

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 841

AN ACT

To repeal sections 407.925, 407.926, 407.927, 407.929, 407.931, 407.933, and 407.934, RSMo, and to enact in lieu thereof seven new sections relating to alternative nicotine or vapor products, with penalty provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 407.925, 407.926, 407.927, 407.929,
2 407.931, 407.933, and 407.934, RSMo, are repealed and seven new
3 sections enacted in lieu thereof, to be known as sections
4 407.925, 407.926, 407.927, 407.929, 407.931, 407.933, and
5 407.934, to read as follows:

6 407.925. As used in sections 407.925 to [407.932] 407.934,
7 the following terms mean:

8 (1) "Alternative nicotine product", any non-combustible
9 product containing nicotine that is intended for human
10 consumption, whether chewed, absorbed, dissolved, or ingested by
11 any other means. Alternative nicotine product does not include
12 any vapor product, tobacco product or any product regulated as a
13 drug or device by the United States Food and Drug Administration
14 under Chapter V of the Food, Drug, and Cosmetic Act;

15 (2) "Center of youth activities", any playground, school or
16 other facility, when such facility is being used primarily by

1 persons under the age of eighteen for recreational, educational
2 or other purposes;

3 [(2)] (3) "Distribute", a conveyance to the public by sale,
4 barter, gift or sample;

5 [(3)] (4) "Minor", a person under the age of eighteen;

6 [(4)] (5) "Municipality", the city, village or town within
7 which tobacco products, alternative nicotine products or vapor
8 products are sold or distributed or, in the case of tobacco
9 products, alternative nicotine products or vapor products that
10 are not sold or distributed within a city, village or town, the
11 county in which they are sold or distributed;

12 [(5)] (6) "Person", an individual, partnership,
13 copartnership, firm, company, public or private corporation,
14 association, joint stock company, trust, estate, political
15 subdivision or any agency, board, department or bureau of the
16 state or federal government, or any other legal entity which is
17 recognized by law as the subject of rights and duties;

18 [(6)] (7) "Proof of age", a driver's license or other
19 generally accepted means of identification that contains a
20 picture of the individual and appears on its face to be valid;

21 [(7)] (8) "Rolling papers", paper designed, manufactured,
22 marketed, or sold for use primarily as a wrapping or enclosure
23 for tobacco, which enables a person to roll loose tobacco into a
24 smokable cigarette;

25 [(8)] (9) "Sample", a tobacco product, alternative nicotine
26 product, or vapor product distributed to members of the general
27 public at no cost or at nominal cost for product promotional
28 purposes;

1 [(9)] (10) "Sampling", the distribution to members of the
2 general public of tobacco product, alternative nicotine product
3 or vapor product samples;

4 [(10)] (11) "Tobacco products", any substance containing
5 tobacco leaf, including, but not limited to, cigarettes, cigars,
6 pipe tobacco, snuff, chewing tobacco, or dipping tobacco but does
7 not include alternative nicotine products, or vapor products;

8 [(11)] (12) "Vapor product", any non-combustible product
9 containing nicotine that employs a heating element, power source,
10 electronic circuit, or other electronic, chemical or mechanical
11 means, regardless of shape or size, that can be used to produce
12 vapor from nicotine in a solution or other form. Vapor product
13 includes any electronic cigarette, electronic cigar, electronic
14 cigarillo, electronic pipe, or similar product or device and any
15 vapor cartridge or other container of nicotine in a solution or
16 other form that is intended to be used with or in an electronic
17 cigarette, electronic cigar, electronic cigarillo, electronic
18 pipe, or similar product or device. Vapor product does not
19 include any alternative nicotine product, tobacco product, or any
20 product regulated as a drug or device by the United States Food
21 and Drug Administration under Chapter V of the Food, Drug, and
22 Cosmetic Act;

23 (13) "Vending machine", any mechanical electric or
24 electronic, self-service device which, upon insertion of money,
25 tokens or any other form of payment, dispenses tobacco products,
26 alternative nicotine products, or vapor products.

27 407.926. 1. Any person or entity who sells tobacco
28 products, alternative nicotine products, or vapor products shall

1 deny the sale of such tobacco products to any person who is less
2 than eighteen years of age.

