

SECOND REGULAR SESSION

SENATE BILL NO. 1085

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROWDEN.

Read 1st time February 27, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5428S.02I

AN ACT

To repeal sections 407.924, 407.925, 407.926, 407.927, 407.929, 407.931, 407.933, and 407.934, RSMo, and to enact in lieu thereof fourteen new sections relating to tobacco products, with penalty provisions and an emergency clause.

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

Section A. Sections 407.924, 407.925, 407.926, 407.927, 407.929, 407.931, 407.933, and 407.934, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 196.1200, 196.1205, 196.1210, 196.1215, 196.1220, 196.1225, 407.924, 407.925, 407.926, 407.927, 407.929, 407.931, 407.933, and 407.934, to read as follows:

196.1200. As used in sections 196.1200 to 196.1225, the following terms mean:

(1) "Alternative nicotine product", the same meaning as in section 407.925;

(2) "Cigar", any roll for smoking, except cigarettes, made chiefly of tobacco or any substitute thereof. "Cigar" shall also include any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers;

(3) "Department", the department of revenue;

(4) "Director", the director of the department of revenue;

(5) "Finished new tobacco product", any new tobacco product that will not be subject to any additional processing before sale to a consumer;

(6) "New tobacco product", any alternative nicotine product,

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

16 **cigar, or vapor product:**

17 **(a) That was not commercially distributed or sold, including, but**
18 **not limited to, products distributed or sold in test markets, in the**
19 **United States as of February 15, 2007; or**

20 **(b) That had a modification in design, a modification of a**
21 **component or part, or a change in the content or amount of any**
22 **additive or ingredient, at any time after February 15, 2007, for which**
23 **the U.S. Food and Drug Administration has issued a regulation or other**
24 **formal guidance determining that such a modification alters the**
25 **product to such an extent that it is no longer substantially equivalent**
26 **to a product commercially distributed or sold prior to February 15,**
27 **2007;**

28 **(7) "New tobacco product manufacturer", any person who**
29 **manufactures, fabricates, assembles, processes, mixes, prepares, labels,**
30 **repacks, or relabels a finished new tobacco product. "New tobacco**
31 **product manufacturer" includes an owner of a brand or formula for a**
32 **new tobacco product who contracts with another person to complete**
33 **the fabrication and assembly of the product to the brand or formula**
34 **owner's standard;**

35 **(8) "Vapor product", the same meaning as in section 407.925.**

196.1205. 1. Beginning June 1, 2020, or another date not more
2 **than thirty days following a premarket tobacco application submission**
3 **deadline issued by the U.S. Food and Drug Administration, whichever**
4 **is later, every new tobacco product manufacturer whose new tobacco**
5 **products are sold in this state, whether directly or through a**
6 **distributor, retailer, or similar intermediary or intermediaries, shall**
7 **execute and deliver on a form prescribed by the director, a certification**
8 **to the director certifying, under penalty of perjury, the following:**

9 **(1) A premarket tobacco application has been submitted to the**
10 **U.S. Food and Drug Administration with respect to each new tobacco**
11 **product that is sold in the state by the new tobacco product**
12 **manufacturer; and**

13 **(2) The date the premarket tobacco application was submitted to**
14 **the U.S. Food and Drug Administration.**

15 **In addition to the foregoing, each new tobacco product manufacturer**
16 **shall provide a copy of the cover page of the premarket tobacco**
17 **application with evidence of receipt of said application by the U.S.**

18 **Food and Drug Administration.**

19 **2. The director shall maintain a directory on the department's**
20 **website and make available to the public a list of all new tobacco**
21 **products that may lawfully be distributed or sold in the state. The**
22 **director shall add each new tobacco product that is compliant with this**
23 **section to the new tobacco product directory within thirty days after**
24 **the filing of proper certification by a new tobacco product**
25 **manufacturer.**

