

1 **SENATE FLOOR VERSION**

2 February 17, 2020

3 SENATE BILL NO. 1423

By: McCortney of the Senate

4 and

5 Wallace and Loring of the
6 House

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

1 statutory reference; clarifying language; and
2 declaring an emergency.

3
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

21 1. Not to exceed One Hundred Dollars (\$100.00) for a first
22 offense; and
23
24

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

4 Upon failure of the individual to pay the administrative fine
5 within ninety (90) days of the day of the fine, the ABLE Commission
6 shall notify the Department of Public Safety, and the Department
7 shall suspend or not issue a driver license to the individual until
8 proof of payment has been furnished to the Department of Public
9 Safety.

10 C. The ABLE Commission shall establish rules to provide for
11 notification to a parent or guardian of any minor cited for a
12 violation of this section.

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

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

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

1 Section 1241. Any person who shall furnish to any ~~minor~~ person
2 under the age of twenty-one (21) by gift, sale or otherwise any
3 cigarettes, cigarette papers, cigars, bidis, snuff, chewing tobacco,
4 or any other form of tobacco product, or vapor products shall be
5 guilty of a misdemeanor and, upon conviction, shall be punished by a
6 fine in the amount of not less than Twenty-five Dollars (\$25.00) nor
7 more than Two Hundred Dollars (\$200.00) and by imprisonment in the
8 county jail for a term of not less than ten (10) days nor more than
9 ninety (90) days for each offense. For the purposes of this
10 section, the term "vapor product" shall have the same meaning as
11 provided in the Prevention of Youth Access to Tobacco Act.

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

15 Section 1242. Any ~~minor~~ person under the age of twenty-one (21)
16 being in possession of cigarettes, cigarette papers, cigars, snuff,
17 chewing tobacco, or any other form of tobacco product, or vapor
18 products and being by any police officer, constable, juvenile court
19 officer, truant officer, or teacher in any school, asked where and
20 from whom such cigarettes, cigarette papers, cigars, snuff, chewing
21 tobacco, or any other form of tobacco product, or vapor products
22 were obtained, who shall refuse to furnish such information, shall
23 be guilty of a misdemeanor and upon conviction thereof before the
24 district court, or any judge of the district court, such minor being

1 of the age of sixteen (16) years or upwards shall be sentenced to
2 pay a fine not exceeding Five Dollars (\$5.00) or to undergo an
3 imprisonment in the jail of the proper county not exceeding five (5)
4 days, or both; if such minor shall be under the age of sixteen (16)
5 years, he or she shall be certified by such magistrate or justice to
6 the juvenile court of the county for such action as the court shall
7 deem proper. For the purposes of this section, the term "vapor
8 product" shall have the same meaning as provided in the Prevention
9 of Youth Access to Tobacco Act.

10 SECTION 4. AMENDATORY 37 O.S. 2011, Section 600.2, as
11 amended by Section 3, Chapter 162, O.S.L. 2014, and as renumbered by
12 Section 171, Chapter 366, O.S.L. 2016 (63 O.S. Supp. 2019, Section
13 1-229.12), is amended to read as follows:

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

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

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

24

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

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

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

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

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

16 8. "Vapor product" shall mean noncombustible products, that may
17 or may not contain nicotine, that employ a mechanical heating
18 element, battery, electronic circuit, or other mechanism, regardless
19 of shape or size, that can be used to produce a vapor in a solution
20 or other form. "Vapor products" shall include any vapor cartridge
21 or other container with or without nicotine or other form that is
22 intended to be used with an electronic cigarette, electronic cigar,
23 electronic cigarillo, electronic pipe, or similar product or device
24 and any vapor cartridge or other container of a solution, that may

1 or may not contain nicotine, that is intended to be used with or in
2 an electronic cigarette, electronic cigar, electronic cigarillo or
3 electronic device. "Vapor products" do not include any products
4 regulated by the United States Food and Drug Administration under
5 Chapter V of the Food, Drug, and Cosmetic Act.

6 SECTION 5. AMENDATORY 37 O.S. 2011, Section 600.3, as
7 amended by Section 4, Chapter 162, O.S.L. 2014, and as renumbered by
8 Section 172, Chapter 366, O.S.L. 2016 (63 O.S. Supp. 2019, Section
9 1-229.13), is amended to read as follows:

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

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

23 If an individual engaged in the sale or distribution of tobacco
24 products or vapor products has demanded proof of age from a

1 prospective purchaser or recipient who is not under ~~eighteen (18)~~
2 twenty-one (21) years of age, the failure to subsequently require
3 proof of age shall not constitute a violation of this subsection.

