

Hall of the House of Representatives

87th General Assembly - Regular Session, 2009

Amendment Form

Subtitle of House Bill No. 1858

"TO AMEND VARIOUS ARKANSAS LAWS CONCERNING THE REGULATION OF
TOBACCO PRODUCTS."

Amendment No. 1 to House Bill No. 1858.

Amend House Bill No. 1858 as originally introduced:

Page 3, delete lines 10 and 11 and substitute the following:

"(1) Be considered a law enforcement officer by the Arkansas Commission on Law Enforcement Standards and Training under § 12-9-101 et seq.; and"

AND

Page 3, delete lines 12 through 16 and substitute the following:

"(2) Have statewide law enforcement authority."

AND

Page 3, delete lines 18 through 33 and substitute the following:

"SECTION 6. Arkansas Code § 5-27-227 is amended to read as follows:
5-27-227. Providing minors with tobacco products and cigarette papers –
Purchase, use, or possession prohibited – Self-service displays prohibited –
Placement of tobacco vending machines.

(a)(1) It is unlawful for any person to give, barter, or sell to a minor:

~~(1)(A)~~ Tobacco in any form; or

~~(2)(B)~~ A cigarette paper.

(2) A person who pleads guilty or nolo contendere to or is found guilty of violating subdivision (a)(1) of this section is guilty of a violation and is subject to a fine not to exceed one hundred dollars (\$100) per violation.

(3) An employee of an Arkansas Retail Cigarette and Tobacco permit holder who violates subdivision (a)(1) of this section is subject to a fine not to exceed one hundred dollars (\$100) per violation.

~~(b) It is unlawful for any minor:~~

~~(1) Unless acting as an agent of the minor's employer within the scope of employment, to use or possess:~~

~~(A) Tobacco in any form; or~~



- ~~(B) A cigarette paper;~~
- ~~(2) To purchase or attempt to purchase:
 - ~~(A) Tobacco in any form; or~~
 - ~~(B) A cigarette paper; or~~~~
- ~~(3) For the purpose of obtaining or attempting to obtain tobacco in any form or a cigarette paper, to use any:
 - ~~(A) Falsified identification; or~~
 - ~~(B) Identification other than his or her own.~~~~

~~(c)(1) It is not an offense under subdivisions (b)(1) or (2) of this section if a minor was acting at the direction of an employee or authorized agent of a governmental agency authorized to enforce or ensure compliance with a law relating to the prohibition of the sale of tobacco in any form or a cigarette paper to a minor.~~

~~(2) Any minor used in the manner described in subdivision (c)(1) of this section by a governmental agency shall display the appearance of a minor.~~

~~(3)(A) If questioned by a retailer or an agent or employee of a retailer about his or her age, the minor shall state his or her actual age and shall present a true and correct identification if verbally asked to present it.~~

~~(B) If verbally asked for it, any failure on the part of the minor to provide true and correct identification is a defense to any action pursuant to this section or a civil action under § 26-57-257.~~

~~(4) No minor is subject to arrest or search by any law enforcement officer merely on the ground that the minor has or may have possession of tobacco or a cigarette paper.~~

~~(d) No person shall engage or direct a minor to violate any provision of this section for purposes of determining compliance with a provision of this section unless the person has procured the written consent of a parent or guardian of the minor to so engage or direct the minor and the person is:~~

~~(1) An officer having authority to enforce a provision of this section;~~

~~(2) An employee of the Arkansas Tobacco Control Board or a prosecuting attorney;~~

~~(3) An authorized representative of a business acting pursuant to a self-compliance program designed to increase compliance with this section;~~

~~(4) An employee or authorized representative of the Department of Health; or~~

~~(5) An employee or authorized agent of a governmental agency authorized to enforce or ensure compliance with a provision of this section.~~

(b)(1) It is unlawful for a minor to:

(A) Use or possess or to purchase, or attempt to purchase:

(i) Tobacco in any form; or

(ii) Cigarette papers; or

(B) For the purpose of obtaining or attempting to obtain tobacco in any form or cigarette papers, falsely represent himself or herself to be eighteen (18) years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the minor's age.

(2) Any cigarettes, tobacco products, or cigarette papers found in the possession of a minor may be confiscated and destroyed by a law enforcement officer.

