

SECOND REGULAR SESSION

SENATE BILL NO. 1265

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR KENNEY.

Read 1st time February 28, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

4969S.01I

AN ACT

To repeal sections 407.926, 407.927, 407.928, 407.929, 407.931, 407.933 and 407.934, RSMo, and to enact in lieu thereof seven new sections relating to the sale of tobacco products to minors, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 407.926, 407.927, 407.928, 407.929, 407.931, 407.933 and 407.934, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 407.926, 407.927, 407.928, 407.929, 407.931, 407.933 and 407.934, to read as follows:

407.926. 1. Any person or entity who sells tobacco products shall deny the sale of such tobacco products to any person who is less than eighteen years of age.

2. Any person or entity who sells or distributes tobacco products by mail or through the Internet in this state in violation of subsection 1 of this section shall be assessed a fine of two hundred fifty dollars for the first violation and five hundred dollars for each subsequent violation.

407.927. The owner of an establishment at which tobacco products or rolling papers are sold at retail or through vending machines shall cause to be prominently displayed in a conspicuous place at every display from which tobacco products are sold and on every vending machine where tobacco products are purchased a sign that shall:

(1) Contain in red lettering at least one-half inch high on a white background the following: "It is a violation of state law for cigarettes or other tobacco products to be sold or otherwise provided to any person under the age of eighteen or for such

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

person to purchase, attempt to purchase or possess cigarettes or other tobacco products.;" and

(2) Include a depiction of a pack of cigarettes at least two inches high defaced by a red diagonal diameter of a surrounding red circle, and the words "Under 18".

407.928. No person or entity shall sell individual packs of cigarettes or smokeless tobacco products unless such packs satisfy one of the following conditions prior to the time of sale:

(1) It is sold through a vending machine; or

(2) It is displayed behind the check-out counter or it is within the unobstructed line of sight of the sales clerk or store attendant from the checkout counter.

407.929. 1. A person or entity selling tobacco products or rolling papers or distributing tobacco product samples shall require proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that such prospective purchaser or recipient may be under the age of eighteen.

2. The operator's or chauffeur's license issued pursuant to the provisions of section 302.177, RSMo, or the operator's or chauffeur's license issued pursuant to the laws of any state or possession of the United States to residents of those states or possessions, or an identification card as provided for in section 302.181, RSMo, or the identification card issued by any uniformed service of the United States, or a valid passport shall be presented by the holder thereof upon request of any agent of the division of liquor control or any owner or employee of an establishment that sells tobacco, for the purpose of aiding the registrant, agent or employee to determine whether or not the person is at least eighteen years of age when such person desires to purchase or possess tobacco products procured from a registrant. Upon such presentation, the owner or employee of the establishment shall compare the photograph and physical characteristics noted on the license, identification card or passport with the physical characteristics of the person presenting the license, identification card or passport.

3. Any person who shall, without authorization from the department of revenue, reproduce, alter, modify or misrepresent any chauffeur's license, motor vehicle operator's license or identification card shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than one thousand dollars, and confinement for not more than one year, or by both such fine and imprisonment.

4. Reasonable reliance on proof of age or on the appearance of the purchaser or recipient shall be a defense to any action for a violation of subsections 1, 2 and 3

of section 407.931. No person shall be liable for more than one violation of subsections 2 and 3 of section 407.931 on any single day.

407.931. 1. It shall be unlawful for any person to sell, provide or distribute tobacco products to persons under eighteen years of age.

2. By January 1, 2002, all vending machines that dispense tobacco products shall be located within the unobstructed line of sight and under the direct supervision of an adult responsible for preventing persons less than eighteen years of age from purchasing any tobacco product from such machine or shall be equipped with a lock-out device to prevent the machines from being operated until the person responsible for monitoring sales from the machines disables the lock. Such locking device shall be of a design that prevents it from being left in an unlocked condition and which will allow only a single sale when activated. A locking device shall not be required on machines that are located in areas where persons less than eighteen years of age are not permitted or prohibited by law. An owner of an establishment whose vending machine is not in compliance with the provisions of this subsection shall be subject to the penalties contained in subsection 5 of this section. A determination of noncompliance may be made by a local law enforcement agency or the division of liquor control. Nothing in this section shall apply to a vending machine if located in a factory, private club or other location not generally accessible to the general public.

