

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

As Engrossed: H3/6/97 H3/7/97 H3/20/97

A Bill

HOUSE BILL 1610

4
5 *By: Representatives Dietz and Hausam*
6 *By: Senator Hopkins*

For An Act To Be Entitled

10 "AN ACT TO ENHANCE THE LAW PROHIBITING THE SALE OF TOBACCO
11 PRODUCTS TO MINORS; AND FOR OTHER PURPOSES."

Subtitle

14 "TO ENHANCE THE LAW PROHIBITING THE SALE
15 OF TOBACCO PRODUCTS TO MINORS."

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

19 SECTION 1. DEFINITIONS.

20 As used in this act, unless the context requires otherwise:

21 (1) "Designated agency" means the agency designated by the Governor to
22 perform the functions set forth in sections 5 and 6.

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

25 (3) "Proof of age" means a drivers license or other documentary or
26 written evidence that purports to establish that the person is eighteen (18)
27 years of age or older.

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

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

33 SECTION 2. RETAILER TRAINING.

34 (a) Every person engaged in the business of selling tobacco products at
35 retail shall notify each individual employed by that person as a retail sales
36 clerk that state law (1) prohibits the sale or distribution of tobacco

1 products to any person under eighteen (18) years of age and the purchase or
2 receipt of tobacco products by any person under eighteen (18) years of age,
3 and (2) requires that proof of age be demanded from a prospective purchaser or
4 recipient if the prospective purchaser or recipient appears to be under
5 twenty-seven (27) years of age. This notice shall be provided before the
6 individual commences work as a retail sales clerk, or, in the case of an
7 individual employed as a retail sales clerk on the date when this section
8 becomes effective, within thirty (30) days after that date. The individual
9 shall signify that he or she has received the notice required by this section
10 by signing a form stating as follows:

11 "I understand that state law prohibits the sale or distribution of
12 tobacco products to persons under eighteen (18) years of age and requires that
13 proof of age be demanded from a prospective purchaser or recipient if the
14 prospective purchaser or recipient appears to be under twenty-seven (27) years
15 of age. I promise, as a condition of my employment, to observe this law."

16 (b) Each form signed by such individual shall indicate the date of
17 signature. The employer shall retain the form signed by each individual
18 employed as a retail sales clerk until one-hundred twenty (120) days after the
19 individual has left the employers employ.

20 (c) Any employer failing to comply with the requirements of this section
21 with respect to any employee shall be deemed guilty of a misdemeanor
22 punishable by a fine of not less than twenty-five dollars (\$25) or more than
23 fifty dollars (\$50) for each violation.

24

25 SECTION 3. PROOF OF AGE DEMAND.

26 (a) It is unlawful for any person engaged in the sale or distribution of
27 tobacco products to fail to demand a photo identification card from a
28 prospective purchaser who appears to be under twenty-seven (27) years of age.

29 (b) Proof that the defendant demanded, was shown, and reasonably relied
30 upon a photo identification card shall be an affirmative defense to any action
31 brought pursuant to Arkansas Code 5-27-227(a) or subsection (a) of this
32 section.

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34 SECTION 4. EMPLOYEE LIABILITY.

35 If a sale in violation of Arkansas Code 5-27-227(a) is made by an
36 employee of an owner of a retail store at which tobacco products are sold or

1 distributed, the employee and the owner shall be guilty of the violation and
2 be subject to the penalty. If the sale is made through a vending machine, the
3 proprietor of the establishment where the machine is located shall be guilty
4 of the violation and be subject to the penalty; provided, however, that if the
5 proprietor has made an employee responsible for supervising the machine, such
6 employee and the proprietor shall be guilty of the violation and be subject to
7 the penalty. If the tobacco product is distributed by an employee engaged in
8 the business of distributing free samples of any tobacco product, the employee
9 and his or her employer shall be guilty of the violation and subject to the
10 penalty.

