

1 State of Arkansas  
2 80th General Assembly  
3 Regular Session, 1995

# A Bill

HOUSE BILL 1952

4 By: Representatives Allen, Hill, Dietz and Young

5

6

7

## For An Act To Be Entitled

8 "AN ACT TO PROVIDE COMPREHENSIVE SMOKING RESTRICTIONS AND  
9 TO PREVENT YOUTH ACCESS TO TOBACCO; TO AMEND ARKANSAS CODE  
10 5-27-227 (a) CONCERNING ACCESS TO TOBACCO BY MINORS; AND  
11 FOR OTHER PURPOSES."

12

13

## Subtitle

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20

21 SECTION 1. Definitions.

22 As used in Sections 1 to 8 of this act, unless the context requires  
23 otherwise:

24 (1) "Distribute" means to sell, furnish, give or provide tobacco  
25 products, including tobacco product samples, to the ultimate consumer.

26 (2) "Division" means the division authorized by the Governor to  
27 perform the functions set forth in *Section 5 of this act*.

28 (3) "Proof of age" means a driver's license or other documentary or  
29 written evidence that purports to establish that the person is eighteen (18)  
30 years of age or older.

31 (4) "Sample" means a tobacco product distributed to members of the  
32 general public at no cost for the purpose of promoting the product.

33 (5) "Tobacco product" means any product that contains tobacco and is  
34 intended for human consumption.

35 (6) "Vending machine" means any mechanical, electric or electronic

1 self-service device which, upon insertion of money, tokens or any other form  
2 of payment, automatically dispenses tobacco products.

3

4 SECTION 2. Vending machines.

5 (a) It shall be unlawful to sell tobacco products dispensed through a  
6 vending machine to any person under eighteen (18) years of age.

7 (b) It shall be unlawful for any person under eighteen (18) years of  
8 age to purchase tobacco products dispensed through a vending machine.

9 (c) In addition to the restrictions and requirements of § 5-27-227(d),  
10 except for vending machines located in offices or factories, or vending  
11 machines located in bars or taverns to which minors are not permitted access,  
12 beginning one (1) year after the effective date of this act, any vending  
13 machine from which tobacco products are dispensed shall be located in the  
14 line of sight of an employee of the establishment where the vending machine  
15 is located.

16 (d) Any owner of an establishment violating this section shall be  
17 subject to a fine of not less than twenty-five dollars (\$25.00) nor more than  
18 fifty dollars (\$50.00) for each violation. A person under eighteen (18)  
19 years of age who violates this section is subject to a fine of twenty-five  
20 dollars (\$25.00) or twenty-five (25) hours of community service work for a  
21 first offense within a one-year period, and a fine of fifty dollars (\$50.00)  
22 and fifty (50) hours of community service work for a second or subsequent  
23 offense within a one-year period.

24

25 SECTION 3. Purchase or receipt by minors.

26 (a) It shall be unlawful for a person who has not attained eighteen  
27 (18) years of age to purchase or accept receipt of a tobacco product, or to  
28 present or offer to any person any purported proof of age which is false,  
29 fraudulent, or not actually his or her own, for the purpose of purchasing or  
30 receiving any tobacco product; provided, however, that it shall not be  
31 unlawful for such a person to accept receipt of a tobacco product from a  
32 family member, or from an employer when required in the performance of such  
33 person's duties.

34 (b) A person who violates this section is subject to a fine of twenty-  
35 five dollars (\$25.00) or twenty-five (25) hours of community service work for

1 a first offense within a one-year period, and a fine of fifty dollars (\$50)  
2 and fifty (50) hours of community service work for a second or subsequent  
3 offense within a one-year period.

4

5 SECTION 4. Notification of employees.

6 (a) Each owner of a retail establishment selling or distributing  
7 tobacco products shall notify each individual employed in the retail  
8 establishment as a retail sales clerk that the sale of tobacco products to  
9 any person under eighteen (18) years of age and the purchase of tobacco  
10 products by any person under eighteen (18) years of age are prohibited.