3. No person or entity shall sell, provide or distribute any tobacco product or rolling papers to any minor, or sell any individual cigarettes to any person in this state. This subsection shall not apply to the distribution by family members on property that is not open to the public.

4. Any person including, but not limited to, a sales clerk, owner or operator who violates subsection 1, 2 or 3 of this section or section 407.927 shall be penalized as follows:

- (1) For the first offense, twenty-five dollars;**
- (2) For the second offense, one hundred dollars;**
- (3) For a third and subsequent offense, two hundred fifty dollars.**

5. Any owner of the establishment where tobacco products are available for sale who violates subsection 3 of this section, in addition to the penalties established in subsection 4 of this section, shall be penalized in the following manner:

- (1) For the first violation per location within two years, a reprimand shall be issued by the division of liquor control;**
- (2) For the second violation per location within two years, the division of liquor control shall issue a citation prohibiting the outlet from selling tobacco**

products for a twenty-four-hour period;

(3) For the third violation per location within two years, the division of liquor control shall issue a citation prohibiting the outlet from selling tobacco products for a forty-eight-hour period;

(4) For the fourth and any subsequent violations per location within two years, the division of liquor control shall issue a citation prohibiting the outlet from selling tobacco products for a five-day period.

6. Any owner of the establishment where tobacco products are available for sale who violates subsection 3 of this section shall not be penalized pursuant to this section if such person documents the following:

(1) An in-house or other tobacco compliance employee training program was in place to provide the employee with information on the state and federal regulations regarding tobacco sales to minors. Such training program must be attended by all employees who sell tobacco products to the general public;

(2) A signed statement by the employee stating that the employee has been trained and understands the state laws and federal regulations regarding the sale of tobacco to minors; and

(3) Such in-house or other tobacco compliance training meets the minimum training criteria, which shall not exceed a total of ninety minutes in length, established by the division of liquor control.

7. The exemption in subsection 6 of this section shall not apply to any person who is considered the general owner or operator of the outlet where tobacco products are available for sale if:

(1) Four or more violations per location of subsection 3 of this section occur within a one-year period; or

(2) Such person knowingly violates or knowingly allows his or her employees to violate subsection 3 of this section.

8. If a sale is made by an employee of the owner of an establishment in violation of sections 407.925 to 407.934, the employee shall be guilty of an offense established in subsections 1, 2 and 3 of this section. If a vending machine is in violation of section 407.927, the owner of the establishment shall be guilty of an offense established in subsections 3 and 4 of this section. If a sample is distributed by an employee of a company conducting the sampling, such employee shall be guilty of an offense established in subsections 3 and 4 of this section.

9. A person cited for selling, providing or distributing any tobacco product to any individual less than eighteen years of age in violation of subsection 1, 2 or 3 of this section shall conclusively be presumed to have reasonably relied on proof of age

of the purchaser or recipient, and such person shall not be found guilty of such violation if such person raises and proves as an affirmative defense that such individual presented a driver's license or other government-issued photo identification purporting to establish that such individual was eighteen years of age or older.

10. Any person adversely affected by this section may file an appeal with the administrative hearing commission which shall be adjudicated pursuant to the procedures established in chapter 621, RSMo.

407.933. 1. No person less than eighteen years of age shall purchase, attempt to purchase or possess cigarettes or other tobacco products unless such person is an employee of a seller of cigarettes or tobacco products and is in such possession to effect a sale in the course of employment, or an employee of the division of liquor control for enforcement purposes pursuant to subsection 5 of section 407.934.

2. Any person less than eighteen years of age shall not misrepresent his or her age to purchase cigarettes or tobacco products.

3. Any person who violates the provisions of this section shall be penalized as follows:

(1) For the first violation, the person is guilty of an infraction and shall have any cigarettes or tobacco products confiscated;

(2) For a second violation and any subsequent violations, the person is guilty of an infraction, shall have any cigarettes or tobacco products confiscated and shall complete a tobacco education or smoking cessation program, if available.

407.934. 1. No person shall sell cigarettes or tobacco products unless the person has a retail sales tax license.

2. Beginning January 1, 2002, the department of revenue shall permit persons to designate through the Internet or by including a place on all sales tax license applications for the applicant to designate himself or herself as a seller of tobacco products and to provide a list of all locations where the applicant sells such products.

3. On or before July first of each year, the department of revenue shall make available to the division of liquor control and the department of mental health a complete list of every establishment which sells cigarettes and other tobacco products in this state.