26 **3. Notwithstanding the provisions of subsections 1 and 2 of this**
27 **section, if a new tobacco product manufacturer can demonstrate to the**
28 **director that the U.S. Food and Drug Administration has issued a rule,**
29 **guidance, or any other formal statement that temporarily exempts a**
30 **new tobacco product from the federal premarket tobacco application**
31 **requirements, the new tobacco product may be added to the new**
32 **tobacco product directory upon request by the new tobacco product**
33 **manufacturer and sufficient evidence that the new tobacco product is**
34 **temporarily exempt from federal enforcement action.**

196.1210. The director shall designate a fee, not to exceed five
2 **hundred dollars per new tobacco product to be paid by each new**
3 **tobacco product manufacturer, that reasonably reflects the cost**
4 **incurred by the department for processing the certifications required**
5 **by section 196.1205 and for the operation of the new tobacco product**
6 **directory.**

196.1215. 1. Any new tobacco product manufacturer that has
2 **made a certification as required pursuant to section 196.1205 shall**
3 **notify the director within thirty days of receiving either of the**
4 **following:**

5 **(1) An order issued by the U.S. Food and Drug Administration**
6 **with regard to a new tobacco product pursuant to 21 U.S.C. Section**
7 **387e or 21 U.S.C. Section 387j; or**

8 **(2) Any notice of action taken by the U.S. Food and Drug**
9 **Administration affecting the ability of the new tobacco product to be**
10 **introduced or delivered into interstate commerce for commercial**
11 **distribution.**

12 **2. If the U.S. Food and Drug Administration takes a negative**
13 **action resulting in the removal of the new tobacco product from**
14 **interstate commerce, then the director shall remove that new tobacco**

15 **product from the new tobacco product directory, subject to**
16 **recertification.**

196.1220. 1. **Beginning July 1, 2020, it shall be unlawful for any**
2 **manufacturer, distributor, or retailer to distribute or sell any new**
3 **tobacco product that has not sufficiently complied with the new**
4 **tobacco product certification requirements pursuant to section**
5 **196.1205.**

6 2. **There shall be a rebuttable presumption that an alternative**
7 **nicotine product, cigar, or vapor product distributed or sold in this**
8 **state that is not listed on the new tobacco product directory is being**
9 **distributed or sold, as applicable, unlawfully in the state.**

10 3. **Notwithstanding subsection 2 of this section, if a manufacturer**
11 **of cigars that were distributed or sold prior to February 15, 2007, can**
12 **provide a list of such cigars with evidence of the date of market entry**
13 **to the director, such cigars shall be included on the directory**
14 **described.**

15 4. **A knowing violation of subsection 1 of this section shall result**
16 **in a fine of five hundred dollars. Each distribution or sale in this state**
17 **of a new tobacco product that is not listed on the directory shall be**
18 **considered a separate violation.**

196.1225. 1. **The director shall have authority, as appropriate, to**
2 **promulgate rules and regulations only to the extent that such rules and**
3 **regulations are necessary and proper to enforce and implement the**
4 **provisions of section 196.1200 to 196.1220.**

5 2. **Any rule or portion of a rule, as that term is defined in section**
6 **536.010, that is created under the authority delegated in this section**
7 **shall become effective only if it complies with and is subject to all of**
8 **the provisions of chapter 536 and, if applicable, section 536.028. This**
9 **section and chapter 536 are nonseverable and if any of the powers**
10 **vested with the general assembly pursuant to chapter 536 to review, to**
11 **delay the effective date, or to disapprove and annul a rule are**
12 **subsequently held unconstitutional, then the grant of rulemaking**
13 **authority and any rule proposed or adopted after the effective date of**
14 **this act shall be invalid and void.**

407.924. 1. **The division of [liquor] alcohol and tobacco control within**
2 **the department of public safety shall implement and enforce the provisions of**
3 **sections 407.925 to 407.934.**

4 2. Beginning January 1, 2003, the division [of liquor control] shall submit
5 an annual report to the general assembly on the effectiveness of sections 407.925
6 to 407.934 in reducing tobacco possession by [minors] **persons under twenty-**
7 **one years of age** and the enforcement activities by the division for violations
8 of sections 407.925 to 407.934.