3 2. Any person or entity who sells or distributes tobacco
4 products, alternative nicotine products, or vapor products by
5 mail or through the internet in this state in violation of
6 subsection 1 of this section shall be assessed a fine of two
7 hundred fifty dollars for the first violation and five hundred
8 dollars for each subsequent violation.

9 3. Alternative nicotine products and vapor products shall
10 only be sold to persons eighteen years of age or older, shall be
11 subject to local and state sales tax, but shall not be otherwise
12 taxed or regulated as tobacco products.

13 407.927. The owner of an establishment at which tobacco
14 products, alternative nicotine products, vapor products, or
15 rolling papers are sold at retail or through vending machines
16 shall cause to be prominently displayed in a conspicuous place at
17 every display from which tobacco products, alternative nicotine
18 products, or vapor products are sold and on every vending machine
19 where tobacco products are purchased a sign that shall:

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

28 (2) Include a depiction of a pack of cigarettes at least

1 two inches high defaced by a red diagonal diameter of a
2 surrounding red circle, and the words "Under 18".

3 407.929. 1. A person or entity selling tobacco products,
4 alternative nicotine products, or vapor products or rolling
5 papers or distributing tobacco product, alternative nicotine
6 product, or vapor product samples shall require proof of age from
7 a prospective purchaser or recipient if an ordinary person would
8 conclude on the basis of appearance that such prospective
9 purchaser or recipient may be under the age of eighteen.

10 2. The operator's or chauffeur's license issued pursuant to
11 the provisions of section 302.177, or the operator's or
12 chauffeur's license issued pursuant to the laws of any state or
13 possession of the United States to residents of those states or
14 possessions, or an identification card as provided for in section
15 302.181, or the identification card issued by any uniformed
16 service of the United States, or a valid passport shall be
17 presented by the holder thereof upon request of any agent of the
18 division of liquor control or any owner or employee of an
19 establishment that sells tobacco, alternative nicotine products,
20 or vapor products, for the purpose of aiding the registrant,
21 agent or employee to determine whether or not the person is at
22 least eighteen years of age when such person desires to purchase
23 or possess tobacco products, alternative nicotine products, or
24 vapor products procured from a registrant. Upon such
25 presentation, the owner or employee of the establishment shall
26 compare the photograph and physical characteristics noted on the
27 license, identification card or passport with the physical
28 characteristics of the person presenting the license,

1 identification card or passport.

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

9 4. Reasonable reliance on proof of age or on the appearance
10 of the purchaser or recipient shall be a defense to any action
11 for a violation of subsections 1, 2 and 3 of section 407.931. No
12 person shall be liable for more than one violation of subsections
13 2 and 3 of section 407.931 on any single day.

14 407.931. 1. It shall be unlawful for any person to sell,
15 provide or distribute tobacco products, alternative nicotine
16 products, or vapor products to persons under eighteen years of
17 age.

18 2. **[By January 1, 2002,]** All vending machines that dispense
19 tobacco products, alternative nicotine products, or vapor
20 products shall be located within the unobstructed line of sight
21 and under the direct supervision of an adult responsible for
22 preventing persons less than eighteen years of age from
23 purchasing any tobacco product, alternative nicotine product, or
24 vapor product from such machine or shall be equipped with a
25 lock-out device to prevent the machines from being operated until
26 the person responsible for monitoring sales from the machines
27 disables the lock. Such locking device shall be of a design that
28 prevents it from being left in an unlocked condition and which

1 will allow only a single sale when activated. A locking device
2 shall not be required on machines that are located in areas where
3 persons less than eighteen years of age are not permitted or
4 prohibited by law. An owner of an establishment whose vending
5 machine is not in compliance with the provisions of this
6 subsection shall be subject to the penalties contained in
7 subsection 5 of this section. A determination of noncompliance
8 may be made by a local law enforcement agency or the division of
9 liquor control. Nothing in this section shall apply to a vending
10 machine if located in a factory, private club or other location
11 not generally accessible to the general public.

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

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

21 (1) For the first offense, twenty-five dollars;

22 (2) For the second offense, one hundred dollars;

23 (3) For a third and subsequent offense, two hundred fifty
24 dollars.