4. The division of liquor control shall have the authority to inspect stores and tobacco outlets for compliance with all laws related to access of tobacco products to minors. The division may employ a person seventeen years of age, with parental consent, to attempt to purchase tobacco for the purpose of inspection or enforcement of tobacco laws.

5. The supervisor of the division of liquor control shall not use minors to

enforce the provisions of this chapter unless the supervisor promulgates rules that establish standards for the use of minors. The supervisor shall establish mandatory guidelines for the use of minors in investigations by a state, county, municipal or other local law enforcement authority which shall be followed by such authority and which shall, at a minimum, provide for the following:

- (1) The minor shall be seventeen years of age;**
- (2) The minor shall have a youthful appearance, and the minor, if a male, shall not have facial hair or a receding hairline and if a female, shall not wear excessive makeup or excessive jewelry;**
- (3) The state, county, municipal or other local law enforcement agency shall obtain the consent of the minor's parent or legal guardian before the use of such minor on a form approved by the supervisor;**
- (4) The state, county, municipal or other local law enforcement agency shall make a photocopy of the minor's valid identification showing the minor's correct date of birth;**
- (5) Any attempt by such minor to purchase tobacco products shall be videotaped or audiotaped with equipment sufficient to record all statements made by the minor and the seller of the tobacco product;**
- (6) The minor shall carry his or her own identification showing the minor's correct date of birth and shall, upon request, produce such identification to the seller of the tobacco product;**
- (7) The minor shall answer truthfully any questions about his or her age and shall not remain silent when asked questions regarding his or her age;**
- (8) The minor shall not lie to the seller of the tobacco product to induce a sale of tobacco products;**
- (9) The minor shall not be employed by the state, county, municipal or other local law enforcement agency on an incentive or quota basis;**
- (10) The state, county, municipal or other local law enforcement agency shall, within forty-eight hours, contact or take all reasonable steps to contact the owner or manager of the establishment if a violation occurs;**
- (11) The state, county, municipal or other local law enforcement agency shall maintain records of each visit to an establishment where a minor is used by the state, county, municipal or other local law enforcement agency for a period of at least one year following the incident, regardless of whether a violation occurs at each visit, and such records shall, at a minimum, include the following information:**
 - (a) The signed consent form of the minor's parent or legal guardian;**
 - (b) A Polaroid photograph of the minor;**

- (c) A photocopy of the minor's valid identification, showing the minor's correct date of birth;
- (d) An information sheet completed by the minor on a form approved by the supervisor; and
- (e) The name of each establishment visited by the minor, and the date and time of each visit.

6. If the state, county, municipal or other local law enforcement authority uses minors in investigations or in enforcing or determining violations of this chapter or any local ordinance and does not comply with the mandatory guidelines established by the supervisor of liquor control in subsection 5 of this section, the supervisor of liquor control shall not take any disciplinary action against the establishment or seller pursuant to this chapter based on an alleged violation discovered when using a minor and shall not cooperate in any way with the state, county, municipal or other local law enforcement authority in prosecuting any alleged violation discovered when using a minor.

[407.926. 1. Any person or entity who sells tobacco products shall deny the sale of such tobacco products to any person who is less than eighteen years of age.

2. Any person or entity who sells or distributes tobacco products by mail or through the Internet in this state in violation of subsection 1 of this section shall be assessed a fine of two hundred fifty dollars for the first violation and five hundred dollars for each subsequent violation.]

[407.927. The owner of an establishment at which tobacco products or rolling papers are sold at retail or through vending machines shall cause to be prominently displayed in a conspicuous place at every display from which tobacco products are sold and on every vending machine where tobacco products are purchased a sign that shall:

(1) Contain in red lettering at least one-half inch high on a white background the following: "It is a violation of state law for cigarettes or other tobacco products to be sold or otherwise provided to any person under the age of eighteen or for such person to purchase, attempt to purchase or possess cigarettes or other tobacco products."; and

(2) Include a depiction of a pack of cigarettes at least two inches high defaced by a red diagonal diameter of a surrounding red circle, and the words "Under 18".]

[407.928. No person or entity shall sell individual packs of cigarettes or smokeless tobacco products unless such packs satisfy one of the following conditions prior to the time of sale:

(1) It is sold through a vending machine; or

(2) It is displayed behind the check-out counter or it is within the unobstructed line of sight of the sales clerk or store attendant from the checkout counter.]