9 **3. The division of behavioral health within the department of**
10 **mental health shall be responsible for ensuring that the state is in**
11 **compliance with and satisfies all reporting and enforcement obligations**
12 **pursuant to 42 U.S.C. Section 300x-26, as amended, and any rule or**
13 **regulation promulgated by the U.S. Department of Health and Human**
14 **Services pursuant to 42 U.S.C. Section 300x-26, as amended, including,**
15 **but not limited to, annually preparing and submitting to the Secretary**
16 **of the Department of Health and Human Services a report, as required**
17 **by federal law, describing:**

18 (1) The activities carried out by the division of behavioral
19 health, in coordination with the division of alcohol and tobacco control,
20 to ensure that tobacco retailers do not sell alternative nicotine
21 products, tobacco products, or vapor products to persons under the age
22 of twenty-one;

23 (2) The extent of success the division of behavioral health, in
24 coordination with the division of alcohol and tobacco control, has
25 achieved in ensuring that retailers do not sell alternative nicotine
26 products, tobacco products, and vapor products to individuals under
27 the age of twenty-one; and

28 (3) The strategies utilized by the division of behavioral health,
29 in coordination with the division of alcohol and tobacco control, to
30 ensure that retailers do not sell alternative nicotine products, tobacco
31 products, or vapor products to persons under the age of twenty-one.

32 4. The department of mental health shall have authority to
33 promulgate additional rules and regulations that are necessary and
34 proper to ensure the state satisfies the enforcement and reporting
35 obligations pursuant to subsection 3 of this section. Any rule or
36 portion of a rule, as that term is defined in section 536.010, that is
37 created under the authority delegated in this section shall become
38 effective only if it complies with and is subject to all of the provisions
39 of chapter 536 and, if applicable, section 536.028. This section and
40 chapter 536 are nonseverable and if any of the powers vested with the

41 **general assembly pursuant to chapter 536 to review, to delay the**
42 **effective date, or to disapprove and annul a rule are subsequently held**
43 **unconstitutional, then the grant of rulemaking authority and any rule**
44 **proposed or adopted after the effective date of this act shall be invalid**
45 **and void.**

46 **5. Any authority delegated by the general assembly within**
47 **sections 407.924 to 407.934 shall be strictly construed and limited in**
48 **scope to reducing tobacco use and possession by persons under the age**
49 **of twenty-one through the enforcement of state and federal law. If the**
50 **general assembly has not expressly delegated authority concerning the**
51 **subject matter of sections 407.924 to 407.934, then the powers remain**
52 **vested exclusively in the general assembly.**

407.925. As used in sections 407.925 to 407.934, the following terms
2 mean:

3 (1) "Alternative nicotine product", any noncombustible product containing
4 nicotine that is intended for human consumption, whether chewed, absorbed,
5 dissolved, or ingested by any other means. Alternative nicotine product does not
6 include any vapor product, tobacco product or any product regulated as a drug or
7 device by the United States Food and Drug Administration under Chapter V of
8 the Food, Drug, and Cosmetic Act;

9 (2) ["Center of youth activities", any playground, school or other facility,
10 when such facility is being used primarily by persons under the age of eighteen
11 for recreational, educational or other purposes;

12 (3)] "Distribute", a conveyance to the public by sale, barter, gift, or
13 sample;

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

15 (3) **"Division", the division of alcohol and tobacco control within**
16 **the department of public safety;**

17 [(5)] (4) "Municipality", the city, village or town within which tobacco
18 products, alternative nicotine products or vapor products are sold or distributed
19 or, in the case of tobacco products, alternative nicotine products or vapor products
20 that are not sold or distributed within a city, village or town, the county in which
21 they are sold or distributed;

