

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Senator Dowd

A Bill

SENATE BILL 508

For An Act To Be Entitled

"COMPREHENSIVE SMOKING RESTRICTION AND PREVENTION OF YOUTH
ACCESS TO TOBACCO ACT OF 1995."

Subtitle

"COMPREHENSIVE SMOKING RESTRICTION AND
PREVENTION OF YOUTH ACCESS TO TOBACCO
ACT OF 1995."

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

SECTION 1. Definitions.

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

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

(2) "Division" means the Weights and Measures Division of the State
Plant Board.

(3) "Photographic identification" means a driver's license or other
generally accepted means of identification that describes the individual as
eighteen (18) years of age or older and contains a photograph or other
likeness of the individual and appears on its face to be valid.

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

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

(6) "Vending machine" means any mechanical, electric or electronic
self-service device which, upon insertion of money, tokens or any other form
of payment, automatically dispenses tobacco products.

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
26
27
28
29
30
31
32
33
34
35

SECTION 2. Vending machines.

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

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

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

(d) Any owner of an establishment violating this section shall be subject to a fine of not less than ten dollars (\$10) nor more than twenty-five dollars (\$25) for each violation.

SECTION 3. Purchase or receipt by minors.

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

(b) A person who violates this section is subject to a fine of fifty dollars (\$50) or twenty-five (25) hours of community service work for a first offense within a one-year period, and a fine of fifty dollars (\$50) and fifty (50) hours of community service work for a second or subsequent offense within a one-year period.

SECTION 4. Notification of employees.

(a) Each owner of a retail establishment selling or distributing tobacco products shall notify each individual employed in the retail

1 establishment as a retail sales clerk that the sale of tobacco products by
2 any person under eighteen (18) years of age are prohibited.

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

12 (c) The owner of the retail establishment shall maintain the signed
13 notice that is required pursuant to subsection (b) of this section in a place
14 and a manner so as to be easily accessible to any Division employee
15 conducting an inspection of the retail establishment for the purpose of
16 monitoring compliance as provided in section 5 of this act.

17 (d) Any owner of a retail establishment violating subsections (a) to
18 (c) of this section shall be subject to a fine of not less than ten dollars
19 (\$10) nor more than twenty-five dollars (\$25) for each violation.

20

21 SECTION 5. Enforcement; annual inspections.

22 (a) The provisions of § 5-27-227 and of this act shall be enforced
23 through actions brought in the circuit court by the prosecuting attorney for
24 the county in which the alleged violation occurred. Any fine collected for a
25 violation of such provisions shall be paid to the circuit clerk of the county
26 in which the violation occurred who shall in turn remit to the general fund
27 of the county. Upon receipt of a fine for any violation of such provision,
28 the clerk shall promptly notify the Division of the violation.

29 (b) The Division shall annually conduct random, unannounced
30 inspections at locations where tobacco products are sold or distributed to
31 ensure compliance with § 5-27-227 and this act. Persons under eighteen (18)
32 years of age may be enlisted by the Division to test compliance with § 5-27-
33 227 and this act; provided, however, that such persons may be used to test
34 compliance with § 5-27-227 and this act only if the testing is conducted
35 under the direct supervision of the Division, and written parental consent

1 has been provided after the consenting parent has received from the Division
2 written, detailed information about the duties which such persons under
3 eighteen (18) years of age will be asked to perform and the methods and
4 procedures to be employed in carrying out such duties. Any other use of
5 persons under eighteen (18) years of age to test compliance with § 5-27-227
6 or this act or any other prohibition of like or similar import shall be
7 unlawful and any person or persons directing or supervising such other use
8 shall be subject to a fine of not less than ten dollars (\$10) nor more than
9 twenty-five dollars (\$25) for each violation.

10 (c) The Division shall prepare annually for submission to the
11 Secretary of the United States Department of Health and Human Services the
12 report required by Section 1926 of subpart 1 of part B of Title XIX of the
13 Federal Public Health Service Act (42 U.S.C. 300x-26). The report shall be
14 promptly transmitted to the Secretary of the United States Department of
15 Health and Human Services.

16

17 SECTION 6. Defenses.

18 Proof that the defendant demanded, was shown, and reasonably relied
19 upon photographic identification or other written or documentary evidence
20 that the prospective purchaser or recipient was eighteen (18) years of age or
21 older shall be a defense to any action brought pursuant to subsection (a) or
22 subsection (c) of § 5-27-227.

23

24 SECTION 7. Arkansas Code 5-27-227(a) and (b) is amended to read as
25 follows:

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

30 (b) It shall be unlawful for any person who has been issued a permit
31 or a license under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201
32 et seq., as amended, to fail to display prominently, at each place where
33 over-the-counter or vending machine sales are made, a sign that meets the
34 following requirements:

35 (1) The sign shall contain in red lettering at least one-half

1 inch (1/2") high on a white background, IT IS A VIOLATION OF THE LAW FOR
2 CIGARETTES OR OTHER TOBACCO PRODUCTS TO BE SOLD TO A PERSON UNDER THE AGE OF
3 18_; and

4 (2) The sign shall include a depiction of a pack of cigarettes
5 at least two inches (2") high defaced by a red diagonal diameter of a
6 surrounding red circle, and shall have a reading surface up to 93.5 square
7 inches."

