

SECOND REGULAR SESSION

HOUSE BILL NO. 2786

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LOVASCO.

5760H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 407.925, 407.926, 407.927, 407.929, 407.931, 407.933, and 407.934, RSMo, and to enact in lieu thereof eight new sections relating to tobacco products, with penalty provisions.

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

Section A. Sections 407.925, 407.926, 407.927, 407.929, 407.931, 407.933, and 407.934, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 407.925, 407.926, 407.927, 407.929, 407.930, 407.931, 407.933, and 407.934, to read as follows:

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

(1) "Alternative nicotine product", any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. Alternative nicotine product does not include any vapor product, tobacco product or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act;

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

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

~~[(4)]~~ **(3)** "Minor", a person under ~~[the age of eighteen]~~ **twenty-one years of age;**

~~[(5)]~~ **(4)** "Municipality", the city, village or town within which tobacco products, alternative nicotine products or vapor products are sold or distributed or, in the case of

EXPLANATION — Matter enclosed in bold-faced brackets ~~[thus]~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 tobacco products, alternative nicotine products or vapor products that are not sold or
16 distributed within a city, village or town, the county in which they are sold or distributed;

17 ~~[(6)]~~ (5) "Person", an individual, partnership, copartnership, firm, company, public or
18 private corporation, association, joint stock company, trust, estate, political subdivision or any
19 agency, board, department or bureau of the state or federal government, or any other legal
20 entity which is recognized by law as the subject of rights and duties;

21 ~~[(7)]~~ (6) "Proof of age", a driver's license or other generally accepted means of
22 identification that contains a picture of the individual and appears on its face to be valid;

23 ~~[(8)]~~ (7) "Rolling papers", paper designed, manufactured, marketed, or sold for use
24 primarily as a wrapping or enclosure for tobacco, which enables a person to roll loose tobacco
25 into a smokable cigarette;

26 ~~[(9)]~~ (8) "Sample", a tobacco product, alternative nicotine product, or vapor product
27 distributed to members of the general public at no cost or at nominal cost for product
28 promotional purposes;

29 ~~[(10)]~~ (9) "Sampling", the distribution to members of the general public of tobacco
30 product, alternative nicotine product or vapor product samples;

31 ~~[(11)]~~ (10) "Tobacco products", any substance containing tobacco leaf, including, but
32 not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco but
33 does not include alternative nicotine products, or vapor products;

34 ~~[(12)]~~ (11) "Vapor product", any noncombustible product containing nicotine that
35 employs a heating element, power source, electronic circuit, or other electronic, chemical or
36 mechanical means, regardless of shape or size, that can be used to produce vapor from
37 nicotine in a solution or other form. Vapor product includes any electronic cigarette,
38 electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any
39 vapor cartridge or other container of nicotine in a solution or other form that is intended to be
40 used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or
41 similar product or device. Vapor product does not include any alternative nicotine product or
42 tobacco product;

43 ~~[(13)]~~ (12) "Vending machine", any mechanical, electric, or electronic~~[-]~~ self-service
44 device ~~[which]~~ **that**, upon insertion of money, tokens or any other form of payment, dispenses
45 tobacco products, alternative nicotine products, or vapor products.

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

4 2. Any person or entity who sells or distributes tobacco products, alternative nicotine
5 products, or vapor products by mail or through the internet in this state in violation of

6 subsection 1 of this section shall be assessed a fine of two hundred fifty dollars for the first
7 violation and five hundred dollars for each subsequent violation.

8 3. Alternative nicotine products and vapor products shall ~~[only]~~ **not** be sold to
9 ~~[persons eighteen years of age or older]~~ **minors**, shall be subject to local and state sales tax,
10 ~~[but]~~ **and** shall not be otherwise taxed or regulated as tobacco products.

11 4. (1) Any nicotine liquid container that is sold at retail in this state shall satisfy the
12 child-resistant effectiveness standards set forth in 16 CFR 1700.15(b) as in effect on August
13 28, 2015, when tested in accordance with the method described in 16 CFR 1700.20 as in
14 effect on August 28, 2015.