22 (5) **"Nicotine liquid container", a bottle or other container of**
23 **liquid or other substance containing varying amounts of nicotine,**
24 **flavorings, or other chemicals that is sold, marketed, or intended for**

25 use in a vapor product. A "nicotine liquid container" shall not include
26 a liquid or other substance containing nicotine in a cartridge that is
27 sold, marketed, or intended for use in a vapor product, provided that
28 such cartridge is prefilled and sealed by the manufacturer and not
29 intended to be opened by the consumer;

30 (6) "Person", an individual, partnership, copartnership, firm, company,
31 public or private corporation, association, joint stock company, trust, estate,
32 political subdivision or any agency, board, department or bureau of the state or
33 federal government, or any other legal entity which is recognized by law as the
34 subject of rights and duties;

35 (7) "Proof of age", a driver's license or other generally accepted means of
36 identification that contains a picture of the individual and appears on its face to
37 be valid;

38 (8) "Rolling papers", paper designed, manufactured, marketed, or sold for
39 use primarily as a wrapping or enclosure for tobacco, which enables a person to
40 roll loose tobacco into a smokable cigarette;

41 (9) "Sample", a tobacco product, alternative nicotine product, or vapor
42 product distributed to members of the general public at no cost or at nominal cost
43 for product promotional purposes;

44 (10) "Sampling", the distribution to members of the general public of
45 tobacco product, alternative nicotine product or vapor product samples;

46 (11) "Tobacco products", any substance containing tobacco leaf **that is**
47 **intended for human consumption**, including, but not limited to, cigarettes,
48 cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco but does not
49 include alternative nicotine products, or vapor products;

50 (12) "Vapor product", any noncombustible product containing nicotine that
51 employs a heating element, power source, electronic circuit, or other electronic,
52 chemical or mechanical means, regardless of shape or size, that can be used to
53 produce vapor from nicotine in a **liquid** solution [or other form]. Vapor product
54 includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic
55 pipe, or similar product or device and any vapor cartridge or other [container of]
56 nicotine [in a solution or other form] **liquid container** that is intended to be
57 used with or in an electronic cigarette, electronic cigar, electronic cigarillo,
58 electronic pipe, or similar product or device. **Vapor product also includes any**
59 **device classified by the U.S. Food and Drug Administration as an**
60 **electronic nicotine delivery system.** Vapor product does not include any

61 alternative nicotine product [or tobacco product];

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

407.926. 1. Any person or entity who sells tobacco products, alternative
2 nicotine products, or vapor products shall deny the sale of such tobacco products
3 to any person who is less than [eighteen] **twenty-one** years of age.

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

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

13 4. (1) Any nicotine liquid container that is sold at retail in this state shall
14 satisfy the child-resistant effectiveness standards set forth in 16 CFR 1700.15(b)
15 as in effect on August 28, 2015, when tested in accordance with the method
16 described in 16 CFR 1700.20 as in effect on August 28, 2015.

17 (2) [For the purposes of this subsection, "nicotine liquid container" shall
18 mean a bottle or other container of liquid or other substance containing nicotine
19 if the liquid or substance is sold, marketed, or intended for use in a vapor
20 product. A "nicotine liquid container" shall not include a liquid or other
21 substance containing nicotine in a cartridge that is sold, marketed, or intended
22 for use in a vapor product, provided that such cartridge is prefilled and sealed by
23 the manufacturer and not intended to be opened by the consumer.

24 (3)] Any person who engages in retail sales of liquid nicotine containers
25 in this state in violation of this subsection shall be assessed a fine of two hundred
26 fifty dollars for the first violation and five hundred dollars for each subsequent
27 violation.

