

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 SENATE BILL 1423

By: McCortney

4  
5  
6 AS INTRODUCED

7 An Act relating to tobacco and vapor products;  
8 amending 37 O.S. 2011, Section 600.4, as renumbered  
9 by Section 28, Chapter 404, O.S.L. 2013, and as  
10 amended by Section 5, Chapter 162, O.S.L. 2014 (10A  
11 O.S. Supp. 2019, Section 2-8-224), which relates to  
12 purchase, receipt or possession of tobacco or vapor  
13 products by minors; amending 21 O.S. 2011, Sections  
14 1241 and 1242, as amended by Sections 1 and 2,  
15 Chapter 162, O.S.L. 2014 (21 O.S. Supp. 2019,  
16 Sections 1241 and 1242), which relate to furnishing  
17 of tobacco or vapor products to minors; amending 37  
18 O.S. 2011, Sections 600.2, 600.3, 600.5, 600.6,  
19 600.7, 600.8, 600.10A, 600.11 and 600.13, as amended  
20 by Sections 3, 4, 6, 7, 8, 9, 11, 12 and 13, Chapter  
21 162, O.S.L. 2014, and as renumbered by Sections 171,  
22 172, 173, 174, 175, 176, 179, 180 and 184, Chapter  
23 366, O.S.L. 2016 (63 O.S. Supp. 2019, Sections 1-  
24 229.12, 1-229.13, 1-229.15, 1-229.16, 1-229.17, 1-  
25 229.18, 1-229.21, 1-229.22 and 1-229.26), which  
26 relate to prevention of youth access to tobacco or  
27 vapor products; amending Section 6, Chapter 369,  
28 O.S.L. 2017 (63 O.S. Supp. 2019, Section 1-1530),  
29 which relates to development of strategies to prevent  
30 tobacco use by minors; increasing legal age limits  
31 related to purchase, receipt, possession, furnishing,  
32 sale or distribution of tobacco or vapor products;  
33 conforming provisions related to employees, proof of  
34 age, signage, employee notification, vending  
35 machines, display of tobacco or vapor products, the  
36 Alcoholic Beverage Laws Enforcement Commission and  
37 tobacco use prevention strategies; broadening  
38 strategies to include vapor products; updating  
39 statutory reference; clarifying language; and  
40 declaring an emergency.

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

2 SECTION 1. AMENDATORY 37 O.S. 2011, Section 600.4, as  
3 renumbered by Section 28, Chapter 404, O.S.L. 2013, and as amended  
4 by Section 5, Chapter 162, O.S.L. 2014 (10A O.S. Supp. 2019, Section  
5 2-8-224), is amended to read as follows:

6 Section 2-8-224. A. It is unlawful for a person who is under  
7 ~~eighteen (18)~~ twenty-one (21) years of age to purchase, receive, or  
8 have in his or her possession a tobacco product, or vapor product,  
9 or to present or offer to any person any purported proof of age  
10 which is false or fraudulent, for the purpose of purchasing or  
11 receiving any tobacco product or vapor product. It shall not be  
12 unlawful for an employee under ~~eighteen (18)~~ twenty-one (21) years  
13 of age to handle tobacco products or vapor products when required in  
14 the performance of the employee's duties.

15 B. When a person violates subsection A of this section, the  
16 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose  
17 an administrative fine of:

- 18 1. Not to exceed One Hundred Dollars (\$100.00) for a first  
19 offense; and
- 20 2. Not to exceed Two Hundred Dollars (\$200.00) for a second or  
21 subsequent offense within a one-year period following the first  
22 offense.

23 Upon failure of the individual to pay the administrative fine  
24 within ninety (90) days of the day of the fine, the ABLE Commission

1 shall notify the Department of Public Safety, and the Department  
2 shall suspend or not issue a driver license to the individual until  
3 proof of payment has been furnished to the Department of Public  
4 Safety.