15 (2) For the purposes of this subsection, "nicotine liquid container" shall mean a bottle
16 or other container of liquid or other substance containing nicotine if the liquid or substance is
17 sold, marketed, or intended for use in a vapor product. A "nicotine liquid container" shall not
18 include a liquid or other substance containing nicotine in a cartridge that is sold, marketed, or
19 intended for use in a vapor product, provided that such cartridge is prefilled and sealed by the
20 manufacturer and not intended to be opened by the consumer.

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

24 (4) The department of health and senior services may adopt rules necessary to carry
25 out the provisions of this subsection. Any rule or portion of a rule, as that term is defined in
26 section 536.010, that is created under the authority delegated in this section shall become
27 effective only if it complies with and is subject to all of the provisions of chapter 536 and, if
28 applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the
29 powers vested with the general assembly under chapter 536 to review, to delay the effective
30 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant
31 of rulemaking authority and any rule proposed or adopted after August 28, 2015, shall be
32 invalid and void.

33 (5) The provisions of this subsection and any rules adopted hereunder shall be null,
34 void, and of no force and effect upon the effective date of the final regulations issued by the
35 federal Food and Drug Administration or from any other federal agency if such regulations
36 mandate child-resistant effectiveness standards for nicotine liquid containers.

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

6 (1) Contain in red lettering at least one-half inch high on a white background the
7 following: "It is a violation of state law for cigarettes, other tobacco products, alternative
8 nicotine products, or vapor products to be sold or otherwise provided to any person under the
9 age of [~~eighteen~~] **twenty-one** or for such person to purchase, attempt to purchase or possess
10 cigarettes, other tobacco products, alternative nicotine products or vapor products."; and

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

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

6 2. The operator's or chauffeur's license issued pursuant to the provisions of section
7 302.177, or the operator's or chauffeur's license issued pursuant to the laws of any state or
8 possession of the United States to residents of those states or possessions, or an identification
9 card as provided for in section 302.181, or the identification card issued by any uniformed
10 service of the United States, or a valid passport shall be presented by the holder thereof upon
11 request of any agent of the division of liquor control or any owner or employee of an
12 establishment that sells tobacco, alternative nicotine products, or vapor products, for the
13 purpose of aiding the registrant, agent or employee to determine whether or not the person is
14 [~~at least eighteen years of age~~] **a minor** when such person desires to purchase or possess
15 tobacco products, alternative nicotine products, or vapor products procured from a registrant.
16 Upon such presentation, the owner or employee of the establishment shall compare the
17 photograph and physical characteristics noted on the license, identification card or passport
18 with the physical characteristics of the person presenting the license, identification card or
19 passport.

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

25 4. Reasonable reliance on proof of age or on the appearance of the purchaser or
26 recipient shall be a defense to any action for a violation of subsections 1, 2 and 3 of section
27 407.931. No person shall be liable for more than one violation of subsections 2 and 3 of
28 section 407.931 on any single day.

**407.930. The state preempts the field of regulating the sale or use of tobacco
2 products, alternative nicotine products, and vapor products, and the provisions of**

3 **sections 407.924 to 407.934 shall supersede any local laws, ordinances, orders, rules, or**
4 **regulations enacted by a county, municipality, or other political subdivision to regulate**
5 **the sale or use of tobacco products, alternative nicotine products, or vapor products.**
6 **However, this section shall not prohibit a county, municipality, or other political**
7 **subdivision from taxing the sale of tobacco products, alternative nicotine products, or**
8 **vapor products under other law.**

407.931. 1. It shall be unlawful for any person to sell, provide or distribute tobacco
2 products, alternative nicotine products, or vapor products to [~~persons under eighteen years of~~
3 ~~age~~] **a minor.**