28 [(4)] **(3)** The department of health and senior services may adopt rules
29 necessary to carry out the provisions of this subsection. Any rule or portion of
30 a rule, as that term is defined in section 536.010, that is created under the
31 authority delegated in this section shall become effective only if it complies with
32 and is subject to all of the provisions of chapter 536 and, if applicable, section

33 536.028. This section and chapter 536 are nonseverable and if any of the powers
34 vested with the general assembly under chapter 536 to review, to delay the
35 effective date, or to disapprove and annul a rule are subsequently held
36 unconstitutional, then the grant of rulemaking authority and any rule proposed
37 or adopted after August 28, 2015, shall be invalid and void.

38 [(5) The provisions of this subsection and any rules adopted hereunder
39 shall be null, void, and of no force and effect upon the effective date of the final
40 regulations issued by the federal Food and Drug Administration or from any other
41 federal agency if such regulations mandate child-resistant effectiveness standards
42 for nicotine liquid containers.]

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

7 (1) Contain in red lettering at least one-half inch high on a white
8 background the following: "It is a violation of state law for cigarettes, other
9 tobacco products, alternative nicotine products, or vapor products to be sold or
10 otherwise provided to any person under the age of [~~eighteen~~] **twenty-one** or for
11 such person to purchase, attempt to purchase or possess cigarettes, other tobacco
12 products, alternative nicotine products or vapor products."; and

13 (2) Include a depiction of a pack of cigarettes at least two inches high
14 defaced by a red diagonal diameter of a surrounding red circle, and the words
15 "Under [~~18~~] **21**".

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

7 2. The operator's or chauffeur's license issued pursuant to the provisions
8 of section 302.177, or the operator's or chauffeur's license issued pursuant to the
9 laws of any state or possession of the United States to residents of those states
10 or possessions, or an identification card as provided for in section 302.181, or the
11 identification card issued by any uniformed service of the United States, or a

12 valid passport shall be presented by the holder thereof upon request of any agent
13 of the division [of liquor control] or any owner or employee of an establishment
14 that sells tobacco, alternative nicotine products, or vapor products, for the
15 purpose of aiding the [registrant,] agent, **owner**, or employee to determine
16 whether or not the person is at least [eighteen] **twenty-one** years of age when
17 such person desires to purchase or possess tobacco products, alternative nicotine
18 products, or vapor products [procured from a registrant]. Upon such
19 presentation, the owner or employee of the establishment shall compare the
20 photograph and physical characteristics noted on the license, identification card
21 or passport with the physical characteristics of the person presenting the license,
22 identification card or passport.

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

29 4. Reasonable reliance on proof of age or on the appearance of the
30 purchaser or recipient shall be a defense to any action for a violation of
31 subsections 1, 2 and 3 of section 407.931. No person shall be liable for more than
32 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
2 distribute tobacco products, alternative nicotine products, or vapor products to
3 persons under [eighteen] **twenty-one** years of age.

4 2. All vending machines that dispense tobacco products, alternative
5 nicotine products, or vapor products shall be located within the unobstructed line
6 of sight and under the direct supervision of an adult responsible for preventing
7 persons less than [eighteen] **twenty-one** years of age from purchasing any
8 tobacco product, alternative nicotine product, or vapor product from such machine
9 or shall be equipped with a lock-out device to prevent the machines from being
10 operated until the person responsible for monitoring sales from the machines
11 disables the lock. Such locking device shall be of a design that prevents it from
12 being left in an unlocked condition and which will allow only a single sale when
13 activated. A locking device shall not be required on machines that are located in
14 areas where persons less than [eighteen] **twenty-one** years of age are not
15 permitted or prohibited by law. An owner of an establishment whose vending

16 machine is not in compliance with the provisions of this subsection shall be
17 subject to the penalties contained in subsection 5 of this section. A determination
18 of noncompliance may be made by a local law enforcement agency or the division
19 [of liquor control]. Nothing in this section shall apply to a vending machine if
20 located in a factory, private club or other location not generally accessible to the
21 general public.