25 5. Any owner of the establishment where tobacco products, alternative nicotine products, or vapor products are available
26 for sale who violates subsection 3 of this section, in addition
27 to the penalties established in subsection 4 of this section,
28

1 shall be penalized in the following manner:

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

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

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

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

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

20 (1) An in-house or other tobacco compliance employee
21 training program was in place to provide the employee with
22 information on the state and federal regulations regarding
23 **[tobacco]** sales of tobacco products, alternative nicotine
24 products, or vapor products to minors. Such training program
25 must be attended by all employees who sell tobacco products,
26 alternative nicotine products, or vapor products to the general
27 public;

28 (2) A signed statement by the employee stating that the

1 employee has been trained and understands the state laws and
2 federal regulations regarding the sale of tobacco products,
3 alternative nicotine products, or vapor products to minors; and

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

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

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

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

16 8. If a sale is made by an employee of the owner of an
17 establishment in violation of sections 407.925 to 407.934, the
18 employee shall be guilty of an offense established in subsections
19 1, 2 and 3 of this section. If a vending machine is in violation
20 of section 407.927, the owner of the establishment shall be
21 guilty of an offense established in subsections 3 and 4 of this
22 section. If a sample is distributed by an employee of a company
23 conducting the sampling, such employee shall be guilty of an
24 offense established in subsections 3 and 4 of this section.

25 9. A person cited for selling, providing or distributing
26 any tobacco product, alternative nicotine product, or vapor
27 product to any individual less than eighteen years of age in
28 violation of subsection 1, 2 or 3 of this section shall

1 conclusively be presumed to have reasonably relied on proof of
2 age of the purchaser or recipient, and such person shall not be
3 found guilty of such violation if such person raises and proves
4 as an affirmative defense that such individual presented a
5 driver's license or other government-issued photo identification
6 purporting to establish that such individual was eighteen years
7 of age or older.

8 10. Any person adversely affected by this section may file
9 an appeal with the administrative hearing commission which shall
10 be adjudicated pursuant to the procedures established in chapter
11 621.

12 407.933. 1. No person less than eighteen years of age
13 shall purchase, attempt to purchase or possess cigarettes [or],
14 other tobacco products, alternative nicotine products, or vapor
15 products unless such person is an employee of a seller of
16 cigarettes [or], tobacco products, alternative nicotine products,
17 or vapor products and is in such possession to effect a sale in
18 the course of employment, or an employee of the division of
19 liquor control for enforcement purposes pursuant to subsection 5
20 of section 407.934.

21 2. Any person less than eighteen years of age shall not
22 misrepresent his or her age to purchase cigarettes [or], tobacco
23 products, alternative nicotine products, or vapor products.

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

26 (1) For the first violation, the person is guilty of an
27 infraction and shall have any cigarettes [or], tobacco products,
28 alternative nicotine products, or vapor products confiscated;

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

6 407.934. 1. No person shall sell cigarettes [or], tobacco
7 products, alternative nicotine products, or vapor products unless
8 the person has a retail sales tax license.

9 2. [Beginning January 1, 2002,] The department of revenue
10 shall permit persons to designate through the internet or by
11 including a place on all sales tax license applications for the
12 applicant to designate himself or herself as a seller of tobacco
13 products, alternative nicotine products, or vapor products and to
14 provide a list of all locations where the applicant sells such
15 products.

16 3. On or before July first of each year, the department of
17 revenue shall make available to the division of liquor control
18 and the department of mental health a complete list of every
19 establishment which sells cigarettes [and], other tobacco
20 products, alternative nicotine products, or vapor products in
21 this state.

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

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

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

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

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

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

21 (5) Any attempt by such minor to purchase tobacco products,
22 alternative nicotine products, or vapor products shall be
23 videotaped or audiotaped with equipment sufficient to record all
24 statements made by the minor and the seller of the tobacco
25 product;

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

1 product, alternative nicotine product, or vapor product;

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

5 (8) The minor shall not lie to the seller of the tobacco
6 product, alternative nicotine product, or vapor product to induce
7 a sale of tobacco products;

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

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

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

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

24 (b) A Polaroid photograph of the minor;

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

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

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

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