11 (b) The notice to employees that is required in subsection (a) of this  
12 section shall be provided before the person commences work as a retail sales  
13 clerk, or, in the case of a person employed as a retail sales clerk on the  
14 effective date of this section, within thirty (30) days of that date. The  
15 employee shall signify receipt of the notice required by this section by  
16 signing a form that states as follows: "I understand that under the law of  
17 the State of Arkansas it is illegal to sell or distribute tobacco products to  
18 persons under eighteen (18) years of age and that it is illegal for persons  
19 under eighteen (18) years of age to purchase tobacco products."

20 (c) The owner of the retail establishment shall maintain the signed  
21 notice that is required pursuant to subsection (b) of this section in a place  
22 and a manner so as to be easily accessible to the sheriff, chief of police,  
23 or employee thereof, conducting an inspection of the retail establishment for  
24 the purpose of monitoring compliance as provided in Section 5 of this act.

25 (d) Any owner of a retail establishment violating subsections (a) to  
26 (c) of this section shall be subject to a fine of not less than twenty-five  
27 (\$25) dollars nor more than fifty dollars (\$50) for each violation.  
28 It shall be a defense to any action against the owner of a retail  
29 establishment for a violation of § 5-27-227 by an employee of said owner that  
30 the owner obtained from the employee the signed notice required pursuant to  
31 subsection (b) of this section.

32

33 SECTION 5. Enforcement; annual inspections.

34 (a) The provisions of § 5-27-227 and of this act shall be enforced  
35 through actions brought in the circuit or juvenile court, as appropriate, by

1 the prosecuting attorney for the county in which the alleged violation  
2 occurred. Any fine collected for a violation of such provisions shall be  
3 paid to the circuit clerk of the county in which the violation occurred who  
4 shall in turn remit to the general fund of the county. Upon receipt of a  
5 fine for any violation of such provision, the clerk shall promptly notify the  
6 Division of the violation.

7 (b) The sheriffs of the several counties and the chiefs of police of  
8 the several municipalities shall annually conduct random, unannounced  
9 inspections at locations where tobacco products are sold or distributed to  
10 ensure compliance with § 5-27-227 and this act. Persons under eighteen (18)  
11 years of age may be enlisted by such sheriffs or chiefs of police to test  
12 compliance with § 5-27-227 and this act; provided, however, that such persons  
13 may be used to test compliance with § 5-27-227 and this act only if the  
14 testing is conducted under the direct supervision of such sheriffs or chiefs  
15 of police, and written parental consent has been provided after the  
16 consenting parent has received from the sheriff or chief of police written,  
17 detailed information about the duties which such persons under eighteen (18)  
18 years of age will be asked to perform and the methods and procedures to be  
19 employed in carrying out such duties. Any other use of persons under  
20 eighteen (18) years of age to test compliance with § 5-27-227 or this act or  
21 any other prohibition of like or similar import shall be unlawful and shall  
22 be subject to a fine of not less than ten dollars (\$10.00) nor more than  
23 twenty-five dollars (\$25.00) for each violation.

24 (c) The sheriffs of the several counties and the chiefs of police of  
25 the several municipalities *shall* submit the results of all random,  
26 unannounced inspections to the Division. The Division shall prepare annually  
27 for submission to the Secretary of the United States Department of Health and  
28 Human Services the report required by Section 1926 of subpart 1 of part B of  
29 Title XIX of the Federal Public Health Service Act (42 U.S.C. 300x-26). The  
30 report shall be promptly transmitted to the Secretary of the United States  
31 Department of Health and Human Services.

32

33 SECTION 6. Defenses.

34 Proof that the defendant demanded, was shown, and reasonably relied  
35 upon proof of age shall be a defense to any action brought pursuant to

1 subsection (a) or subsection (c) of § 5-27-227.

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3 SECTION 7. Arkansas Code 5-27-227(a) is amended to read as follows:

4 "(a) It shall be unlawful for any person, other than the parent or  
5 guardian, to give, barter, sell, or distribute to a minor under eighteen (18)  
6 years of age, tobacco in any form, including tobacco product samples or  
7 cigarette papers."