22 3. No person or entity shall sell, provide or distribute any tobacco product,
23 alternative nicotine product, or vapor product or rolling papers to any [minor]
24 **person under twenty-one years of age**, or sell any individual cigarettes to
25 any person in this state. This subsection shall not apply to the distribution by
26 family members on property that is not open to the public.

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

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

33 5. Any owner of the establishment where tobacco products, alternative
34 nicotine products, or vapor products are available for sale who violates subsection
35 3 of this section, in addition to the penalties established in subsection 4 of this
36 section, shall be penalized in the following manner:

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

39 (2) For the second violation per location within two years, the division [of
40 liquor control] shall issue a citation prohibiting the outlet from selling tobacco
41 products, alternative nicotine products, or vapor products for a twenty-four-hour
42 period;

43 (3) For the third violation per location within two years, the division [of
44 liquor control] shall issue a citation prohibiting the outlet from selling tobacco
45 products, alternative nicotine products, or vapor products for a forty-eight-hour
46 period;

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

50 6. Any owner of the establishment where tobacco products are available
51 for sale who violates subsection 3 of this section shall not be penalized pursuant

52 to this section if such person documents the following:

53 (1) An in-house or other tobacco compliance employee training program
54 was in place to provide the employee with information on the state and federal
55 regulations regarding sales of tobacco products, alternative nicotine products, or
56 vapor products to [minors] **persons under twenty-one years of age**. Such
57 training program must be attended by all employees who sell tobacco products,
58 alternative nicotine products, or vapor products to the general public;

59 (2) A signed statement by the employee stating that the employee has
60 been trained and understands the state laws and federal regulations regarding
61 the sale of tobacco products, alternative nicotine products, or vapor products to
62 [minors] **persons under twenty-one years of age**; and

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

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

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

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

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

81 9. A person cited for selling, providing or distributing any tobacco product,
82 alternative nicotine product, or vapor product to any individual less than
83 [eighteen] **twenty-one** years of age in violation of subsection 1, 2 or 3 of this
84 section shall conclusively be presumed to have reasonably relied on proof of age
85 of the purchaser or recipient, and such person shall not be found guilty of such
86 violation if such person raises and proves as an affirmative defense that such
87 individual presented a driver's license or other government-issued photo

88 identification purporting to establish that such individual was [eighteen]
89 **twenty-one** years of age or older.

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

407.933. 1. No person less than [eighteen] **twenty-one** years of age shall
2 purchase, attempt to purchase or possess cigarettes, other tobacco products,
3 alternative nicotine products, or vapor products unless such person is an
4 employee of a seller of cigarettes, tobacco products, alternative nicotine products,
5 or vapor products and is in such possession to effect a sale in the course of
6 employment, or an employee of the division [of liquor control] for enforcement
7 purposes pursuant to subsection 5 of section 407.934.

8 2. Any person less than [eighteen] **twenty-one** years of age shall not
9 misrepresent his or her age to purchase cigarettes, tobacco products, alternative
10 nicotine products, or vapor products.

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

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

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

407.934. 1. No person shall sell cigarettes, tobacco products, alternative
2 nicotine products, or vapor products unless the person has a retail sales tax
3 license.

4 2. The department of revenue shall permit persons to designate through
5 the internet or by including a place on all sales tax license applications for the
6 applicant to designate himself or herself as a seller of tobacco products,
7 alternative nicotine products, or vapor products and to provide a list of all
8 locations where the applicant sells such products.

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

13 4. The division [of liquor control] shall have the authority to inspect
14 stores and tobacco outlets for compliance with all laws related to access of tobacco
15 products, alternative nicotine products, or vapor products to minors. The division
16 may employ a person **between** seventeen **and twenty** years of age, with
17 parental consent **for a person under eighteen years of age**, to attempt to
18 purchase tobacco for the purpose of inspection or enforcement of tobacco laws.