[407.929. 1. A person or entity selling tobacco products or rolling papers or distributing tobacco product samples shall require proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that such prospective purchaser or recipient may be under the age of eighteen.

2. The operator's or chauffeur's license issued pursuant to the provisions of section 302.177, RSMo, or the operator's or chauffeur's license issued pursuant to the laws of any state or possession of the United States to residents of those states or possessions, or an identification card as provided for in section 302.181, RSMo, or the identification card issued by any uniformed service of the United States, or a valid passport shall be presented by the holder thereof upon request of any agent of the division of liquor control or any owner or employee of an establishment that sells tobacco, for the purpose of aiding the registrant, agent or employee to determine whether or not the person is at least eighteen years of age when such person desires to purchase or possess tobacco products procured from a registrant. Upon such presentation, the owner or employee of the establishment shall compare the photograph and physical characteristics noted on the license, identification card or passport with the physical characteristics of the person presenting the license, identification card or passport.

3. Any person who shall, without authorization from the department of revenue, reproduce, alter, modify or misrepresent any chauffeur's license, motor vehicle operator's license or identification card shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than one thousand dollars, and confinement for not more than one year, or by both such fine and imprisonment.

4. Reasonable reliance on proof of age or on the appearance of the purchaser or recipient shall be a defense to any action for a violation of subsections 1, 2 and 3 of section 407.931. No person shall be liable for more than one violation of subsections 2 and 3 of section 407.931 on any single day.]

[407.931. 1. It shall be unlawful for any person to sell, provide or distribute tobacco products to persons under eighteen years of age.

2. By January 1, 2002, all vending machines that dispense tobacco products shall be located within the unobstructed line of sight and under the direct supervision of an adult responsible for preventing persons less than eighteen years of age from purchasing any tobacco product from such machine or shall be equipped with a lock-out device to prevent the machines from being operated until the person responsible for monitoring sales from the machines disables the lock. Such locking device shall be of a design that prevents it from being left in an unlocked condition and which will allow only a single sale when activated. A locking device shall not be required on machines that are located in areas where persons less than eighteen years of age are not permitted or prohibited

by law. An owner of an establishment whose vending machine is not in compliance with the provisions of this subsection shall be subject to the penalties contained in subsection 5 of this section. A determination of noncompliance may be made by a local law enforcement agency or the division of liquor control. Nothing in this section shall apply to a vending machine if located in a factory, private club or other location not generally accessible to the general public.

3. No person or entity shall sell, provide or distribute any tobacco product or rolling papers to any minor, or sell any individual cigarettes to any person in this state. This subsection shall not apply to the distribution by family members on property that is not open to the public.

4. Any person including, but not limited to, a sales clerk, owner or operator who violates subsection 1, 2 or 3 of this section or section 407.927 shall be penalized as follows:

- (1) For the first offense, twenty-five dollars;
- (2) For the second offense, one hundred dollars;
- (3) For a third and subsequent offense, two hundred fifty dollars.

5. Any owner of the establishment where tobacco products are available for sale who violates subsection 3 of this section, in addition to the penalties established in subsection 4 of this section, shall be penalized in the following manner:

(1) For the first violation per location within two years, a reprimand shall be issued by the division of liquor control;

(2) For the second violation per location within two years, the division of liquor control shall issue a citation prohibiting the outlet from selling tobacco products for a twenty-four-hour period;

(3) For the third violation per location within two years, the division of liquor control shall issue a citation prohibiting the outlet from selling tobacco products for a forty-eight-hour period;

(4) For the fourth and any subsequent violations per location within two years, the division of liquor control shall issue a citation prohibiting the outlet from selling tobacco products for a five-day period.

6. Any owner of the establishment where tobacco products are available for sale who violates subsection 3 of this section shall not be penalized pursuant to this section if such person documents the following:

(1) An in-house or other tobacco compliance employee training program was in place to provide the employee with information on the state and federal regulations regarding tobacco sales to minors. Such training program must be attended by all employees who sell tobacco products to the general public;

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trained and understands the state laws and federal regulations regarding the sale of tobacco to minors; and

(3) Such in-house or other tobacco compliance training meets the minimum training criteria, which shall not exceed a total of ninety minutes in length, established by the division of liquor control.

7. The exemption in subsection 6 of this section shall not apply to any person who is considered the general owner or operator of the outlet where tobacco products are available for sale if:

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(2) Such person knowingly violates or knowingly allows his or her employees to violate subsection 3 of this section.

