

# SENATE BILL NO. 1158

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

5737S.01I

ADRIANE D. CROUSE, Secretary

## AN ACT

To repeal sections 407.925, 407.926, 407.927, 407.929, 407.931, 407.932, 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,  
2 407.931, 407.932, 407.933, and 407.934, RSMo, are repealed and  
3 eight new sections enacted in lieu thereof, to be known as  
4 sections 407.925, 407.926, 407.927, 407.929, 407.931, 407.932,  
5 407.933, and 407.934, to read as follows:

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 Food and Drug Administration under Chapter V of the Food,  
10 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;

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

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

17           [(4)] (3) "Minor", a person under [the age of  
18 eighteen] **twenty-one years of age;**

19           [(5)] (4) "Municipality", the city, village or town  
20 within which tobacco products, alternative nicotine products  
21 or vapor products are sold or distributed or, in the case of  
22 tobacco products, alternative nicotine products or vapor  
23 products that are not sold or distributed within a city,  
24 village or town, the county in which they are sold or  
25 distributed;

26           [(6)] (5) "Person", an individual, partnership,  
27 copartnership, firm, company, public or private corporation,  
28 association, joint stock company, trust, estate, political  
29 subdivision or any agency, board, department or bureau of  
30 the state or federal government, or any other legal entity  
31 which is recognized by law as the subject of rights and  
32 duties;

33           [(7)] (6) "Proof of age", a driver's license or other  
34 generally accepted means of identification that contains a  
35 picture of the individual and appears on its face to be  
36 valid;

37           [(8)] (7) "Rolling papers", paper designed,  
38 manufactured, marketed, or sold for use primarily as a  
39 wrapping or enclosure for tobacco, which enables a person to  
40 roll loose tobacco into a smokable cigarette;

41           [(9)] (8) "Sample", a tobacco product, alternative  
42 nicotine product, or vapor product distributed to members of  
43 the general public at no cost or at nominal cost for product  
44 promotional purposes;

45 [(10)] (9) "Sampling", the distribution to members of  
46 the general public of tobacco product, alternative nicotine  
47 product or vapor product samples;

48 [(11)] (10) "Tobacco products", any substance  
49 containing tobacco leaf, including, but not limited to,  
50 cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or  
51 dipping tobacco but does not include alternative nicotine  
52 products, or vapor products;

53 [(12)] (11) "Vapor product", any noncombustible  
54 product containing nicotine that employs a heating element,  
55 power source, electronic circuit, or other electronic,  
56 chemical or mechanical means, regardless of shape or size,  
57 that can be used to produce vapor from nicotine in a  
58 solution or other form. Vapor product includes any  
59 electronic cigarette, electronic cigar, electronic  
60 cigarillo, electronic pipe, or similar product or device and  
61 any vapor cartridge or other container of nicotine in a  
62 solution or other form that is intended to be used with or  
63 in an electronic cigarette, electronic cigar, electronic  
64 cigarillo, electronic pipe, or similar product or device.  
65 Vapor product does not include any alternative nicotine  
66 product or tobacco product;

67 [(13)] (12) "Vending machine", any mechanical  
68 electric or electronic[, ] self-service device [which] that,  
69 upon insertion of money, tokens or any other form of  
70 payment, dispenses tobacco products, alternative nicotine  
71 products, or vapor products.

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

5           2. Any person or entity who sells or distributes  
6 tobacco products, alternative nicotine products, or vapor  
7 products by mail or through the internet in this state in  
8 violation of subsection 1 of this section shall be assessed  
9 a fine of two hundred fifty dollars for the first violation  
10 and five hundred dollars for each subsequent violation.

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

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

22           (2) For the purposes of this subsection, "nicotine  
23 liquid container" shall mean a bottle or other container of  
24 liquid or other substance containing nicotine if the liquid  
25 or substance is sold, marketed, or intended for use in a  
26 vapor product. A "nicotine liquid container" shall not  
27 include a liquid or other substance containing nicotine in a  
28 cartridge that is sold, marketed, or intended for use in a  
29 vapor product, provided that such cartridge is prefilled and  
30 sealed by the manufacturer and not intended to be opened by  
31 the consumer.

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

37           (4) The department of health and senior services may  
38 adopt rules necessary to carry out the provisions of this  
39 subsection. Any rule or portion of a rule, as that term is  
40 defined in section 536.010, that is created under the  
41 authority delegated in this section shall become effective  
42 only if it complies with and is subject to all of the  
43 provisions of chapter 536 and, if applicable, section  
44 536.028. This section and chapter 536 are nonseverable and  
45 if any of the powers vested with the general assembly under  
46 chapter 536 to review, to delay the effective date, or to  
47 disapprove and annul a rule are subsequently held  
48 unconstitutional, then the grant of rulemaking authority and  
49 any rule proposed or adopted after August 28, 2015, shall be  
50 invalid and void.

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

          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 are sold and on every vending machine where tobacco products  
8 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  
14 age of eighteen] **twenty-one years of age** or for such person  
15 to purchase, attempt to purchase or possess cigarettes,  
16 other tobacco products, alternative nicotine products or  
17 vapor products."; 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,  
4 alternative nicotine product, or vapor product samples shall  
5 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] **a minor**.