8

9 SECTION 8. Statewide uniformity.

10 The General Assembly finds that it is necessary and proper to prescribe  
11 a single, uniform standard of conduct statewide regarding the field of  
12 tobacco regulation, and the General Assembly hereby occupies that field. In  
13 occupying that field, it is the intent of the General Assembly that all  
14 regulation of the sale, distribution, promotion and use of tobacco products  
15 shall by this Act be made uniform throughout the state, and that this Act, as  
16 the means of such regulation, shall be uniformly enforced throughout the  
17 state to ensure the eligibility for and receipt of any federal funds or  
18 grants that the state now receives or may receive relating to the provision  
19 of the Act. However, nothing herein shall affect the validity of any  
20 ordinance, rule or regulation enacted prior to January 1, 1995.

21

22 SECTION 9. Regulating smoking in certain public places.

23 (a) As used in this section, unless the context requires otherwise:

24 (1) "Bar" means any indoor area open to the public devoted to the  
25 sale and service of alcoholic beverages for on-premises consumption and where  
26 the service of food is only incidental to the consumption of such beverages.  
27 Service of food shall be considered incidental if the food service generates  
28 less than forty (40) percent of total annual gross sales. Any bar that  
29 generates forty (40) percent or more of total annual gross sales from the  
30 sale of food for on-premises consumption shall be a food service  
31 establishment.

32 (2) "Designated smoking area" means an indoor area where smoking  
33 is permitted. A designated smoking area shall be separate from non-smoking  
34 areas and shall be designated by appropriate signs which are clearly visible  
35 to patrons within and entering the area. A designated smoking area shall

1 contain ashtrays, containers, or other receptacles for extinguishing smoking  
2 materials. A designated smoking area shall not include service lines or  
3 cashier areas. A designated smoking area shall be situated so as to minimize  
4 the drift of smoke from the smoking area to a non-smoking area within the  
5 same common space.

6 (3) "Designated non-smoking area" means an indoor area where  
7 smoking is not permitted. A designated non-smoking area shall be separate  
8 from smoking areas and shall be designated by appropriate signs which are  
9 clearly visible to patrons within and entering the area.

10 (4) "Food service establishment" means any indoor area open to  
11 the public or portion thereof in which the business is the sale of food for  
12 on-premises consumption and which has an indoor seating capacity of greater  
13 than thirty persons including, but not limited to restaurants, cafeterias,  
14 coffee shops, diners, sandwich shops or short order cafes. A food service  
15 establishment shall not include the bar area of such establishment.

16 (5) "Health care facility" means all enclosed indoor areas in  
17 which health care is provided to the general public (other than areas for  
18 which smoking policy is already established by §§ 20-27-701 through 20-27-  
19 703), including nursing and convalescent homes, physical therapy facilities,  
20 and the offices of optometrists, podiatrists and chiropractors.

21 (6) "Manager" means the owner, lessee, or other person who  
22 controls a public place.

23 (7) "Public place" means any enclosed indoor area that is used  
24 by the general public; provided that the term "public place" shall not  
25 include a hotel or motel guest room or an area of a private business to which  
26 the public is not ordinarily invited, or a private residence, unless such  
27 residence is used only as a health care or licensed child care facility. The  
28 term "public place" shall not include any "government building" as defined in  
29 *Section 10 (a)(5) of this act.*

30 (8) "Swimming pool" means any swimming pool owned or operated by  
31 the state, a county or a municipality, including the entire area within the  
32 pool enclosure.

33 (9) "Smoking" means holding a lighted pipe, cigar, or cigarette  
34 of any kind, or lighting, or emitting or exhaling the smoke of, a pipe,  
35 cigar, or cigarette of any kind.

1 (b) Smoking shall not be permitted and no person shall smoke in the  
2 following public places:

3 (1) Health care facilities, except in private or semi-private  
4 rooms occupied by one or more patients all of whom are smokers who have asked  
5 to be placed in rooms where smoking is permitted;

6 (2) Any indoor facility utilized for the provision of routine or  
7 regular kindergarten, elementary or secondary education or library services  
8 to children;

9 (3) any other indoor facility providing children\_s services to  
10 the extent that smoking is prohibited in such facility by federal law;

11 (4) Polling places;

12 (5) Courtrooms;

13 (6) Rooms, halls, or other places of meeting or public assembly,  
14 during such times as a public meeting is in progress, but only if the room,  
15 hall or place is owned or operated by the state, or a county or municipal  
16 government; provided that this section shall not apply to rooms, halls or  
17 other places when used for meetings of private organizations;

18 (7) Drug stores, grocery stores, libraries and laundromats;

19 (8) Buses, taxis and airport limousines;

20 (9) Elevators accessible to the public;

21 (10) Restrooms, except in public places enumerated in subsection

22 (d); and

23 (11) Swimming pools.