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9. A person cited for selling, providing or distributing any tobacco product to any individual less than eighteen years of age in violation of subsection 1, 2 or 3 of this section shall conclusively be presumed to have reasonably relied on proof of age of the purchaser or recipient, and such person shall not be found guilty of such violation if such person raises and proves as an affirmative defense that such individual presented a driver's license or other government-issued photo identification purporting to establish that such individual was eighteen years of age or older.

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2. Any person less than eighteen years of age shall not misrepresent his or her age to purchase cigarettes or tobacco products.

3. Any person who violates the provisions of this section shall be penalized as

follows:

(1) For the first violation, the person is guilty of an infraction and shall have any cigarettes or tobacco products confiscated;

(2) For a second violation and any subsequent violations, the person is guilty of an infraction, shall have any cigarettes or tobacco products confiscated and shall complete a tobacco education or smoking cessation program, if available.]

[407.934. 1. No person shall sell cigarettes or tobacco products unless the person has a retail sales tax license.

2. Beginning January 1, 2002, the department of revenue shall permit persons to designate through the Internet or by including a place on all sales tax license applications for the applicant to designate himself or herself as a seller of tobacco products and to provide a list of all locations where the applicant sells such products.

3. On or before July first of each year, the department of revenue shall make available to the division of liquor control and the department of mental health a complete list of every establishment which sells cigarettes and other tobacco products in this state.

4. The division of liquor control shall have the authority to inspect stores and tobacco outlets for compliance with all laws related to access of tobacco products to minors. The division may employ a person seventeen years of age, with parental consent, to attempt to purchase tobacco for the purpose of inspection or enforcement of tobacco laws.

5. The supervisor of the division of liquor control shall not use minors to enforce the provisions of this chapter unless the supervisor promulgates rules that establish standards for the use of minors. The supervisor shall establish mandatory guidelines for the use of minors in investigations by a state, county, municipal or other local law enforcement authority which shall be followed by such authority and which shall, at a minimum, provide for the following:

(1) The minor shall be seventeen years of age;

(2) The minor shall have a youthful appearance, and the minor, if a male, shall not have facial hair or a receding hairline and if a female, shall not wear excessive makeup or excessive jewelry;

(3) The state, county, municipal or other local law enforcement agency shall obtain the consent of the minor's parent or legal guardian before the use of such minor on a form approved by the supervisor;

(4) The state, county, municipal or other local law enforcement agency shall make a photocopy of the minor's valid identification showing the minor's correct date of birth;

(5) Any attempt by such minor to purchase tobacco products shall be videotaped or audiotaped with equipment sufficient to record all statements made by the minor and

the seller of the tobacco product;

(6) The minor shall carry his or her own identification showing the minor's correct date of birth and shall, upon request, produce such identification to the seller of the tobacco product;

(7) The minor shall answer truthfully any questions about his or her age and shall not remain silent when asked questions regarding his or her age;

(8) The minor shall not lie to the seller of the tobacco product to induce a sale of tobacco products;

(9) The minor shall not be employed by the state, county, municipal or other local law enforcement agency on an incentive or quota basis;

(10) The state, county, municipal or other local law enforcement agency shall, within forty-eight hours, contact or take all reasonable steps to contact the owner or manager of the establishment if a violation occurs;

(11) The state, county, municipal or other local law enforcement agency shall maintain records of each visit to an establishment where a minor is used by the state, county, municipal or other local law enforcement agency for a period of at least one year following the incident, regardless of whether a violation occurs at each visit, and such records shall, at a minimum, include the following information:

(a) The signed consent form of the minor's parent or legal guardian;

(b) A Polaroid photograph of the minor;

(c) A photocopy of the minor's valid identification, showing the minor's correct date of birth;

(d) An information sheet completed by the minor on a form approved by the supervisor; and

(e) The name of each establishment visited by the minor, and the date and time of each visit.

6. If the state, county, municipal or other local law enforcement authority uses minors in investigations or in enforcing or determining violations of this chapter or any local ordinance and does not comply with the mandatory guidelines established by the supervisor of liquor control in subsection 5 of this section, the supervisor of liquor control shall not take any disciplinary action against the establishment or seller pursuant to this chapter based on an alleged violation discovered when using a minor and shall not cooperate in any way with the state, county, municipal or other local law enforcement authority in prosecuting any alleged violation discovered when using a minor.]