

FIRST REGULAR SESSION

HOUSE BILL NO. 930

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BROWN (30).

Read 1st time March 31, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2107L.011

AN ACT

To repeal sections 407.925, 407.929, 407.931, and 407.934, RSMo, and to enact in lieu thereof five new sections relating to sale of tobacco products, with penalty provisions.

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

Section A. Sections 407.925, 407.929, 407.931, and 407.934, RSMo, are repealed and
2 five new sections enacted in lieu thereof, to be known as sections 407.925, 407.929, 407.930,
3 407.931, and 407.934, to read as follows:

407.925. As used in sections 407.925 to 407.932, the following terms mean:

- 2 (1) "Center of youth activities", any playground, school or other facility, when such
3 facility is being used primarily by persons under the age of eighteen for recreational, educational
4 or other purposes;
- 5 (2) ["Distribute", a conveyance to the public by sale, barter, gift or sample] **"Licensee",**
6 **a person who holds a license issued by the division of liquor control under section 407.930;**
- 7 (3) "Minor", a person under the age of eighteen;
- 8 (4) "Municipality", the city, village or town within which tobacco products are sold or
9 distributed or, in the case of tobacco products that are not sold or distributed within a city, village
10 or town, the county in which they are sold or distributed;
- 11 (5) "Person", an individual, partnership, copartnership, firm, company, public or private
12 corporation, association, joint stock company, trust, estate, political subdivision or any agency,
13 board, department or bureau of the state or federal government, or any other legal entity which
14 is recognized by law as the subject of rights and duties;
- 15 (6) "Proof of age", a driver's license or other generally accepted means of identification

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 that contains a picture of the individual and appears on its face to be valid;

17 (7) "Rolling papers", paper designed, manufactured, marketed, or sold for use primarily
18 as a wrapping or enclosure for tobacco, which enables a person to roll loose tobacco into a
19 smokable cigarette;

20 (8) "Sample", a tobacco product distributed to members of the general public at no cost
21 or at nominal cost for product promotional purposes;

22 (9) "Sampling", the distribution to members of the general public of tobacco product
23 samples;

24 (10) **"Sell or distribute", the receipt of money or other consideration, including but
25 not limited to the receipt of a coupon that may be redeemed by a third party, from a
26 consumer in a retail transaction, or the provision of a product to a consumer without
27 receiving consideration for the purpose of promoting the product. Seller and distributor
28 shall be defined with reference to this subsection;**

29 (11) "Tobacco products", any substance containing tobacco leaf, including, but not
30 limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco;

31 [(11)](12) "Vending machine", any mechanical electric or electronic, self-service device
32 which, upon insertion of money, tokens or any other form of payment, dispenses tobacco
33 products.

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

5 2. The operator's or chauffeur's license issued pursuant to the provisions of section
6 302.177, RSMo, or the operator's or chauffeur's license issued pursuant to the laws of any state
7 or possession of the United States to residents of those states or possessions, or an identification
8 card as provided for in section 302.181, RSMo, or the identification card issued by any
9 uniformed service of the United States, or a valid passport shall be presented by the holder
10 thereof upon request of any agent of the division of liquor control or any owner or employee of
11 an establishment that sells tobacco, for the purpose of aiding the [registrant] **owner**, agent or
12 employee to determine whether or not the person is at least eighteen years of age when such
13 person desires to purchase or possess tobacco products [procured from a registrant]. Upon such
14 presentation, the owner or employee of the establishment shall compare the photograph and
15 physical characteristics noted on the license, identification card or passport with the physical
16 characteristics of the person presenting the license, identification card or passport.

17 3. Any person who shall, without authorization from the department of revenue,
18 reproduce, alter, modify or misrepresent any chauffeur's license, motor vehicle operator's license

19 or identification card shall be deemed guilty of a misdemeanor and upon conviction shall be
20 subject to a fine of not more than one thousand dollars, and confinement for not more than one
21 year, or by both such fine and imprisonment.

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

**407.930. 1. No person shall sell or distribute tobacco products or rolling papers
2 within this state without:**

3 **(1) A retail sales tax license; and**

4 **(2) A license issued by the division of liquor control under this section.**

5 **2. When issuing a license under subdivision (2) of subsection 1 of this section, the**
6 **supervisor of the division of liquor control shall strictly adhere to the following**
7 **requirements:**

8 **(1) There shall be two classes of such license, one class for vending or other coin-**
9 **operated machines as permitted under section 407.931, and the other class for all other**
10 **means of sale or distribution;**

11 **(2) A separate license shall be obtained for each establishment where tobacco**
12 **products or rolling papers are sold or distributed;**

13 **(3) A separate license shall be obtained for each vending or other coin-operated**
14 **machine;**