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

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

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

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

21 d. not more than Three Hundred Dollars (\$300.00) for a
22 fourth or subsequent offense within a two-year period
23 following the first offense. In addition to any other
24 penalty, the store's license to sell tobacco products

1 or the store's sales tax permit for a store that is
2 predominantly engaged in the sale of vapor products in
3 which the sale of other products is merely incidental
4 may be suspended for a period not exceeding sixty (60)
5 days.

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

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

20 a. the individual who purchased or received the tobacco
21 product or vapor product presented a driver license or
22 other government-issued photo identification
23 purporting to establish that such individual was
24

1 ~~eighteen (18)~~ twenty-one (21) years of age or older,
2 or

3 b. the person cited for the violation confirmed the
4 validity of the driver license or other government-
5 issued photo identification presented by such
6 individual by performing a transaction scan by means
7 of a transaction scan device.

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

16 D. If the sale is made by an employee of the owner of a store
17 at which tobacco products or vapor products are sold at retail, the
18 employee shall be guilty of the violation and shall be subject to
19 the fine. Each violation by any employee of an owner of a store
20 licensed to sell tobacco products or permitted to sell vapor
21 products shall be deemed a violation against the owner for purposes
22 of a license suspension pursuant to subsection C of this section.
23 Each violation by an employee of a store predominantly engaged in
24 the sale of vapor products in which the sale of other products is

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

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

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

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

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

15 H. County sheriffs may enforce the provisions of the Prevention
16 of Youth Access to Tobacco Act.

17 SECTION 6. AMENDATORY 37 O.S. 2011, Section 600.5, as
18 amended by Section 6, Chapter 162, O.S.L. 2014, and as renumbered by
19 Section 173, Chapter 366, O.S.L. 2016 (63 O.S. Supp. 2019, Section
20 1-229.15), is amended to read as follows:

21 Section 1-229.15. A. Every person who sells or displays
22 tobacco products or vapor products at retail shall post
23 conspicuously and keep so posted at the place of business a sign, as
24 specified by the Alcoholic Beverage Laws Enforcement (ABLE)

1 Commission, stating the following: ~~"IT'S THE LAW. WE DO NOT SELL~~
2 ~~TOBACCO PRODUCTS OR VAPOR PRODUCTS TO PERSONS UNDER 18 YEARS OF~~
3 ~~AGE".~~ "IT'S THE LAW. WE DO NOT SELL TOBACCO PRODUCTS OR VAPOR
4 PRODUCTS TO PERSONS UNDER 21 YEARS OF AGE." The sign shall also
5 provide the toll-free number operated by the Alcoholic Beverage Laws
6 Enforcement (ABLE) Commission for the purpose of reporting
7 violations of the Prevention of Youth Access to Tobacco Act.

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

16 SECTION 7. AMENDATORY 37 O.S. 2011, Section 600.6, as
17 amended by Section 7, Chapter 162, O.S.L. 2014, and as renumbered by
18 Section 174, Chapter 366, O.S.L. 2016 (63 O.S. Supp. 2019, Section
19 1-229.16), is amended to read as follows:

20 Section 1-229.16. A. Every person engaged in the business of
21 selling tobacco products or vapor products at retail shall notify
22 each individual employed by that person as a retail sales clerk that
23 state law:
24

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

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

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

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

1 "I understand that state law prohibits the sale or distribution of
2 tobacco products or vapor products to persons under twenty-one (21)
3 years of age and out-of-package sales, and requires proof of age of
4 purchaser or recipient if an ordinary person would conclude on the
5 basis of appearance that the prospective purchaser or recipient may
6 be under twenty-one (21) years of age. I promise, as a condition of
7 my employment, to obey the law. I understand that violations by me
8 may be punishable by fines, suspension or nonissuance of my driver
9 license. In addition, I understand that violations by me may
10 subject the storeowner to fines or license or permit suspension."

