

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 87th General Assembly  
3 Regular Session, 2009

# A Bill

HOUSE BILL 1857

4  
5 By: Representative Betts  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO AMEND ARKANSAS LAW CONCERNING PROVIDING  
10 MINORS WITH TOBACCO PRODUCTS AND CIGARETTE  
11 PAPERS; AND FOR OTHER PURPOSES.  
12

### Subtitle

13  
14 TO AMEND ARKANSAS LAW CONCERNING  
15 PROVIDING MINORS WITH TOBACCO PRODUCTS  
16 AND CIGARETTE PAPERS.  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code § 5-27-227 is amended to read as follows:

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

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

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

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

29 (2) A person who pleads guilty or nolo contendere to or is found  
30 guilty of violating subdivision (a)(1) of this section is guilty of a Class A  
31 misdemeanor.

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

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

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

36 ~~(B) A cigarette paper;~~



1           ~~(2) To purchase or attempt to purchase;~~

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

3                     ~~(B) A cigarette paper; or~~

4           ~~(3) For the purpose of obtaining or attempting to obtain tobacco~~  
5 ~~in any form or a cigarette paper, to use any;~~

6                     ~~(A) Falsified identification; or~~

7                     ~~(B) Identification other than his or her own.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

7                           (i) Tobacco in any form; or

8                           (ii) Cigarette papers; or

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

13           (2) A minor who pleads guilty or nolo contendere to or is found  
 14 guilty of an offense under subdivision (b)(1) of this section is guilty of a  
 15 violation and may:

16                   (A) Be fined up to one hundred dollars (\$100);

17                   (B) Have his or her driver's license or permit suspended  
 18 for up to six (6) months by the Office of Driver's Services under § 27-16-  
 19 907;

20                   (C) Be sentenced to up to twelve (12) hours of community  
 21 service; or

22                   (D) Be subject to any combination of penalties in this  
 23 subdivision (b)(2).

24           (3) Any cigarettes, tobacco products, or cigarette papers found  
 25 in the possession of a minor may be confiscated and destroyed by a law  
 26 enforcement officer without issuing a citation to the minor for a violation  
 27 of subdivision (b)(1) of this section.

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

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

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

36                   (C) The minor was acting at the request of an Arkansas

1 Retail Cigarette and Tobacco permit holder to assist the permit holder by  
 2 performing a check on the permit holder's own retail business to see if the  
 3 permit holder's employees would sell tobacco or cigarette papers to the  
 4 minor.

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

7 (A) Display the appearance of a minor;

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

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

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

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

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

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

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

32 (2) To any minor.

33 ~~(h)~~(g)(1)(A) It is unlawful for any person that has been issued a  
 34 permit or license under the Arkansas Tobacco Products Act of 1977, § 26-57-  
 35 201 et seq., to sell or distribute a cigarette product through a self-service  
 36 display.

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

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

5 (ii) Retail tobacco store.

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

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

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

11 (i) That contains a cigarette product;

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

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

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

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

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

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

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

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

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

33 ~~(A) If the alleged violator has received a notice of an~~  
 34 ~~alleged violation from the Arkansas Tobacco Control Board or other agency or~~  
 35 ~~official with the authority to assess a penalty containing the information~~  
 36 ~~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;

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

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

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

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

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

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

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

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

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

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

22 ~~(o)(1)~~ A person convicted of violating any provision of this section  
23 whose permit or license to distribute or sell a tobacco product is suspended  
24 or revoked upon conviction shall surrender to the court any permit or license  
25 to distribute or sell a tobacco product and the court shall transmit the  
26 permit or license to distribute or sell a tobacco product to the Director of  
27 the Department of Finance and Administration and instruct the Director of the  
28 Arkansas Tobacco Control Board:

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

32 (2) Not to issue any new permit or license to that person for  
33 the period of time determined by the court in accordance with this section.  
34

35 SECTION 2. Arkansas Code § 27-16-907(a), concerning the suspension of  
36 a driver's license, is amended to read as follows:

1 (a) The Office of Driver Services is authorized to suspend the license  
 2 of any driver after a hearing upon a showing by its records or other  
 3 sufficient evidence that the licensee:

4 (1) Has been convicted of an offense for which mandatory  
 5 revocation of the license is required;

6 (2) Has been involved as a driver in any accident resulting in  
 7 the death or personal injury of another or in serious property damage;

8 (3) Is an habitually reckless or negligent driver of a motor  
 9 vehicle;

10 (4) Is an habitual violator of the traffic laws;

11 (5) Is incompetent to drive a motor vehicle;

12 (6) Has permitted an unlawful or fraudulent use of his or her  
 13 license;

14 (7) Has committed an offense in another state which if committed  
 15 in this state would be grounds for suspension or revocation;

16 (8) Is receiving any type of welfare, tax, or other benefit or  
 17 exemption as a blind or nearly blind person if the correctable vision of the  
 18 person is less than 20/50 in the better eye or if the total visual field of  
 19 the person is less than one hundred five degrees (105°);

20 (9) Is any person who is not lawfully within the United States;

21 (10) Was found by the office or its agent to have used or  
 22 attempted to use a driver's license or identification card issued under § 27-  
 23 16-805 that was fraudulent, counterfeit, or altered; ~~or~~

24 (11)(A) Was a minor and for the purpose of obtaining or  
 25 attempting to obtain tobacco in any form or cigarette papers, falsely  
 26 represented himself or herself to be eighteen (18) years of age or older by  
 27 displaying proof of age that was false, fraudulent, or not actually proof of  
 28 the minor's own age under § 5-27-227(b)(1).

29 (B) For the purposes of subdivision(a)(11)(A) of this  
 30 section, the Office of Driver's Services may suspend a minor's license or  
 31 permit; or

32 ~~(11)~~(12) Was found by the office or its agent to have used or  
 33 attempted to use the driver's license or identification card of another  
 34 person by representing it as his or her own license or identification card  
 35 issued under § 27-16-805.

36