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

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

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

17 SECTION 2. AMENDATORY 21 O.S. 2011, Section 1241, as  
18 amended by Section 1, Chapter 162, O.S.L. 2014 (21 O.S. Supp. 2019,  
19 Section 1241), is amended to read as follows:

20 Section 1241. Any person who shall furnish to any ~~minor~~ person  
21 under the age of twenty-one (21) by gift, sale or otherwise any  
22 cigarettes, cigarette papers, cigars, bidis, snuff, chewing tobacco,  
23 or any other form of tobacco product, or vapor products shall be  
24 guilty of a misdemeanor and, upon conviction, shall be punished by a

1 fine in the amount of not less than Twenty-five Dollars (\$25.00) nor  
2 more than Two Hundred Dollars (\$200.00) and by imprisonment in the  
3 county jail for a term of not less than ten (10) days nor more than  
4 ninety (90) days for each offense. For the purposes of this  
5 section, the term "vapor product" shall have the same meaning as  
6 provided in the Prevention of Youth Access to Tobacco Act.

7 SECTION 3. AMENDATORY 21 O.S. 2011, Section 1242, as  
8 amended by Section 2, Chapter 162, O.S.L. 2014 (21 O.S. Supp. 2019,  
9 Section 1242), is amended to read as follows:

10 Section 1242. Any ~~minor~~ person under the age of twenty-one (21)  
11 being in possession of cigarettes, cigarette papers, cigars, snuff,  
12 chewing tobacco, or any other form of tobacco product, or vapor  
13 products and being by any police officer, constable, juvenile court  
14 officer, truant officer, or teacher in any school, asked where and  
15 from whom such cigarettes, cigarette papers, cigars, snuff, chewing  
16 tobacco, or any other form of tobacco product, or vapor products  
17 were obtained, who shall refuse to furnish such information, shall  
18 be guilty of a misdemeanor and upon conviction thereof before the  
19 district court, or any judge of the district court, such minor being  
20 of the age of sixteen (16) years or upwards shall be sentenced to  
21 pay a fine not exceeding Five Dollars (\$5.00) or to undergo an  
22 imprisonment in the jail of the proper county not exceeding five (5)  
23 days, or both; if such minor shall be under the age of sixteen (16)  
24 years, he or she shall be certified by such magistrate or justice to

1 the juvenile court of the county for such action as the court shall  
2 deem proper. For the purposes of this section, the term "vapor  
3 product" shall have the same meaning as provided in the Prevention  
4 of Youth Access to Tobacco Act.

5 SECTION 4. AMENDATORY 37 O.S. 2011, Section 600.2, as  
6 amended by Section 3, Chapter 162, O.S.L. 2014, and as renumbered by  
7 Section 171, Chapter 366, O.S.L. 2016 (63 O.S. Supp. 2019, Section  
8 1-229.12), is amended to read as follows:

9 Section 1-229.12. As used in the Prevention of Youth Access to  
10 Tobacco Act:

11 1. "Person" means any individual, firm, fiduciary, partnership,  
12 corporation, trust, or association, however formed;

13 2. "Proof of age" means a driver license, license for  
14 identification only, or other generally accepted means of  
15 identification that describes the individual as ~~eighteen (18)~~  
16 twenty-one (21) years of age or older and contains a photograph or  
17 other likeness of the individual and appears on its face to be  
18 valid;

19 3. "Sample" means a tobacco product or vapor product  
20 distributed to members of the public at no cost for the purpose of  
21 promoting the product;

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

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

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

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

11           8. "Vapor product" shall mean noncombustible products, that may  
12 or may not contain nicotine, that employ a mechanical heating  
13 element, battery, electronic circuit, or other mechanism, regardless  
14 of shape or size, that can be used to produce a vapor in a solution  
15 or other form. "Vapor products" shall include any vapor cartridge  
16 or other container with or without nicotine or other form that is  
17 intended to be used with an electronic cigarette, electronic cigar,  
18 electronic cigarillo, electronic pipe, or similar product or device  
19 and any vapor cartridge or other container of a solution, that may  
20 or may not contain nicotine, that is intended to be used with or in  
21 an electronic cigarette, electronic cigar, electronic cigarillo or  
22 electronic device. "Vapor products" do not include any products  
23 regulated by the United States Food and Drug Administration under  
24 Chapter V of the Food, Drug, and Cosmetic Act.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SECTION 5. AMENDATORY 37 O.S. 2011, Section 600.3, as amended by Section 4, Chapter 162, O.S.L. 2014, and as renumbered by Section 172, Chapter 366, O.S.L. 2016 (63 O.S. Supp. 2019, Section 1-229.13), is amended to read as follows:

Section 1-229.13. A. It is unlawful for any person to sell, give or furnish in any manner any tobacco product or vapor product to another person who is under ~~eighteen (18)~~ twenty-one (21) years of age, or to purchase in any manner a tobacco product or vapor product on behalf of any such person. It shall not be unlawful for an employee under ~~eighteen (18)~~ twenty-one (21) years of age to handle tobacco products or vapor products when required in the performance of the employee's duties.

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

If an individual engaged in the sale or distribution of tobacco products or vapor products has demanded proof of age from a prospective purchaser or recipient who is not under ~~eighteen (18)~~ twenty-one (21) years of age, the failure to subsequently require proof of age shall not constitute a violation of this subsection.

1 C. 1. When a person violates subsection A or B of this  
2 section, the Alcoholic Beverage Laws Enforcement (ABLE) Commission  
3 shall impose an administrative fine of:

4 a. not more than One Hundred Dollars (\$100.00) for the  
5 first offense,

6 b. not more than Two Hundred Dollars (\$200.00) for the  
7 second offense within a two-year period following the  
8 first offense,

9 c. not more than Three Hundred Dollars (\$300.00) for a  
10 third offense within a two-year period following the  
11 first offense. In addition to any other penalty, the  
12 store's license to sell tobacco products or the  
13 store's sales tax permit for a store that is  
14 predominantly engaged in the sale of vapor products in  
15 which the sale of other products is merely incidental  
16 may be suspended for a period not exceeding thirty  
17 (30) days, or

18 d. not more than Three Hundred Dollars (\$300.00) for a  
19 fourth or subsequent offense within a two-year period  
20 following the first offense. In addition to any other  
21 penalty, the store's license to sell tobacco products  
22 or the store's sales tax permit for a store that is  
23 predominantly engaged in the sale of vapor products in  
24 which the sale of other products is merely incidental



1                   may be suspended for a period not exceeding sixty (60)  
2                   days.

3           2. When it has been determined that a penalty shall include a  
4 license or permit suspension, the ABLE Commission shall notify the  
5 Oklahoma Tax Commission, and the Tax Commission shall suspend the  
6 store's license to sell tobacco products or the store's sales tax  
7 permit for a store that is predominantly engaged in the sale of  
8 vapor products in which the sale of other products is merely  
9 incidental at the location where the offense occurred for the period  
10 of time prescribed by the ABLE Commission.

11           3. Proof that the defendant demanded, was shown, and reasonably  
12 relied upon proof of age shall be a defense to any action brought  
13 pursuant to this section. A person cited for violating this section  
14 shall be deemed to have reasonably relied upon proof of age, and  
15 such person shall not be found guilty of the violation if such  
16 person proves that:

17           a. the individual who purchased or received the tobacco  
18 product or vapor product presented a driver license or  
19 other government-issued photo identification  
20 purporting to establish that such individual was  
21 ~~eighteen (18)~~ twenty-one (21) years of age or older,  
22 or

23           b. the person cited for the violation confirmed the  
24 validity of the driver license or other government-

1 issued photo identification presented by such  
2 individual by performing a transaction scan by means  
3 of a transaction scan device.

4 Provided, that this defense shall not relieve from liability any  
5 person cited for a violation of this section if the person failed to  
6 exercise reasonable diligence to determine whether the physical  
7 description and picture appearing on the driver license or other  
8 government-issued photo identification was that of the individual  
9 who presented it. The availability of the defense described in this  
10 subsection does not affect the availability of any other defense  
11 under any other provision of law.