15 **(4) A license shall not be issued to any minor or to any business entity with respect**
16 **to which a minor serves as an officer or principal;**

17 **(5) A license shall not be issued if the division has reasonable grounds to believe**
18 **that the license application has been submitted for purposes of circumventing the effects**
19 **of a previously issued license suspension or revocation;**

20 **(6) Application for a license shall be made on a form furnished by the division and**
21 **shall set forth such information as the division shall prescribe by rule, including but not**
22 **limited to such information as may be necessary to identify the person seeking the license,**
23 **such person's contact information, and the business location of the establishment for which**
24 **the license will be issued;**

25 **(7) The application shall be signed and verified by oath or affirmation by the owner**
26 **of the business seeking the license if a sole proprietor or, if the owner is a firm, association,**
27 **partnership, corporation, or other business entity, by an executive officer of the**
28 **corporation or business entity or by any person authorized by the firm, association,**
29 **partnership, corporation, or business entity to sign the application, together with the**

30 **written evidence of such authority;**

31 **(8) A license shall be valid for one year. The license may be renewed pursuant to**
32 **procedures established by the division. The division shall include current information with**
33 **respect to any changes in the state tobacco distribution law with each renewed license the**
34 **division issues under this section;**

35 **(9) Upon approval of an application for a license, the division shall issue to the**
36 **applicant a license for the establishment specified in the application. A license shall not be**
37 **assignable and is valid only for the person to whom the license is issued and for the location**
38 **of the establishment designated in the license. The license shall be conspicuously displayed**
39 **at all times at the location or on the vending machine for which it is issued; and**

40 **(10) If a license is destroyed or lost, the licensee may apply to the division for the**
41 **issuance of a duplicate license. The division shall issue a duplicate license pursuant to**
42 **procedures established by rule of the division.**

43 **3. Any person who violates the provisions of subsection 2 of this section shall be**
44 **subject to a civil penalty as follows:**

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

46 **(2) For the second offense, one hundred dollars; and**

47 **(3) For a third or subsequent offense, two hundred fifty dollars.**

48 **4. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**
49 **that is created under the authority delegated in this section shall become effective only if**
50 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
51 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
52 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**
53 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**
54 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**
55 **adopted after August 28, 2005, shall be invalid and void.**

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

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

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

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

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

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

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

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

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

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

30 (2) For the second violation per location within two years, **the court shall order** the
31 division of liquor control [shall issue a citation prohibiting the outlet from selling tobacco
32 products] **to suspend the license issued by the division under section 407.930 for the location**
33 **where the violation occurred** for a twenty-four-hour period;

34 (3) For the third violation per location within two years, **the court shall order** the
35 division of liquor control [shall issue a citation prohibiting the outlet from selling tobacco
36 products] **to suspend the license issued by the division under section 407.930 for the location**
37 **where the violation occurred** for a forty-eight-hour period, **or the court may order the**
38 **division to revoke the license;**

39 (4) For the fourth and any subsequent violations per location within two years, **the court**
40 **shall order** the division of liquor control [shall issue a citation prohibiting the outlet from selling
41 tobacco products] **to suspend the license issued by the division under section 407.930 for the**
42 **location where the violations occurred** for a five-day period, **or the court may order the**
43 **division to revoke the license.**

44

45 **Upon the suspension of a license under this subsection, the court shall advise the division**
46 **of liquor control of the suspension or revocation in writing. The licensee shall surrender**

47 **the license to the division.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 [5.] 2. The supervisor of the division of liquor control shall not use minors to enforce the
15 provisions of this chapter unless the supervisor promulgates rules that establish standards for the
16 use of minors. The supervisor shall establish mandatory guidelines for the use of minors in
17 investigations by a state, county, municipal or other local law enforcement authority which shall
18 be followed by such authority and which shall, at a minimum, provide for the following:

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

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

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

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

28 (5) Any attempt by such minor to purchase tobacco products shall be videotaped or
29 audiotaped with equipment sufficient to record all statements made by the minor and the seller
30 of the tobacco product;

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

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

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

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

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

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

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

48 (b) A Polaroid photograph of the minor;

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

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

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

55 [6.] 3. If the state, county, municipal or other local law enforcement authority uses
56 minors in investigations or in enforcing or determining violations of this chapter or any local
57 ordinance and does not comply with the mandatory guidelines established by the supervisor of
58 liquor control in subsection 5 of this section, the supervisor of liquor control shall not take any
59 disciplinary action against the establishment or seller pursuant to this chapter based on an alleged
60 violation discovered when using a minor and shall not cooperate in any way with the state,
61 county, municipal or other local law enforcement authority in prosecuting any alleged violation
62 discovered when using a minor.