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 any owner or employee of an  
19 establishment that sells tobacco, alternative nicotine  
20 products, or vapor products, for the purpose of aiding the  
21 registrant, agent or employee to determine whether or not  
22 the person is [at least eighteen years of age] **a minor** when  
23 such person desires to purchase or possess tobacco products,

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

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

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

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

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

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

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

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

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



43           5. Any owner of the establishment where tobacco  
44 products, alternative nicotine products, or vapor products  
45 are available for sale who violates subsection 3 of this  
46 section, in addition to the penalties established in  
47 subsection 4 of this section, shall be penalized in the  
48 following manner:

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

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

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

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

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

70           (1) An in-house or other tobacco compliance employee  
71 training program was in place to provide the employee with  
72 information on the state and federal regulations regarding  
73 sales of tobacco products, alternative nicotine products, or  
74 vapor products to minors. Such training program must be

75 attended by all employees who sell tobacco products,  
76 alternative nicotine products, or vapor products to the  
77 general public;

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

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

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

92 (1) Four or more violations per location of subsection  
93 3 of this section occur within a one-year period; or

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

96 8. If a sale is made by an employee of the owner of an  
97 establishment in violation of sections 407.925 to 407.934,  
98 the employee shall be guilty of an offense established in  
99 subsections 1, 2 and 3 of this section. If a vending  
100 machine is in violation of section 407.927, the owner of the  
101 establishment shall be guilty of an offense established in  
102 subsections 3 and 4 of this section. If a sample is  
103 distributed by an employee of a company conducting the  
104 sampling, such employee shall be guilty of an offense  
105 established in subsections 3 and 4 of this section.

106           9. A person cited for selling, providing or  
107 distributing any tobacco product, alternative nicotine  
108 product, or vapor product to [any individual less than  
109 eighteen years of age] **a minor** in violation of subsection 1,  
110 2 or 3 of this section shall conclusively be presumed to  
111 have reasonably relied on proof of age of the purchaser or  
112 recipient, and such person shall not be found guilty of such  
113 violation if such person raises and proves as an affirmative  
114 defense that such individual presented a driver's license or  
115 other government-issued photo identification purporting to  
116 establish that such individual was [eighteen years of age or  
117 older] **not a minor**.

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

          407.932. [Nothing in sections 407.925 to 407.932 shall  
2 prohibit local political subdivisions from enacting more  
3 stringent ordinances or rules.] **The state preempts the field  
4 of regulating the sale of tobacco products, alternative  
5 nicotine products, and vapor products, and the provisions of  
6 sections 407.924 to 407.934 shall supersede any local laws,  
7 ordinances, orders, rules, or regulations enacted by a  
8 county, municipality, or other political subdivision to  
9 regulate the sale of tobacco products, alternative nicotine  
10 products, or vapor products.**

          407.933. 1. No [person less than eighteen years of  
2 age] **minor** shall purchase, attempt to purchase or possess  
3 cigarettes, other tobacco products, alternative nicotine  
4 products, or vapor products unless such person is an  
5 employee of a seller of cigarettes, tobacco products,  
6 alternative nicotine products, or vapor products and is in

7 such possession to effect a sale in the course of  
8 employment, or an employee of the division of liquor control  
9 for enforcement purposes pursuant to subsection 5 of section  
10 407.934.

11 2. [Any person less than eighteen years of age] **No**  
12 **minor** shall [not] misrepresent his or her age to purchase  
13 cigarettes, tobacco products, alternative nicotine products,  
14 or vapor products.

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

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

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

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

4 2. The department of revenue shall permit persons to  
5 designate through the internet or by including a place on  
6 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 shall have the  
18 authority to inspect stores and tobacco outlets for  
19 compliance with all laws related to access of tobacco  
20 products, alternative nicotine products, or vapor products  
21 to minors. The division may employ a [person seventeen  
22 years of age] **minor**, with parental consent **if the minor is**  
23 **under eighteen years of age**, to attempt to purchase tobacco  
24 for the purpose of inspection or enforcement of tobacco laws.

25 5. The supervisor of the division of liquor control  
26 shall not use minors to enforce the provisions of this  
27 chapter unless the supervisor promulgates rules that  
28 establish standards for the use of minors. The supervisor  
29 shall establish mandatory guidelines for the use of minors  
30 in investigations by a state, county, municipal or other  
31 local law enforcement authority which shall be followed by  
32 such authority and which shall, at a minimum, provide for  
33 the following:

34 (1) The minor shall be seventeen years of age **or older**;

35 (2) The minor shall have a youthful appearance, and  
36 the minor, if a male, shall not have facial hair or a  
37 receding hairline and if a female, shall not wear excessive  
38 makeup or excessive jewelry;

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

43 (4) The state, county, municipal or other local law  
44 enforcement agency shall make a photocopy of the minor's

45 valid identification showing the minor's correct date of  
46 birth;

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

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

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

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

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

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

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

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

79 (b) A Polaroid photograph of the minor;

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

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

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

86 6. If the state, county, municipal or other local law  
87 enforcement authority uses minors in investigations or in  
88 enforcing or determining violations of this chapter or any  
89 local ordinance and does not comply with the mandatory  
90 guidelines established by the supervisor of liquor control  
91 in subsection 5 of this section, the supervisor of liquor  
92 control shall not take any disciplinary action against the  
93 establishment or seller pursuant to this chapter based on an  
94 alleged violation discovered when using a minor and shall  
95 not cooperate in any way with the state, county, municipal  
96 or other local law enforcement authority in prosecuting any  
97 alleged violation discovered when using a minor.

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