11

12 SECTION 5. (a) It is unlawful for a person under eighteen (18) years
13 of age to purchase, possess or use any cigarettes or other tobacco products.
14 Persons under eighteen (18) years of age may be enlisted by sheriffs or chiefs
15 of police, the Arkansas Department of Health, or a state agency working with
16 the Food and Drug Administration to test compliance with Arkansas Code 5-27-
17 227 and this act; provided, however, that such persons may be used to test
18 compliance with Arkansas Code 5-27-227 and this act only if the testing is
19 conducted under the direct supervision of sheriffs or chiefs of police or the
20 Arkansas Department of Health or a state agency working with the Food and Drug
21 Administration for the purposes of monitoring illegal sales of tobacco to
22 minors, and written parental consent has been provided after the consenting
23 parent has received from the sheriff or chief of police or Health Department
24 or state agency working with the Food and Drug Administration written
25 information about the duties which such persons under eighteen (18) years of
26 age will be asked to perform and the methods and procedures to be employed in
27 carrying out such duties.

28 (b) Any person who violates the provisions of this section is guilty of
29 a misdemeanor and punishable by a fine of not less than twenty-five dollars
30 (\$25.00) nor more than one hundred dollars (\$100.00).

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32 SECTION 6. ENFORCEMENT - ANNUAL INSPECTIONS.

33 (a) The provisions of Arkansas Code 5-27-227 and of this act shall be
34 enforced through actions brought in the circuit court or municipal court by
35 the prosecuting attorney for the county in which the alleged violation
36 occurred. Any fine collected for a violation of such provision shall be paid

1 to the applicable court clerk of the county in which the violation occurred
2 who shall in turn remit to the general fund of the county. Upon receipt of a
3 fine for any violation of any such provision, the clerk shall promptly notify
4 the designated agency of the violation. In the case of a fine collected for a
5 violation of Arkansas Code 5-27-227(a), the clerk shall notify the designated
6 agency of the name, location, and owner of the retail establishment or the
7 name and address of the owner of the vending machine from which the sale to
8 the minor occurred, as applicable. The designated agency shall annually
9 publish the name, location, and owner of each such retail establishment and
10 the name and address of each such owner of a vending machine and make copies
11 of such information available to any interested party.

12 (b) The State Department of Health shall annually conduct random,
13 unannounced inspections at locations where tobacco products are sold or
14 distributed to ensure compliance with Arkansas Code 5-27-227 and this act.
15 Persons under eighteen (18) years of age may be enlisted by the State
16 Department of Health to test compliance with Arkansas Code 5-27-227 and this
17 act; provided, however, that such persons may be used to test compliance with
18 Arkansas Code 5-27-227 and this act only if the testing is conducted under the
19 direct supervision of the State Department of Health, and written parental
20 consent has been provided after the consenting parent has received from the
21 State Department of Health written, detailed information about the duties
22 which such persons under eighteen (18) years of age will be asked to perform
23 and the methods and procedures to be employed in carrying out such duties.
24 Any other use of persons under eighteen (18) years of age to test compliance
25 with Arkansas Code 5-27-227 or this act or any other prohibition of like or
26 similar import is unlawful and punishable by a fine of not less than ten
27 dollars (\$10) nor more than twenty-five dollars (\$25) for each violation.

28 (c) The State Department of Health shall prepare annually for submission
29 to the Secretary of the United States Department of Health and Human Services
30 the report required by Section 1926 of subpart 1 of part B of Title XIX of the
31 Federal Public Health Service Act (42 U.S.C. 300x-26). The report shall be
32 promptly transmitted to the Secretary of the United States Department of
33 Health and Human Services.

34

35 SECTION 7. AVAILABILITY OF FEDERAL FUNDS.

36 The following federal funds may be expended to the full extent permitted

1 by federal law to support the inspections and enforcement actions authorized
2 by Section 8 and the preparation of the report required to be submitted to the
3 United States Department of Health and Human Services required by such
4 section:

5 (1) The primary set-aside portion of federal block grants for substance
6 abuse prevention and treatment (45 C.F.R. 96.124(b)(1)).