11 SECTION 8. AMENDATORY 37 O.S. 2011, Section 600.7, as
12 amended by Section 8, Chapter 162, O.S.L. 2014, and as renumbered by
13 Section 175, Chapter 366, O.S.L. 2016 (63 O.S. Supp. 2019, Section
14 1-229.17), is amended to read as follows:

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

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

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

22 SECTION 9. AMENDATORY 37 O.S. 2011, Section 600.8, as
23 amended by Section 9, Chapter 162, O.S.L. 2014, and as renumbered by
24

1 Section 176, Chapter 366, O.S.L. 2016 (63 O.S. Supp. 2019, Section
2 1-229.18), is amended to read as follows:

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

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

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

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

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

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

21 D. Upon failure of any person to pay an administrative fine
22 within ninety (90) days of the assessment of the fine, the ABLE
23 Commission shall notify the Department of Public Safety, and the
24 Department shall suspend or not issue a driver license to the person

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

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

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

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

21 B. When a person violates subsection A of this section, the
22 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
23 an administrative fine of not more than Two Hundred Dollars
24 (\$200.00) for each offense.

1 C. Cities and towns may enact and municipal police officers may
2 enforce ordinances prohibiting and penalizing conduct under
3 provisions of this section, but the provisions of municipal
4 ordinances shall be the same as provided for in this section, and
5 the penalty provisions under such ordinances shall not be more
6 stringent than those of this section.

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

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

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

21 C. Any conviction for a violation of a municipal ordinance
22 authorized by the Prevention of Youth Access to Tobacco Act and any
23 compliance checks by a municipal police officer or a county sheriff
24 pursuant to subsection E of this section shall be reported in

1 writing to the ABLE Commission within thirty (30) days of such
2 conviction or compliance check. Such reports shall be compiled in
3 the manner prescribed by the ABLE Commission.

4 D. For the purpose of determining second or subsequent
5 violations, both the offenses penalized by the ABLE Commission as
6 administrative fines and the offenses penalized by municipalities
7 and towns and reported to the ABLE Commission, shall be considered
8 together in such determination.

9 E. Persons under ~~eighteen (18)~~ twenty-one (21) years of age may
10 be enlisted by the ABLE Commission, a municipality or town, or a
11 county to assist in compliance checks and enforcement; provided,
12 such persons may be used to test compliance only if written parental
13 consent has been provided and the testing is conducted under the
14 direct supervision of the ABLE Commission or conducted by another
15 law enforcement agency if such agency has given written notice to
16 the ABLE Commission in the manner prescribed by the ABLE Commission.
17 Municipalities which have enacted municipal ordinances in accordance
18 with the Prevention of Youth Access to Tobacco Act may conduct,
19 pursuant to rules of the ABLE Commission, compliance checks without
20 prior notification to the ABLE Commission and shall be exempt from
21 the written notice requirement in this subsection. This subsection
22 shall not apply to the use of persons under ~~eighteen (18)~~ twenty-one
23 (21) years of age to test compliance if the compliance test is being
24 conducted by or on behalf of a retailer of cigarettes, as defined in

1 Section 301 of Title 68 of the Oklahoma Statutes, at any location
2 the retailer of cigarettes is authorized to sell cigarettes. Any
3 other use of persons under ~~eighteen (18)~~ twenty-one (21) years of
4 age to test compliance shall be unlawful and punishable by the ABLE
5 Commission by assessment of an administrative fine of One Hundred
6 Dollars (\$100.00).

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

1 the Oklahoma Tax Commission of the licensee or sales tax permit
2 holder of the location at which the violation occurred and the ABLE
3 Commission receives delivery confirmation from the U.S. Postal
4 Service.

5 G. Upon request of a storeowner or a municipality which has
6 enacted ordinances in accordance with the Prevention of Youth Access
7 to Tobacco Act, the ABLE Commission is hereby authorized to provide
8 information on any Prevention of Youth Access to Tobacco Act offense
9 of any applicant for employment or employee of the storeowner.

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

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

21 Section 1-229.26. A. It is unlawful for any person to sell,
22 give or furnish in any manner to another person who is under
23 ~~eighteen (18)~~ twenty-one (21) years of age any material or device
24 used in the smoking, chewing, or other method of consumption of

1 tobacco products or vapor products, including cigarette papers,
2 pipes, holders of smoking materials of all types, and other items
3 designed primarily for the smoking or ingestion of tobacco products
4 or vapor products.

5 B. When a person violates subsection A of this section, the
6 Alcoholic Beverage Laws Enforcement (ABLE) Commission shall impose
7 an administrative fine of not more than One Hundred Dollars
8 (\$100.00) for each offense.

9 SECTION 13. AMENDATORY Section 6, Chapter 369, O.S.L.
10 2017 (63 O.S. Supp. 2019, Section 1-1530), is amended to read as
11 follows:

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

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

21 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
22 February 17, 2020 - DO PASS
23
24