19 5. The supervisor of the division [of liquor control] shall not use [minors]
20 **persons under twenty-one years of age** to enforce the provisions of this
21 chapter unless the supervisor promulgates rules that establish standards for the
22 use of [minors] **persons under twenty-one years of age**. The supervisor shall
23 establish mandatory guidelines for the use of [minors] **persons under twenty-**
24 **one years of age** in investigations by a state, county, municipal or other local
25 law enforcement authority which shall be followed by such authority and which
26 shall, at a minimum, provide for the following:

27 (1) The [minor] **person** shall be **between** seventeen **and twenty** years
28 of age;

29 (2) The [minor] **person** shall have a youthful appearance, and the
30 [minor] **person**, if a male, shall not have facial hair or a receding hairline and
31 if a female, shall not wear excessive makeup or excessive jewelry;

32 (3) The state, county, municipal or other local law enforcement agency
33 shall obtain the consent of the [minor's] **person's** parent or legal guardian, **if**
34 **the person is under eighteen years of age**, before the use of such [minor]
35 **person** on a form approved by the supervisor;

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

39 (5) Any attempt by such [minor] **person** to purchase tobacco products,
40 alternative nicotine products, or vapor products shall be videotaped or audiotaped
41 with equipment sufficient to record all statements made by the [minor] **person**
42 and the seller of the tobacco product;

43 (6) The [minor] **person** shall carry his or her own identification showing
44 [the minor's] **his or her** correct date of birth and shall, upon request, produce
45 such identification to the seller of the tobacco product, alternative nicotine
46 product, or vapor product;

47 (7) The [minor] **person** shall answer truthfully any questions about his
48 or her age and shall not remain silent when asked questions regarding his or her

49 age;

50 (8) The **[minor] person** shall not lie to the seller of the tobacco product,
51 alternative nicotine product, or vapor product to induce a sale of tobacco products;

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

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

57 (11) The state, county, municipal or other local law enforcement agency
58 shall maintain records of each visit to an establishment where a **[minor] person**
59 **under twenty-one years of age** is used by the state, county, municipal or other
60 local law enforcement agency for a period of at least one year following the
61 incident, regardless of whether a violation occurs at each visit, and such records
62 shall, at a minimum, include the following information:

63 (a) The signed consent form of the **[minor's] person's** parent or legal
64 guardian **if the person is under eighteen years of age**;

65 (b) A **[Polaroid]** photograph of the minor;

66 (c) A photocopy of the **[minor's] person's** valid identification, showing
67 **[the minor's] his or her** correct date of birth;

68 (d) An information sheet completed by the **[minor] person** on a form
69 approved by the supervisor; and

70 (e) The name of each establishment visited by the **[minor] person**, and
71 the date and time of each visit.

72 6. If the state, county, municipal or other local law enforcement authority
73 uses **[minors] persons under twenty-one years of age** in investigations or in
74 enforcing or determining violations of this chapter or any local ordinance and
75 does not comply with the mandatory guidelines established by the supervisor of
76 **[liquor control] the division** in subsection 5 of this section, the supervisor **[of**
77 **liquor control]** shall not take any disciplinary action against the establishment
78 or seller pursuant to this chapter based on an alleged violation discovered when
79 using a **[minor] person under twenty-one years of age** and shall not
80 cooperate in any way with the state, county, municipal or other local law
81 enforcement authority in prosecuting any alleged violation discovered when using
82 a **[minor] person under twenty-one years of age**.

Section B. Because of the necessity of complying with federal regulations
2 and the importance of protecting the health and welfare of young Missourians,

3 section A of this act is deemed necessary for the immediate preservation of the
4 public health, welfare, peace and safety, and is hereby declared to be an
5 emergency act within the meaning of the constitution, and section A of this act
6 shall be in full force and effect upon its passage and approval.

✓

Unofficial

Bill

Copy