24 (c) Smoking shall not be permitted and no person shall smoke in the  
25 following public places, except in designated smoking areas:

26 (1) Facilities used primarily for exhibiting any motion picture,  
27 lecture, musical recital, stage, or other similar performance;

28 (2) Enclosed walkways in malls and shopping centers;

29 (3) Hotels and motels;

30 (4) Museums and galleries;

31 (5) Banks and retail stores doing business with the general  
32 public, except for retail stores whose primary source of revenue is the sale  
33 of tobacco and tobacco-related products;

34 (6) Food service establishments;

35 (7) Public transportation terminals; and

1           (8) Health spas, roller rinks, bowling alleys, and other indoor  
2 sports or recreation facilities, except pool halls.

3           (d) The provisions of this section shall not apply to the following  
4 facilities, provided that the manager posts a conspicuous notice on each  
5 public entrance stating that smoking is permitted in the facility:

6                 (1) Bars and bar areas of food service establishments;

7                 (2) Beauty salons and barber shops;

8                 (3) Retail stores whose primary source of revenue is sale of  
9 tobacco and tobacco-related products;

10                (4) Offices of tobacco-product manufacturers, wholesalers and  
11 distributors;

12                (5) Physicians' offices and hospitals;

13                (6) Gasoline stations (except as provided by the fire code) and  
14 convenience stores; and

15                (7) Pool halls.

16           (e) (1) The manager of a public place to which this section applies  
17 shall make one of the following designations. The manager may designate:

18                         (A) The entire public place as a non-smoking facility; or

19                         (B) Separate areas of the public place as designated  
20 smoking and non-smoking areas, if permitted by subsection (c); or

21                         (C) The entire public place as a smoking-permitted  
22 facility, if permitted by subsection (d).

23                (2) The manager of a public place, if the entire public place  
24 has been designated a smoking-permitted facility, shall post a conspicuous  
25 notice on each public entrance stating that smoking is permitted in the  
26 facility.

27                (3) The manager of a public place in which smoking is prohibited  
28 or restricted shall place conspicuous signs at each public entrance up to a  
29 maximum of six entrances, and at appropriate places within the public place,  
30 notifying the public that:

31                                 (A) Smoking is prohibited; or

32                                 (B) Smoking is prohibited except within designated smoking  
33 areas; or

34                                 (C) Smoking is permitted except within designated non-  
35 smoking areas.



1           (4) The manager of a public place in which a smoking or a non-  
2 smoking area has been designated shall be responsible for ensuring compliance  
3 with the requirements of this section for establishing designated smoking and  
4 non-smoking areas.

5           (5) The manager of a public place in which smoking is prohibited  
6 or restricted shall not knowingly permit, or fail to make reasonable efforts  
7 to prevent, smoking in any area where smoking is prohibited. The manager may  
8 fulfill this duty by asking smokers to refrain from smoking in a non-smoking  
9 area or directing smokers to designated smoking areas.

10           (6) Nothing in this statute shall preclude the manager of a  
11 public place enumerated in subsections (c) or (d) from designating the entire  
12 place as non-smoking, or from designating part of a public place enumerated  
13 in subsection (d) as a non-smoking area.

14           (f) The violation of any provision of this section shall be punishable  
15 by a fine of not less than ten dollars (\$10) and not more than one hundred  
16 dollars (\$100), except that an inadvertent first offender may be given a  
17 warning. Each day a violation of this section continues shall be a separate  
18 offense.