(c)(1) It is not an offense under subsection (b) of this section if:

(A) The minor was acting at the direction of an authorized agent of the Arkansas Tobacco Control Board to enforce or ensure compliance with laws relating to the prohibition of the sale of tobacco in any form or cigarette papers to minors;

(B) The minor was acting at the direction of an authorized agent of the Department of Health to compile statistical data relating to the sale of tobacco in any form or cigarette papers to minors;

(C) The minor was acting at the request of an Arkansas Retail Cigarette and Tobacco permit holder to assist the permit holder by performing a check on the permit holder's own retail business to see if the permit holder's employees would sell tobacco or cigarette papers to the minor; or

(D) The minor was acting as an agent of a retail permit holder within the scope of employment.

(2) A minor performing activities under subdivision (c)(1) of this section shall:

(A) Display the appearance of a minor;

(B) Have the written consent of the minor's parent or guardian to perform the activity on file with the agency utilizing the minor; and

(C)(i) Present a true and correct identification if asked.

(ii) Any failure on the part of a minor to provide true and correct identification upon request is a defense to any action under this section or a civil action under § 26-57-256.

~~(e)~~(d) Any person who sells tobacco in any form or a cigarette paper has the right to deny the sale of any tobacco in any form or a cigarette paper to any person.

~~(f)~~(e) It is unlawful for any person who has been issued a permit or a license under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., to fail to display in a conspicuous place or on each vending machine a sign indicating that the sale of tobacco products to or purchase or possession of tobacco products by a minor is prohibited by law.

~~(g)~~(f) It is unlawful for any manufacturer whose tobacco product is distributed in this state and any person who has been issued a permit or license under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., to distribute a free sample of any tobacco product or coupon that entitles the holder of the coupon to any free sample of any tobacco product:

(1) In or on any public street or sidewalk within five hundred feet (500') of any playground, public school, or other facility when the playground, public school, or other facility is being used primarily by minors for recreational, educational, or other purposes; or

(2) To any minor.

~~(h)~~(g)(1)(A) It is unlawful for any person that has been issued a permit or license under the Arkansas Tobacco Products Act of 1977, § 26-57-201 et seq., to sell or distribute a cigarette product through a self-service display.

(B) Subdivision ~~(h)(1)(A)~~(g)(1)(A) of this section does not apply to a:

(i) Vending machine that complies with subdivision ~~(i)(1)(A)~~(h)(1)(A) of this section; or

(ii) Retail tobacco store.

(2) As used in subdivision ~~(h)(1)(g)(1)~~ of this section:

(A) "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental; and

(B) "Self-service display" means a display:

(i) That contains a cigarette product;

(ii) That is located in an area where customers are permitted; and

(iii) In which the cigarette product is readily accessible to a customer without the assistance of a salesperson.

~~(i)(h)(1)(A)~~ Except as provided in subdivision ~~(i)(2)(h)(2)~~ of this section, it is unlawful for any person who owns or leases a tobacco vending machine to place a tobacco vending machine in a public place.

(B) As used in subdivision ~~(i)(1)(A)(h)(1)(A)~~ of this section, "public place" means a publicly or privately owned place to which the public or a substantial number of people have access.

(2) A tobacco vending machine may be placed in a:

(A) Restricted area within a factory, business, office, or other structure to which a member of the general public is not given access;

(B) Permitted premises that has a permit for the sale or dispensing of an alcoholic beverage for on-premises consumption that restrict entry to a person twenty-one (21) years of age or older; or

(C) Place where the tobacco vending machine is under the supervision of the owner or an employee of the owner.

~~(j)(i)(1)~~ Any retail permit holder or license holder who violates any provision in this section is deemed guilty of a violation and subject to ~~the following penalties under § 26-57-256+.~~

~~(A) If the alleged violator has received a notice of an alleged violation from the Arkansas Tobacco Control Board or other agency or official with the authority to assess a penalty containing the information specified in this subchapter, a fine not to exceed two hundred fifty dollars (\$250) for a first violation within a forty eight month period;~~

~~(B) For a second violation within a forty eight month period:~~

~~(i) A fine not to exceed five hundred dollars (\$500); and~~

~~(ii) Suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed two (2) days;~~

~~(C) For a third violation within a forty eight month period:~~

~~(i) A fine not to exceed one thousand dollars (\$1,000); and~~

~~(ii) Suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed seven (7) days;~~

