

SECOND REGULAR SESSION

# HOUSE BILL NO. 1730

## 100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SHAUL (113).

3220H.011

DANA RADEMAN MILLER, Chief Clerk

### 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 eight new sections relating to tobacco products, with penalty provisions.

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

Section A. Sections 407.925, 407.926, 407.927, 407.929, 407.931, 407.933, and 407.934, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 407.925, 407.926, 407.927, 407.929, 407.930, 407.931, 407.933, and 407.934, to read as follows:

407.925. As used in sections ~~[407.925]~~ **407.924** to 407.934, the following terms mean:

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

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

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

~~(4)~~ **(3)** "Minor", a person under ~~[the]~~ **twenty-one years of age** ~~[of eighteen];~~

~~(5)~~ **(4)** "Municipality", the city, village or town within which tobacco products, alternative nicotine products, or vapor products are sold or distributed or, in the case of tobacco

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.

14 products, alternative nicotine products or vapor products that are not sold or distributed within  
15 a city, village or town, the county in which they are sold or distributed;

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

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

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

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

28 ~~[(10)]~~ (9) "Sampling", the distribution to members of the general public of tobacco  
29 product, alternative nicotine product, or vapor product samples;

30 ~~[(11)]~~ (10) "Tobacco products", any substance containing tobacco leaf, including, but  
31 not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco but  
32 does not include alternative nicotine products, or vapor products;

33 ~~[(12)]~~ (11) "Vapor product", any noncombustible product containing nicotine that  
34 employs a heating element, power source, electronic circuit, or other electronic, chemical or  
35 mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine  
36 in a solution or other form. Vapor product includes any electronic cigarette, electronic cigar,  
37 electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other  
38 container of nicotine in a solution or other form that is intended to be used with or in an  
39 electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or  
40 device. Vapor product does not include any alternative nicotine product or tobacco product;

41 ~~[(13)]~~ (12) "Vending machine", any mechanical, electric, or electronic[,] self-service  
42 device ~~[which]~~ **that**, upon insertion of money, tokens, or any other form of payment, dispenses  
43 tobacco products, alternative nicotine products, or vapor products.

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

4 2. Any person or entity who sells or distributes tobacco products, alternative nicotine  
5 products, or vapor products by mail or through the internet in this state in violation of subsection

6 1 of this section shall be assessed a fine of two hundred fifty dollars for the first violation and  
7 five hundred dollars for each subsequent violation.

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

11 4. (1) Any nicotine liquid container that is sold at retail in this state shall satisfy the  
12 child-resistant effectiveness standards set forth in 16 CFR 1700.15(b) as in effect on August 28,  
13 2015, when tested in accordance with the method described in 16 CFR 1700.20 as in effect on  
14 August 28, 2015.

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

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

24 (4) The department of health and senior services may adopt rules necessary to carry out  
25 the provisions of this subsection. Any rule or portion of a rule, as that term is defined in section  
26 536.010, that is created under the authority delegated in this section shall become effective only  
27 if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section  
28 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the  
29 general assembly under chapter 536 to review, to delay the effective date, or to disapprove and  
30 annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and  
31 any rule proposed or adopted after August 28, 2015, shall be invalid and void.

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

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

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

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

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

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

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

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

**407.930. The state preempts the field of regulating the sale of tobacco products,  
2 alternative nicotine products, and vapor products, and the provisions of sections 407.924**

3 **to 407.934 shall supercede any local laws, ordinances, orders, rules, or regulations enacted**  
4 **by a county, municipality, or other political subdivision to regulate the sale of tobacco**  
5 **products, alternative nicotine products, or vapor products. However, this section shall not**  
6 **prohibit a county, municipality, or other political subdivision from taxing the sale of**  
7 **tobacco products, alternative nicotine products, or vapor products under other law.**

2 407.931. 1. It shall be unlawful for any person to sell, provide or distribute tobacco  
3 products, alternative nicotine products, or vapor products to ~~[persons under eighteen years of~~  
4 ~~age]~~ **a minor.**

5 2. All vending machines that dispense tobacco products, alternative nicotine products,  
6 or vapor products shall be located within the unobstructed line of sight and under the direct  
7 supervision of an adult responsible for preventing ~~[persons less than eighteen years of age]~~  
8 **minors** from purchasing any tobacco product, alternative nicotine product, or vapor product from  
9 such machine 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 disables the lock.  
11 Such locking device shall be of a design that prevents it from being left in an unlocked condition  
12 and which will allow only a single sale when activated. A locking device shall not be required  
13 on machines that are located in areas where ~~[persons less than eighteen years of age]~~ **minors** are  
14 not permitted or prohibited by law. An owner of an establishment whose vending machine is not  
15 in compliance with the provisions of this subsection shall be subject to the penalties contained  
16 in subsection 5 of this section. A determination of noncompliance may be made by a local law  
17 enforcement agency or the division of liquor control. Nothing in this section shall apply to a  
18 vending machine if located in a factory, private club or other location not generally accessible  
19 to the general public.

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

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

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

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

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

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

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

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

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

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

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

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

51 (2) A signed statement by the employee stating that the employee has been trained and  
52 understands the state laws and federal regulations regarding the sale of tobacco products,  
53 alternative nicotine products, or vapor products to minors; and

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

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

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

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

64 8. If a sale is made by an employee of the owner of an establishment in violation of  
65 sections 407.925 to 407.934, the employee shall be guilty of an offense established in  
66 subsections 1, 2 and 3 of this section. If a vending machine is in violation of section 407.927,  
67 the owner of the establishment shall be guilty of an offense established in subsections 3 and 4

68 of this section. If a sample is distributed by an employee of a company conducting the sampling,  
69 such employee shall be guilty of an offense established in subsections 3 and 4 of this section.

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

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

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

7 2. ~~[Any person less than eighteen years of age]~~ **No minor** shall ~~[not]~~ misrepresent his  
8 or her age to purchase cigarettes, tobacco products, alternative nicotine products, or vapor  
9 products.

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

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

13 (2) For a second violation and any subsequent violations, the person is guilty of an  
14 infraction~~[-]~~; shall have any cigarettes, tobacco products, alternative nicotine products, or vapor  
15 products confiscated; and shall complete a tobacco education or smoking cessation program, if  
16 available.

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

3 2. The department of revenue shall permit persons to designate through the internet or  
4 by including a place on all sales tax license applications for the applicant to designate himself  
5 or herself as a seller of tobacco products, alternative nicotine products, or vapor products and to  
6 provide a list of 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, other tobacco products, alternative nicotine products, or  
10 vapor products in this state.

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

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

21 (1) The minor shall be **at least** seventeen years of age;

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

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

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

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

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

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

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

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

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

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

50 (a) The signed consent form of the minor's parent or legal guardian, **if necessary**;

51 (b) A Polaroid photograph of the minor;

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

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

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

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

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