12 D. If the sale is made by an employee of the owner of a store  
13 at which tobacco products or vapor products are sold at retail, the  
14 employee shall be guilty of the violation and shall be subject to  
15 the fine. Each violation by any employee of an owner of a store  
16 licensed to sell tobacco products or permitted to sell vapor  
17 products shall be deemed a violation against the owner for purposes  
18 of a license suspension pursuant to subsection C of this section.  
19 Each violation by an employee of a store predominantly engaged in  
20 the sale of vapor products in which the sale of other products is  
21 merely incidental shall be deemed a violation against the owner for  
22 purposes of a sales tax permit suspension pursuant to the provisions  
23 of subsection C of this section. An owner of a store licensed to  
24 sell tobacco products or permitted to sell vapor products shall not

1 be deemed in violation of the provisions of the Prevention of Youth  
2 Access to Tobacco Act for any acts constituting a violation by any  
3 person, when the violation occurs prior to actual employment of the  
4 person by the store owner or the violation occurs at a location  
5 other than the owner's retail store. For purposes of determining  
6 the liability of a person controlling franchises or business  
7 operations in multiple locations, for any violations of subsection A  
8 or B of this section, each individual franchise or business location  
9 shall be deemed a separate entity.

10 E. On or before December 15, 1997, the ABLE Commission shall  
11 adopt rules establishing a method of notification of storeowners  
12 when ~~one of their employees~~ an employee of such storeowner has been  
13 determined to be in violation of this section by the ABLE Commission  
14 or convicted of a violation by a municipality.

15 F. 1. Upon failure of the employee to pay the administrative  
16 fine within ninety (90) days of the day of the assessment of such  
17 fine, the ABLE Commission shall notify the Department of Public  
18 Safety, and the Department shall suspend or not issue a driver  
19 license to the employee until proof of payment has been furnished to  
20 the Department of Public Safety.

21 2. Upon failure of a storeowner to pay the administrative fine  
22 within ninety (90) days of the assessment of the fine, the ABLE  
23 Commission shall notify the Tax Commission, and the Tax Commission  
24 shall suspend the store's license to sell tobacco products or the

1 store's sales tax permit for a store that is predominantly engaged  
2 in the sale of vapor products in which the sale of other products is  
3 merely incidental until proof of payment has been furnished to the  
4 Oklahoma Tax Commission.

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

11 H. County sheriffs may enforce the provisions of the Prevention  
12 of Youth Access to Tobacco Act.

13 SECTION 6. AMENDATORY 37 O.S. 2011, Section 600.5, as  
14 amended by Section 6, Chapter 162, O.S.L. 2014, and as renumbered by  
15 Section 173, Chapter 366, O.S.L. 2016 (63 O.S. Supp. 2019, Section  
16 1-229.15), is amended to read as follows:

17 Section 1-229.15. A. Every person who sells or displays  
18 tobacco products or vapor products at retail shall post  
19 conspicuously and keep so posted at the place of business a sign, as  
20 specified by the Alcoholic Beverage Laws Enforcement (ABLE)  
21 Commission, stating the following: ~~"IT'S THE LAW. WE DO NOT SELL~~  
22 ~~TOBACCO PRODUCTS OR VAPOR PRODUCTS TO PERSONS UNDER 18 YEARS OF~~  
23 ~~AGE".~~ "IT'S THE LAW. WE DO NOT SELL TOBACCO PRODUCTS OR VAPOR  
24 PRODUCTS TO PERSONS UNDER 21 YEARS OF AGE." The sign shall also

1 provide the toll-free number operated by the Alcoholic Beverage Laws  
2 Enforcement (ABLE) Commission for the purpose of reporting  
3 violations of the Prevention of Youth Access to Tobacco Act.

4 B. When a person violates subsection A of this section, the  
5 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose  
6 an administrative fine of not more than Fifty Dollars (\$50.00) for  
7 each day a violation occurs. Each day a violation is continuing  
8 shall constitute a separate offense. The notice required by  
9 subsection A of this section shall be the only notice required to be  
10 posted or maintained in any store that sells tobacco products or  
11 vapor products at retail.

