor products, including samples thereof, free of charge or otherwise
17 shall require proof of age from a prospective buyer or recipient if the person has
18 reason to believe that the prospective purchaser or recipient is under the age of
19 twenty-one (21)~~eighteen (18)~~.

20 (3) Any person who violates the provisions of this section shall be fined not less than
21 one thousand dollars (\$1,000) nor more than two thousand five hundred dollars
22 (\$2,500) for each offense. The fine shall be administered by the Department of
23 Alcoholic Beverage Control using a civil enforcement procedure for persons
24 eighteen (18) years of age or older. For persons under the age of eighteen (18) years,
25 the offense shall be deemed a status offense and shall be under the jurisdiction of
26 the juvenile session of the District Court.

27 (4) All peace officers with general law enforcement authority and employees of the

1 Department of Alcoholic Beverage Control may issue a uniform citation, but may
2 not make an arrest, or take a child into custody, for a violation of this section. If a
3 child fails to appear in court in response to a uniform citation issued pursuant to this
4 section, the court may compel the attendance of the defendant in the manner
5 specified by law.

6 ➔Section 5. KRS 438.315 is amended to read as follows:

- 7 (1) The sale of tobacco products, alternative nicotine products, or vapor products
8 dispensed through a vending machine is prohibited to any person under the age of
9 twenty-one (21)~~eighteen (18)~~ years.
- 10 (2) The purchase of tobacco products, alternative nicotine products, or vapor products
11 dispensed through a vending machine is prohibited to any person under the age of
12 twenty-one (21)~~eighteen (18)~~ years.
- 13 (3) Except for vending machines located in factories or vending machines located in
14 bars or taverns to which minors are not permitted access, any vending machine from
15 which tobacco products, alternative nicotine products, or vapor products are
16 dispensed shall be located in the line of sight of the cashier for the retail
17 establishment.
- 18 (4) Any owner of a retail establishment violating this section shall be subject to a fine
19 of not less than one hundred dollars (\$100) nor more than five hundred dollars
20 (\$500) for each violation. The fine shall be administered by the Department of
21 Alcoholic Beverage Control using a civil enforcement procedure for persons
22 eighteen (18) years of age or older. For persons under the age of eighteen (18) years,
23 the offense shall be deemed a status offense and shall be under the jurisdiction of
24 the juvenile session of the District Court.
- 25 (5) All peace officers with general law enforcement authority and employees of the
26 Department of Alcoholic Beverage Control may issue a uniform citation, but may
27 not make an arrest, or take a child into custody, for a violation of this section. If a

1 child fails to appear in court in response to a uniform citation issued pursuant to this
2 section, the court may compel the attendance of the defendant in the manner
3 specified by law.

4 ➔Section 6. KRS 438.325 is amended to read as follows:

5 (1) Each owner of a retail establishment selling or distributing tobacco products,
6 alternative nicotine products, or vapor products shall notify each individual
7 employed in the retail establishment as a retail sales clerk that the sale of tobacco
8 products, alternative nicotine products, or vapor products to any person under the
9 age of twenty-one (21)~~eighteen (18)~~ years and the purchase of tobacco products,
10 alternative nicotine products, or vapor products by any person under the age of
11 twenty-one (21)~~eighteen (18)~~ years are prohibited.

12 (2) Each owner of a retail establishment selling or distributing tobacco products,
13 alternative nicotine products, or vapor products shall notify each individual
14 employed in the retail establishment as a retail sales clerk that proof of age is
15 required from a prospective buyer or recipient if the person has reason to believe
16 that the prospective purchaser or recipient is under the age of twenty-one
17 (21)~~eighteen (18)~~.

18 (3) The notice to employees that is required in subsection (1) of this section shall be
19 provided before the person commences work as a retail sales clerk, or, in the case of
20 a person employed as a retail sales clerk on April 10, 2014, within thirty (30) days
21 of that date. The employee shall signify receipt of the notice required by this section
22 by signing a form that states as follows:

23 "I understand that under the law of the Commonwealth of Kentucky it is illegal to
24 sell or distribute tobacco products, alternative nicotine products, or vapor products
25 to persons under the age of twenty-one (21)~~eighteen (18)~~ years and that it is illegal
26 for persons under the age of twenty-one (21)~~eighteen (18)~~ years to purchase
27 tobacco products, alternative nicotine products, or vapor products."

1 (4) The owner of the retail establishment shall maintain the signed notice that is
2 required pursuant to subsection (3) of this section in a place and in a manner so as
3 to be easily accessible to any employee of the Department of Alcoholic Beverage
4 Control or the Department of Agriculture conducting an inspection of the retail
5 establishment for the purpose of monitoring compliance in limiting the sale or
6 distribution of tobacco products, alternative nicotine products, or vapor products to
7 persons under the age of twenty-one (21)~~eighteen (18)~~ as provided in KRS
8 438.305 to 438.340.

9 (5) Any owner of the retail establishment violating subsections (1) to (4) of this section
10 shall be subject to a fine of not less than one hundred dollars (\$100) nor more than
11 five hundred dollars (\$500) for each violation. The fine shall be administered by the
12 Department of Alcoholic Beverage Control in a civil enforcement procedure.

13 ➔Section 7. KRS 438.330 is amended to read as follows:

14 (1) The Department of Alcoholic Beverage Control and the Department of Agriculture
15 shall carry out annually conducted random, unannounced inspections of retail
16 establishments where tobacco products, alternative nicotine products, or vapor
17 products are sold or distributed for the purpose of enforcing the provisions of KRS
18 438.305 to 438.340. The inspections shall be conducted to the extent necessary to
19 assure that the Commonwealth remains in compliance with Public Law 102-321
20 and applicable federal regulations. The Department of Alcoholic Beverage Control
21 and the Department of Agriculture shall also ensure that targeted inspections are
22 conducted at those retail establishments where, and at those times when, persons
23 under the age of twenty-one (21)~~eighteen (18)~~ years are most likely to purchase
24 tobacco products, alternative nicotine products, or vapor products. Persons under
25 the age of twenty-one (21)~~eighteen (18)~~ years may be used to test compliance with
26 the provisions of KRS 438.305 to 438.340 only if the testing is conducted under the
27 direct supervision of the Department of Alcoholic Beverage Control, sheriff, or

1 chief of police, or their employees, and written parental consent has been obtained.
2 The Department of Alcoholic Beverage Control shall prepare annually, for
3 submission by the Governor to the Secretary of the United States Department of
4 Health and Human Services, the report required by Section 1926 of Subpart 1 of
5 Part B of Title XIX of the Federal Public Health Service Act.

6 (2) The Department of Alcoholic Beverage Control shall develop and implement the
7 survey sampling methodologies to carry out the inspections as described in this
8 section.

9 ➔Section 8. KRS 438.350 is amended to read as follows:

10 (1) No person under the age of twenty-one~~eighteen (18)~~ shall possess or use tobacco
11 products, alternative nicotine products, or vapor products.

12 (2) Any tobacco product, alternative nicotine product, or vapor product found in the
13 possession of a person under the age of twenty-one~~eighteen (18)~~ and in plain view
14 of the law enforcement officer shall be confiscated by the law enforcement officer
15 making the charge.

16 (3) This section shall not apply to persons exempted as provided by KRS 438.311 and
17 438.330.

18 (4) The terms "alternative nicotine product," "tobacco product," and "vapor product,"
19 shall have the same meanings as in KRS 438.305.