19           (g) Nothing in this section excuses noncompliance with any federal  
20 law, any federal regulation thereunder, any state law, or any state  
21 regulation adopted for the University of Arkansas or for the public schools,  
22 which prohibits or otherwise regulates smoking. The definitions set forth in  
23 subsection (a) shall apply solely to this section and shall not be construed  
24 to repeal or otherwise modify any definition set forth in any other section  
25 of the Arkansas Code of 1987 Annotated.

26

27           SECTION 10. Regulating smoking in government buildings and government  
28 vehicles.

29           (a) As used in this section, unless the context requires otherwise:

30                   (1) "Agency director" means the appointed executive or  
31 administrative head of each state government agency, board, or commission,  
32 the president or head of each state-supported institution of higher  
33 education, or the elected public official in charge of a constitutional  
34 executive department of state government.

35                   (2) "Common area" means any indoor area of a government

1 building, whether open to the general public or not, that is not a work area,  
2 including but not limited to lobbies, hallways and bathrooms. A "common  
3 area" may include any area where work is performed if employees are not  
4 stationed in the area, including, for example, photocopying rooms and supply  
5 rooms that are available for common use as needed but are otherwise  
6 unattended.

7           (3) "Designated non-smoking area" means an indoor area where  
8 smoking is not permitted. A designated non-smoking area shall be separate  
9 from smoking areas and shall be designated by appropriate signs which are  
10 clearly visible to persons within and entering the area.

11           (4) "Designated smoking area" means an indoor area in which  
12 smoking is permitted. A designated non-smoking area shall be separate from  
13 smoking areas and shall be designated by appropriate signs which are clearly  
14 visible to persons within and entering the area.

15           (5) "Government building" means any building or structure or  
16 area of a building or structure owned or leased by the State of Arkansas, an  
17 agency, board or commission of the state, a state supported institution of  
18 higher education, or by a political subdivision of the state or its  
19 departments or agencies, except buildings or areas in the State Capitol that  
20 are under the control of the General Assembly, buildings and structures or  
21 areas of any buildings and structures of the Arkansas Department of  
22 Correction where inmates live, sleep, and are housed full-time or buildings  
23 or areas of buildings of any county jail or county criminal detention  
24 facility under the control of a county sheriff where inmates live and are  
25 housed full-time.

26           (6) "Government vehicle" means any motor vehicle owned or leased  
27 by the State of Arkansas, an agency, board or commission of the state, a  
28 state supported institution of higher education, or by a political  
29 subdivision of the state or its departments or agencies.

30           (7) "Smoking" means holding a lighted pipe, cigar, or cigarette  
31 of any kind, or lighting, or emitting or exhaling the smoke of, a pipe,  
32 cigar, or cigarette of any kind.

33           (8) "Work area" means any indoor area of a government building to  
34 which the public does not have unrestricted access and in which employees are  
35 stationed for the purpose of performing work-related duties.

1 (b) Except as otherwise provided in subsections (d) of this section,  
2 no person shall smoke in a government building.

3 (c)(1) No person shall smoke in a government vehicle unless all  
4 occupants of the vehicle consent.

5 (2) The person who manages or controls any government vehicle  
6 shall take reasonable steps to ensure compliance with this subsection (c) by:

7 (A) Posting appropriate signs; and

8 (B) Requesting persons who are smoking unlawfully in  
9 violation of this subsection (c) to refrain from smoking.

10 (d)(1) With respect to each government building under their ownership  
11 or control, agency directors, mayors of cities or towns, and county judges  
12 shall formulate a smoking policy that makes one of the following  
13 designations:

14 (A) smoking is prohibited; and

15 (B) smoking is prohibited except within designated smoking  
16 areas; or

17 (C) smoking is permitted except within designated non-  
18 smoking areas.

19 (2) In government buildings where the policy does not entirely  
20 prohibit smoking, agency directors, mayors and county judges shall:

21 (A) designate smoking areas or non-smoking areas as  
22 appropriate;

23 (B) have the right to designate any work area for smoking  
24 if all employees assigned to the area agree to the designation;

25 (C) have the right to permit smoking in conference rooms  
26 and meeting rooms, provided everyone in the room agrees that smoking may be  
27 permitted;

28 (D) designate smoking areas within common areas, provided,  
29 however, that the total square footage of such smoking areas shall not exceed  
30 forty (40) percent of the total square footage of the common areas in a  
31 particular building; and

32 (E) in establishing smoking areas in work areas and common  
33 areas, use existing barriers and ventilation systems to minimize the drift of  
34 smoke to non-smoking areas.