12 SECTION 7. AMENDATORY 37 O.S. 2011, Section 600.6, as  
13 amended by Section 7, Chapter 162, O.S.L. 2014, and as renumbered by  
14 Section 174, Chapter 366, O.S.L. 2016 (63 O.S. Supp. 2019, Section  
15 1-229.16), is amended to read as follows:

16 Section 1-229.16. A. Every person engaged in the business of  
17 selling tobacco products or vapor products at retail shall notify  
18 each individual employed by that person as a retail sales clerk that  
19 state law:

20 1. Prohibits the sale or distribution of tobacco products or  
21 vapor products to any person under ~~eighteen (18)~~ twenty-one (21)  
22 years of age and the purchase or receipt of tobacco products or  
23 vapor products by any person under ~~eighteen (18)~~ twenty-one (21)  
24 years of age; and

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

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

9 ~~"I understand that state law prohibits the sale or distribution of  
10 tobacco products or vapor products to persons under eighteen (18)  
11 years of age and out-of-package sales, and requires proof of age of  
12 purchaser or recipient if an ordinary person would conclude on the  
13 basis of appearance that the prospective purchaser or recipient may  
14 be under eighteen (18) years of age. I promise, as a condition of  
15 my employment, to obey the law. I understand that violations by me  
16 may be punishable by fines, suspension or nonissuance of my driver  
17 license. In addition, I understand that violations by me may  
18 subject the storeowner to fines or license or permit suspension."~~

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

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

5 SECTION 8. AMENDATORY 37 O.S. 2011, Section 600.7, as  
6 amended by Section 8, Chapter 162, O.S.L. 2014, and as renumbered by  
7 Section 175, Chapter 366, O.S.L. 2016 (63 O.S. Supp. 2019, Section  
8 1-229.17), is amended to read as follows:

9 Section 1-229.17. It shall be unlawful for any person to sell  
10 tobacco products or vapor products through a vending machine unless  
11 the vending machine is located:

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

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

16 SECTION 9. AMENDATORY 37 O.S. 2011, Section 600.8, as  
17 amended by Section 9, Chapter 162, O.S.L. 2014, and as renumbered by  
18 Section 176, Chapter 366, O.S.L. 2016 (63 O.S. Supp. 2019, Section  
19 1-229.18), is amended to read as follows:

20 Section 1-229.18. A. It shall be unlawful for any person or  
21 retailer to distribute tobacco products, vapor products or product  
22 samples to any person under ~~eighteen (18)~~ twenty-one (21) years of  
23 age.

1 B. No person shall distribute tobacco products, vapor products  
2 or product samples in or on any public street, sidewalk, or park  
3 that is within three hundred (300) feet of any playground, school,  
4 or other facility when the facility is being used primarily by  
5 persons under ~~eighteen (18)~~ twenty-one (21) years of age.

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

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

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

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

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

21 E. Cities and towns may enact and municipal police officers may  
22 enforce ordinances prohibiting and penalizing conduct under  
23 provisions of this section, but the provisions of municipal  
24 ordinances shall be the same as provided for in this section, and



1 the penalty provisions under such ordinances shall not be more  
2 stringent than those of this section.

3 SECTION 10. AMENDATORY 37 O.S. 2011, Section 600.10A, as  
4 amended by Section 11, Chapter 162, O.S.L. 2014, and as renumbered  
5 by Section 179, Chapter 366, O.S.L. 2016 (63 O.S. Supp. 2019,  
6 Section 1-229.21), is amended to read as follows:

7 Section 1-229.21. A. It is unlawful for any person or retail  
8 store to display or offer for sale tobacco products or vapor  
9 products in any manner that allows public access to the tobacco  
10 products or vapor products without assistance from the person  
11 displaying the tobacco products or vapor products or an employee or  
12 the owner of the store. The provisions of this subsection shall not  
13 apply to retail stores which do not admit into the store persons  
14 under ~~eighteen (18)~~ twenty-one (21) years of age.

15 B. When a person violates subsection A of this section, the  
16 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose  
17 an administrative fine of not more than Two Hundred Dollars  
18 (\$200.00) for each offense.

