

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: H2/9/07
A Bill

HOUSE BILL 1370

5 By: Representatives S. Prater, Wagner
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8 **For An Act To Be Entitled**

9 AN ACT CONCERNING SELF-SERVICE DISPLAYS OF
10 CIGARETTE PRODUCTS; AND FOR OTHER PURPOSES.
11

12 **Subtitle**

13 AN ACT CONCERNING SELF-SERVICE DISPLAYS
14 OF CIGARETTE PRODUCTS.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Arkansas Code § 5-27-227 is amended to read as follows:

20 5-27-227. Providing minors with tobacco products and cigarette papers -
21 Purchase, use, or possession prohibited - Self-service displays prohibited -
22 Placement of tobacco vending machines.

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

- 24 (1) Tobacco in any form; or
25 (2) A cigarette paper.

26 (b) It is unlawful for any minor:

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

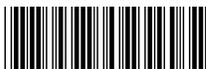
- 29 (A) Tobacco in any form; or
30 (B) A cigarette paper;

31 (2) To purchase or attempt to purchase:

- 32 (A) Tobacco in any form; or
33 (B) A cigarette paper; or

34 (3) For the purpose of obtaining or attempting to obtain tobacco
35 in any form or a cigarette paper, to use any:

- 36 (A) Falsified identification; or



1 (B) Identification other than his or her own.

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

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

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

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

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

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

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

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

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

31 (4) An employee or authorized representative of the Department
32 of Health and Human Services; or

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

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

1 any person.

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

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

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

16 (2) To any minor.

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

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

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

25 (ii) Retail tobacco store.

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

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

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

31 (i) That contains a cigarette product;

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

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

36 ~~(h)(i)~~(1)(A) Except as provided in subdivision ~~(h)(i)~~(2) of this

1 section, it is unlawful for any person who owns or leases a tobacco vending
2 machine to place a tobacco vending machine in a public place.

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

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

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

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

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

14 ~~(i)~~(j)(1) Any retail permit holder or license holder who violates any
15 provision in this section is deemed guilty of a violation and subject to the
16 following penalties:

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

22 (B) For a second violation within a forty-eight month
23 period:

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

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

28 (C) For a third violation within a forty-eight month
29 period:

30 (i) A fine not to exceed one thousand dollars
31 (\$1,000); and

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

34 (D) For a fourth or subsequent violation within a forty-
35 eight month period:

36 (i) A fine not to exceed two thousand dollars

1 (\$2,000); and

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

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

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

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

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

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

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

- 21 (a) Cash register number;
- 22 (b) Physical location of the sale in the
- 23 store; and
- 24 (c) If possible, the lane or aisle number.

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

- 28 (1) The business has adopted and enforced a written policy
- 29 against selling cigarettes or tobacco products to minors;
- 30 (2) The business has informed its employees of the applicable
- 31 laws regarding the sale of cigarettes and tobacco products to minors;
- 32 (3) The business has required employees to verify the age of a
- 33 cigarette or tobacco product customer by way of photographic identification;
- 34 (4) The business has established and imposed disciplinary
- 35 sanctions for noncompliance; and
- 36 (5) That the appearance of the purchaser of the tobacco in any

1 form or cigarette papers was such that an ordinary prudent person would
2 believe him or her to be of legal age to make the purchase.

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

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

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

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

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

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/s/ S. Prater, et al