7 (2) The Centers for Disease Control Preventive Health and Health
8 Services Block Grant (42 U.S.C. 300w et seq.).

9 (3) Any other available source of federal funds.

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11 SECTION 8. Arkansas Code 5-27-227(a) is amended to read as follows:

12 "(a) It shall be unlawful for any person, other than the parent or
13 guardian, to give, barter, ~~or~~ sell , or distribute to a minor under eighteen
14 (18) years of age, tobacco in any form or cigarette papers."

15

16 SECTION 9. Subchapter 7, Chapter 27, Title 20 of the Arkansas Code is
17 amended by inserting an additional section at the end thereof to read as
18 follows:

19 "20-27-704. POSTING OF SMOKING POLICIES BY STATE OR LOCAL AGENCIES AND
20 BUSINESS ENTITIES.

21 (a) (1) The term local unit of government means every city of the
22 first class, city of the second class, incorporated town, county, and public
23 school district in this state.

24 (2) The term public building means a structure owned, operated,
25 or occupied by the State of Arkansas, a local unit of government, or any
26 agency of the State of Arkansas or a local unit of government.

27 (3) The term smoking means the burning of a lighted cigar,
28 cigarette, pipe or any other matter or substance which contains tobacco.

29 (b) The chief administrative officer of any state agency (whether
30 executive, legislative, or judicial) is authorized to establish a written
31 smoking policy for any portion of a public building occupied by the agency.

32 Such written smoking policy may include a smoking policy promulgated by a
33 state agency under § 25-1-102. In the case of an agency that occupies more
34 than one public building, the chief administrative officer of that agency may

35 delegate the authority to establish the written smoking policy to the state
36 officer or employee responsible for managing the space occupied in each such

1 building.

2 (c) A local unit of government is authorized to establish a written
3 smoking policy for any portion of a public building occupied by the local unit
4 of government or any of its agencies. Such written smoking policy may include
5 a smoking policy adopted by a school board of directors under § 6-21-609. In
6 the case of a local unit of government that controls the occupancy of more
7 than one public building, the local unit of government may delegate the
8 authority to establish the written smoking policy to the officer or employee
9 responsible for managing the space occupied in each such building.

10 (d) Any written smoking policy established under this section shall be
11 prominently posted and properly maintained by the owner, operator, manager or
12 other person having control of the governmental or business entity for which
13 the smoking policy is established. Such written policy shall be conveyed by
14 posting on the exterior of the building (1) a "Smoking Allowed" sign
15 (accompanied by a pictorial representation of a burning cigarette enclosed in
16 a circle); (2) a "No Smoking" sign (accompanied by the international "No
17 Smoking" symbol, which consists of a pictorial representation of a burning
18 cigarette enclosed in a circle with a bar across it); or (3) a "Smoking in
19 Designated Areas" sign (accompanied by a pictorial representation of a
20 rectangle surrounding a burning cigarette enclosed in a circle). In the case
21 of a building occupied by several tenants, such signs may be posted adjacent
22 to an interior entrance."

23

24 SECTION 10. Nonpreemption. Nothing in this act nor in Arkansas Code 5-
25 27-227 shall be construed or interpreted so as to preempt or in any other
26 manner qualify or limit the enactment and enforcement of any other federal,
27 state, county, municipal or other local regulation of smoking or of the
28 manufacture, sale, storage or distribution of tobacco products. Nothing in
29 this act nor in Arkansas Code 5-27-227 shall be construed or interpreted so as
30 to preempt or otherwise limit any legal or equitable claims or causes of
31 action brought under the common law or any federal or state statutes.

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33 SECTION 11. All provisions of this act of a general and permanent
34 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
35 Code Revision Commission shall incorporate the same in the Code."

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1 SECTION 12. If any provision of this act or the application thereof to
2 any person or circumstance is held invalid, such invalidity shall not affect
3 other provisions or applications of the act which can be given effect without
4 the invalid provision or application, and to this end the provisions of this
5 act are declared to be severable.

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

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/s/Rep. Dietz

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