4 2. All vending machines that dispense tobacco products, alternative nicotine products,
5 or vapor products shall be located within the unobstructed line of sight and under the direct
6 supervision of an adult responsible for preventing [~~persons less than eighteen years of age~~]
7 **minors** from purchasing any tobacco product, alternative nicotine product, or vapor product
8 from such machine or shall be equipped with a lock-out device to prevent the machines from
9 being operated until the person responsible for monitoring sales from the machines disables
10 the lock. Such locking device shall be of a design that prevents it from being left in an
11 unlocked condition and which will allow only a single sale when activated. A locking device
12 shall not be required on machines that are located in areas where [~~persons less than eighteen~~
13 ~~years of age~~] **minors** are not permitted or prohibited by law. An owner of an establishment
14 whose vending machine is not in compliance with the provisions of this subsection shall be
15 subject to the penalties contained in subsection 5 of this section. A determination of
16 noncompliance may be made by a local law enforcement agency or the division of liquor
17 control. Nothing in this section shall apply to a vending machine if located in a factory,
18 private club or other location not generally accessible to the general public.

19 3. No person or entity shall sell, provide or distribute any tobacco product, alternative
20 nicotine product, or vapor product or rolling papers to any minor, or sell any individual
21 cigarettes to any person in this state. This subsection shall not apply to the distribution by
22 family members on property that is not open to the public.

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

- 25 (1) For the first offense, twenty-five dollars;
26 (2) For the second offense, one hundred dollars;
27 (3) For a third and subsequent offense, two hundred fifty dollars.

28 5. Any owner of the establishment where tobacco products, alternative nicotine
29 products, or vapor products are available for sale who violates subsection 3 of this section, in
30 addition to the penalties established in subsection 4 of this section, shall be penalized in the
31 following manner:

32 (1) For the first violation per location within two years, a reprimand shall be issued by
33 the division of liquor control;

34 (2) For the second violation per location within two years, the division of liquor
35 control shall issue a citation prohibiting the outlet from selling tobacco products, alternative
36 nicotine products, or vapor products for a twenty-four-hour period;

37 (3) For the third violation per location within two years, the division of liquor control
38 shall issue a citation prohibiting the outlet from selling tobacco products, alternative nicotine
39 products, or vapor products for a forty-eight-hour period;

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

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

46 (1) An in-house or other tobacco compliance employee training program was in place
47 to provide the employee with information on the state and federal regulations regarding sales
48 of tobacco products, alternative nicotine products, or vapor products to minors. Such training
49 program must be attended by all employees who sell tobacco products, alternative nicotine
50 products, or vapor products to the general public;

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

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

57 7. The exemption in subsection 6 of this section shall not apply to any person who is
58 considered the general owner or operator of the outlet where tobacco products, alternative
59 nicotine products, or vapor products are available for sale if:

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

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

64 8. If a sale is made by an employee of the owner of an establishment in violation of
65 sections 407.925 to 407.934, the employee shall be guilty of an offense established in
66 subsections 1, 2 and 3 of this section. If a vending machine is in violation of section 407.927,
67 the owner of the establishment shall be guilty of an offense established in subsections 3 and 4
68 of this section. If a sample is distributed by an employee of a company conducting the

69 sampling, such employee shall be guilty of an offense established in subsections 3 and 4 of
70 this section.

71 9. A person cited for selling, providing or distributing any tobacco product,
72 alternative nicotine product, or vapor product to ~~[any individual less than eighteen years of~~
73 ~~age]~~ **a minor** in violation of subsection 1, 2 or 3 of this section shall conclusively be
74 presumed to have reasonably relied on proof of age of the purchaser or recipient, and such
75 person shall not be found guilty of such violation if such person raises and proves as an
76 affirmative defense that such individual presented a driver's license or other government-
77 issued photo identification purporting to establish that such individual was ~~[eighteen years of~~
78 ~~age or older]~~ **not a minor**.

79 10. Any person adversely affected by this section may file an appeal with the
80 administrative hearing commission which shall be adjudicated pursuant to the procedures
81 established in chapter 621.

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

7 2. ~~[Any person less than eighteen years of age]~~ **No minor** shall ~~[not]~~ misrepresent his
8 or her age to purchase cigarettes, tobacco products, alternative nicotine products, or vapor
9 products.