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 product regulation, and the General Assembly hereby occupies that
13 field. In occupying that field, it is the intent of the General Assembly
14 that all regulation of the sale, distribution, promotion and use of tobacco
15 products shall by this Act be uniformly enforced throughout the state to
16 ensure the eligibility for and receipt of any federal funds or grants that
17 the state now receives or may receive relating to the provision of the Act.
18 Nothing herein shall affect the validity of any ordinance, rule or regulation
19 enacted prior to January 1, 1995.

20

21 SECTION 9. Regulating smoking in certain public places.

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

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

30 (2) "Designated smoking area" means an indoor area where smoking
31 is permitted. A designated smoking area shall be separate from non-smoking
32 areas and shall be designated by appropriate signs which are clearly visible
33 to patrons within and entering the area. A designated smoking area shall
34 contain ashtrays, containers, or other receptacles for extinguishing smoking
35 materials. A designated smoking area shall not include service lines or

1 cashier areas. A designated smoking area shall be situated so as to minimize
2 the drift of smoke from the smoking area that enters a non-smoking area
3 within the same common space.

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

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

14 (5) "Health care facility" means all enclosed indoor areas in
15 which health care is provided to the general public (other than areas for
16 which smoking policy is already established by §§ 20-27-701 through 20-27-
17 703), including nursing and convalescent homes, physical therapy facilities,
18 and the offices of optometrists, podiatrists and chiropractors; provided
19 however, the term "health care facility" does not include hospitals.

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

22 (7) "Public place" means any enclosed indoor area that is used
23 by the general public; provided that the term "public place" shall not
24 include a hotel or motel guest room or an area of a private business to which
25 the public is not ordinarily invited, or a private residence, unless such
26 residence is used only as a health care or licensed child care facility.

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

30 (9) "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 (b) Smoking shall not be permitted and no person shall smoke in the
34 following public places:

35 (1) Health care facilities, except in private or semi-private

1 rooms occupied by one or more patients all of whom are smokers who have asked
2 to be placed in rooms where smoking is permitted;

3 (2) Licensed child care facilities, except in areas in which
4 children being cared for are not normally present;

5 (3) Polling places;

6 (4) Courtrooms;

7 (5) Drug stores, grocery stores, banks, libraries and self-
8 service laundries;

9 (6) Buses, taxis and airport limousines;

10 (7) Elevators accessible to the public;

11 (8) Rest rooms, except in public places enumerated in subsection
12 (d); and

13 (9) Swimming pools.

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

16 (1) Facilities used primarily for exhibiting any motion picture,
17 lecture, musical recital, stage, or other similar performance, except when
18 smoking is part of a stage production;

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

20 (3) Hotels and motels;

21 (4) Museums and galleries;

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

25 (6) Food service establishments;

26 (7) Public transportation terminals; and

27 (8) Heath spas, roller rinks, bowling alleys, and other indoor
28 sports or recreation facilities, except pool halls.

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

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

33 (2) Beauty salons and barber shops;

34 (3) Offices of tobacco-product manufacturers, wholesalers and
35 distributors;

1 (4) Physicians_ offices;

2 (5) Gasoline stations (except as provided by the fire code) and
3 convenience stores;

4 (6) Pool halls; and

5 (7) Retail stores whose primary source of revenue is sale of
6 tobacco and tobacco-related products.

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

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

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

12 (C) The entire public place as a smoking-permitted
13 facility, if permitted by subsection (d)

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

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

22 (A) Smoking is prohibited; or

23 (B) Smoking is prohibited except within designated smoking
24 areas; or

25 (C) Smoking is permitted except within designated non-
26 smoking areas.

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

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

1 (6) Nothing in this statute shall preclude the manager of a
2 public place enumerated in subsections (c) or (d) from designating the entire
3 place as non-smoking, or from designating part of a public place enumerated
4 in paragraph (d) as a non-smoking area.

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

10 (g) Nothing in this section excuses noncompliance with any state or
11 federal law, federal or state regulation thereunder (including any rule
12 adopted for the University of Arkansas or for the public schools), which
13 prohibits or otherwise regulates smoking.

14 (h) This act does not apply to hospitals.

15

16 SECTION 10. All provisions of this act of a general and permanent
17 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
18 Code Revision Commission shall incorporate the same in the Code.

19

20 SECTION 11. If any provision of this act or the application thereof to
21 any person or circumstance is held invalid, such invalidity shall not affect
22 other provisions or applications of the act which can be given effect without
23 the invalid provision or application, and to this end the provisions of this
24 act are declared to be severable.

25

26 SECTION 12. All laws and parts of laws in conflict with this act are
27 hereby repealed.

28

29 SECTION 13. EMERGENCY. It is hereby found and determined by the
30 General Assembly that this act is designed to strengthen the law to prevent
31 minors from using tobacco products and that this act should be given effect
32 immediately in or order to protect the health and welfare of minors as soon
33 as possible. Therefore, an emergency is hereby declared to exist and this
34 act being necessary for the immediate preservation of the public peace,
35 health and safety shall be in full force and effect from and after its

1 passage and approval.
2
3
4
5
6
7
8
9
10

/s/Dowd