35 (3) In those buildings or areas in the State Capitol that are

1 under the control of the General Assembly, the Senate and House of  
2 Representatives shall have the authority to designate smoking areas or non-  
3 smoking areas by the adoption of Senate or House Rules for that purpose.

4 (e)(1) The manager of a government building in which smoking is  
5 prohibited or restricted shall, in accordance with the smoking policy for  
6 that building, place conspicuous signs at each public entrance and at  
7 appropriate places within the government building, containing notice that:

8 (A) smoking is prohibited; or

9 (B) smoking is prohibited, except within designated  
10 smoking areas; or

11 (C) smoking is permitted, except within designated non-  
12 smoking areas.

13 (2) It shall be the responsibility of the appropriate agency  
14 director, mayor or county judge to ensure that the smoking policy in each  
15 government building is properly enforced. The manager of a government  
16 building in which smoking is prohibited or restricted shall not knowingly  
17 permit, or fail to make reasonable efforts to prevent, smoking in any area  
18 where smoking is prohibited. The manager may fulfill this duty by asking  
19 smokers to refrain from smoking in a non-smoking area or directing smokers to  
20 designated smoking areas.

21 (f)(1) Any person may allege a violation of this section by filing a  
22 written complaint with the appropriate agency director, mayor or county  
23 judge. The complaint shall state the name of the complainant, the date, and  
24 the nature of the alleged violation. The agency director, mayor or county  
25 judge shall investigate each complaint and, where appropriate, take remedial  
26 action to ensure compliance with this section. The agency director, mayor or  
27 county judge shall keep a written record of any investigation or remedial  
28 action.

29 (2) Any person who desires to register a complaint under this  
30 section may do so with the Director of the Department of Labor. The  
31 complaint must be accompanied by a statement signed by the complainant  
32 attesting that the complainant has made substantially the same complaint to  
33 the appropriate agency director, mayor or county judge and that said agency  
34 director, mayor or county judge has failed to take adequate action to resolve  
35 the complaint within a reasonable period of time. If, during any

1 investigation that may ensue, the director or any person authorized by the  
2 director should find that the complainant did not in fact previously make  
3 substantially the same complaint to the appropriate agency director, mayor or  
4 county judge, the director shall immediately dismiss the complaint.

5           (3) After a complaint has been properly filed, the director of  
6 the Department of Labor or any person authorized by the director shall have  
7 authority to inquire into, hear, and decide whether a violation of this  
8 section has occurred.

9           (4) If, after a hearing, the Director of the Department of Labor  
10 or any person authorized by the director finds that a violation of this  
11 section has occurred, the director shall issue a citation demanding that the  
12 agency director, mayor, or county judge comply with this section and take  
13 appropriate steps to ensure compliance with his or her smoking policies.

14           (g) The Department of Labor shall issue a copy of this section to each  
15 agency director, mayor and county judge. No agency shall promulgate  
16 regulations concerning the subject matter of this act.

17

18           SECTION 11. All provisions of this act of a general and permanent  
19 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
20 Code Revision Commission shall incorporate the same in the Code.

21

22           SECTION 12. If any provision of this act or the application thereof to  
23 any person or circumstance is held invalid, such invalidity shall not affect  
24 other provisions or applications of the act which can be given effect without  
25 the invalid provision or application, and to this end the provisions of this  
26 act are declared to be severable.

27

28           SECTION 13. All laws and parts of laws in conflict with this act are  
29 hereby repealed.

30

31           SECTION 14. EMERGENCY. It is found and determined by the General  
32 Assembly that this act modifies the law concerning the use of tobacco  
33 products and that this act should be given effect immediately in order to  
34 protect the health and welfare of the citizens of this state. Therefore, an  
35 emergency is hereby declared to exist and this act being necessary for the

1 immediate preservation of the public peace, health and safety shall be in  
2 full force and effect from and after its passage and approval.

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*/s/Rep. Allen, et al*