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

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

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

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

3 2. The department of revenue shall permit persons to designate through the internet or
4 by including a place on all sales tax license applications for the applicant to designate himself
5 or herself as a seller of tobacco products, alternative nicotine products, or vapor products and
6 to provide a list of all locations where the applicant sells such products.

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

11 4. The division of liquor control shall have the authority to inspect stores and tobacco
12 outlets for compliance with all laws related to access of tobacco products, alternative nicotine
13 products, or vapor products to minors. The division may employ a ~~person seventeen years of~~
14 ~~age~~ **minor**, with parental consent **if the minor is under eighteen years of age**, to attempt to
15 purchase tobacco for the purpose of inspection or enforcement of tobacco laws.

16 5. The supervisor of the division of liquor control shall not use minors to enforce the
17 provisions of this chapter unless the supervisor promulgates rules that establish standards for
18 the use of minors. The supervisor shall establish mandatory guidelines for the use of minors
19 in investigations by a state, county, municipal or other local law enforcement authority which
20 shall be followed by such authority and which shall, at a minimum, provide for the following:

21 (1) The minor shall be **at least** seventeen years of age;

22 (2) The minor shall have a youthful appearance, and the minor, if a male, shall not
23 have facial hair or a receding hairline and if a female, shall not wear excessive makeup or
24 excessive jewelry;

25 (3) The state, county, municipal or other local law enforcement agency shall obtain
26 the consent of the minor's parent or legal guardian, **if necessary**, before the use of such minor
27 on a form approved by the supervisor;

28 (4) The state, county, municipal or other local law enforcement agency shall make a
29 photocopy of the minor's valid identification showing the minor's correct date of birth;

30 (5) Any attempt by such minor to purchase tobacco products, alternative nicotine
31 products, or vapor products shall be videotaped or audiotaped with equipment sufficient to
32 record all statements made by the minor and the seller of the tobacco product;

33 (6) The minor shall carry his or her own identification showing the minor's correct
34 date of birth and shall, upon request, produce such identification to the seller of the tobacco
35 product, alternative nicotine product, or vapor product;

36 (7) The minor shall answer truthfully any questions about his or her age and shall not
37 remain silent when asked questions regarding his or her age;

38 (8) The minor shall not lie to the seller of the tobacco product, alternative nicotine
39 product, or vapor product to induce a sale of tobacco products;

40 (9) The minor shall not be employed by the state, county, municipal or other local law
41 enforcement agency on an incentive or quota basis;

42 (10) The state, county, municipal or other local law enforcement agency shall, within
43 forty-eight hours, contact or take all reasonable steps to contact the owner or manager of the
44 establishment if a violation occurs;

45 (11) The state, county, municipal or other local law enforcement agency shall
46 maintain records of each visit to an establishment where a minor is used by the state, county,
47 municipal or other local law enforcement agency for a period of at least one year following
48 the incident, regardless of whether a violation occurs at each visit, and such records shall, at a
49 minimum, include the following information:

50 (a) The signed consent form of the minor's parent or legal guardian, **if necessary**;

51 (b) A Polaroid photograph of the minor;

52 (c) A photocopy of the minor's valid identification, showing the minor's correct date
53 of birth;

54 (d) An information sheet completed by the minor on a form approved by the
55 supervisor; and

56 (e) The name of each establishment visited by the minor, and the date and time of
57 each visit.

58 6. If the state, county, municipal or other local law enforcement authority uses minors
59 in investigations or in enforcing or determining violations of this chapter or any local
60 ordinance and does not comply with the mandatory guidelines established by the supervisor
61 of liquor control in subsection 5 of this section, the supervisor of liquor control shall not take
62 any disciplinary action against the establishment or seller pursuant to this chapter based on an
63 alleged violation discovered when using a minor and shall not cooperate in any way with the
64 state, county, municipal or other local law enforcement authority in prosecuting any alleged
65 violation discovered when using a minor.

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