~~(D) For a fourth or subsequent violation within a forty eight month period:~~

~~(i) A fine not to exceed two thousand dollars (\$2,000); and~~

~~(ii) Suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed fourteen (14) days; and~~

~~(E) For a fifth violation within a forty eight month period, the license or permit enumerated in § 26-57-219 may be revoked.~~

~~(2) Upon any revocation or suspension of a permit or license under a provision of subdivision (j)(1) of this section, the person shall not be issued any new permit or license to distribute or sell a tobacco product during the period of suspension or revocation.~~

~~(k)(j)(1)~~ A notice of alleged violation of this section shall be given to the holder of a retail permit or license or an agent of the holder within ten (10) days of the alleged violation.

(2)(A) The notice shall contain the date and time of the alleged violation.

(B)(i) The notice shall also include either the name of the person making the alleged sale or information reasonably necessary to determine the location in the store that allegedly made the sale.

(ii) When appropriate, information under subdivision ~~(k)(j)~~(2)(B)(i) of this section should include, but not be limited to, the:

(a) Cash register number;

(b) Physical location of the sale in the store; and

(c) If possible, the lane or aisle number.

~~(l)(k)~~ Notwithstanding the provisions of subsection ~~(j)(i)~~ of this section, the court shall consider the following factors when reviewing a possible violation:

(1) The business has adopted and enforced a written policy against selling cigarettes or tobacco products to minors;

(2) The business has informed its employees of the applicable laws regarding the sale of cigarettes and tobacco products to minors;

(3) The business has required employees to verify the age of a cigarette or tobacco product customer by way of photographic identification;

(4) The business has established and imposed disciplinary sanctions for noncompliance; and

(5) That the appearance of the purchaser of the tobacco in any form or cigarette papers was such that an ordinary prudent person would believe him or her to be of legal age to make the purchase.

~~(m) Any cigarette or tobacco product found in the possession of a minor may be confiscated.~~

~~(n) An employee of a permit holder who violates § 5-27-227 is subject to a fine not to exceed one hundred dollars (\$100) per violation.~~

~~(o)(l)~~ A person convicted of violating any provision of this section whose permit or license to distribute or sell a tobacco product is suspended or revoked upon conviction shall surrender to the court any permit or license to distribute or sell a tobacco product and the court shall transmit the permit or license to distribute or sell a tobacco product to the Director of the Department of Finance and Administration and instruct the Director of the Arkansas Tobacco Control Board:

(1) To suspend or revoke the person's permit or license to distribute or sell a tobacco product and to not renew the permit or license; and

(2) Not to issue any new permit or license to that person for the period of time determined by the court in accordance with this section."

AND

Page 4, delete line 30 and substitute the following:

"(a) No person shall deal with, deliver or cause to be delivered to any retailer or consumer, or"

AND

Page 5, delete lines 8 through 10

AND

Page 5, delete lines 27 and 28 and substitute the following:

"(3) Every salesperson of any tobacco product in this state who contacts a retailer in this state for the purpose of soliciting or taking and processing orders for the sale of tobacco products, or who through contact delivers or causes delivery of any tobacco product to a retailer in this state, shall first secure a salesperson's license. Application shall be made by the"

AND

Page 11, line 36, delete "§ 5-27-227(a)" and substitute "§ 5-27-227"

AND

Page 12, delete lines 19 and 20 and substitute the following:

"(5) For a fifth or subsequent violation within a forty-eight month period, in addition to any civil penalties authorized by this section, the license or permit under § 26-57-219 may be revoked."

AND

Page 13, line 14, delete "§ 5-27-227(a)" and substitute "§ 5-27-227"

AND

Page 13, line 32, delete "§ 5-27-227(a)" and substitute "§ 5-27-227"

AND

Page 14, delete line 1 and substitute the following:

"accumulated against a new owner of the same retail location.

(k) All penalties collected under this section shall be deposited into the State Treasury as general revenues."

AND

Page 21, delete line 22 and substitute the following:

"violation of subdivision (c)(1) of this section."

The Amendment was read _____
By: Representative Betts
MBM/BGS - 03-18-2009 13:02 _____
MBM245 Chief Clerk