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

1 SECTION 11. AMENDATORY 37 O.S. 2011, Section 600.11, as  
2 amended by Section 12, Chapter 162, O.S.L. 2014, and as renumbered  
3 by Section 180, Chapter 366, O.S.L. 2016 (63 O.S. Supp. 2019,  
4 Section 1-229.22), is amended to read as follows:

5 Section 1-229.22. A. The Alcoholic Beverage Laws Enforcement  
6 (ABLE) Commission is authorized and empowered to enforce the  
7 provisions of ~~Sections 600.1~~ Section 1-229.11 et seq. of this title.  
8 The ABLE Commission shall enforce those provisions in a manner that  
9 can reasonably be expected to reduce the extent to which tobacco  
10 products or vapor products are sold or distributed to persons under  
11 ~~eighteen (18)~~ twenty-one (21) years of age.

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

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

22 D. For the purpose of determining second or subsequent  
23 violations, both the offenses penalized by the ABLE Commission as  
24 administrative fines and the offenses penalized by municipalities

1 and towns and reported to the ABLE Commission, shall be considered  
2 together in such determination.

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

1 F. At the beginning of each month, the Oklahoma Tax Commission,  
2 pursuant to Section 205 of Title 68 of the Oklahoma Statutes, shall  
3 provide to the ABLE Commission and to each municipality which has  
4 ordinances concerning the Prevention of Youth Access to Tobacco Act,  
5 the location, name, and address of each licensee licensed to sell  
6 tobacco products or vapor products at retail or otherwise furnish  
7 tobacco products or vapor products. Upon violation of an employee  
8 at a location, the ABLE Commission shall notify the storeowner for  
9 that location of the latest and all previous violations when one of  
10 their employees has been determined to be in violation of the  
11 Prevention of Youth Access to Tobacco Act by the ABLE Commission or  
12 convicted of a violation by a municipality. If the ABLE Commission  
13 fails to notify the licensee of a violation by an employee, that  
14 violation shall not apply against the licensee for the purpose of  
15 determining a license suspension pursuant to Section 600.3 of this  
16 title. For purposes of this subsection, notification shall be  
17 deemed given if the ABLE Commission mails, by mail with delivery  
18 confirmation, the notification to the address which is on file with  
19 the Oklahoma Tax Commission of the licensee or sales tax permit  
20 holder of the location at which the violation occurred and the ABLE  
21 Commission receives delivery confirmation from the U.S. Postal  
22 Service.

23 G. Upon request of a storeowner or a municipality which has  
24 enacted ordinances in accordance with the Prevention of Youth Access  
25

1 to Tobacco Act, the ABLE Commission is hereby authorized to provide  
2 information on any Prevention of Youth Access to Tobacco Act offense  
3 of any applicant for employment or employee of the storeowner.

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

11 SECTION 12. AMENDATORY 37 O.S. 2011, Section 600.13, as  
12 amended by Section 13, Chapter 162, O.S.L. 2014, and as renumbered  
13 by Section 184, Chapter 366, O.S.L. 2016 (63 O.S. Supp. 2019,  
14 Section 1-229.26), is amended to read as follows:

15 Section 1-229.26. A. It is unlawful for any person to sell,  
16 give or furnish in any manner to another person who is under  
17 ~~eighteen (18)~~ twenty-one (21) years of age any material or device  
18 used in the smoking, chewing, or other method of consumption of  
19 tobacco products or vapor products, including cigarette papers,  
20 pipes, holders of smoking materials of all types, and other items  
21 designed primarily for the smoking or ingestion of tobacco products  
22 or vapor products.

23 B. When a person violates subsection A of this section, the  
24 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose

1 an administrative fine of not more than One Hundred Dollars  
2 (\$100.00) for each offense.

3 SECTION 13. AMENDATORY Section 6, Chapter 369, O.S.L.  
4 2017 (63 O.S. Supp. 2019, Section 1-1530), is amended to read as  
5 follows:

6 Section 1-1530. The ~~Oklahoma~~ State Department of Health and the  
7 Department of Mental Health and Substance Abuse Services shall work  
8 together to develop new and innovative strategies to prevent tobacco  
9 use by minors or use of vapor products by persons under the age of  
10 twenty-one (21).

11 SECTION 14. It being immediately necessary for the preservation  
12 of the public peace, health or safety, an emergency is hereby  
13 declared to exist, by reason whereof this act shall take effect and  
14 be in full force from and after its passage and approval.

15  
16 57-2-3285 DC 1/15/2020 10:31:34 AM