

SECOND REGULAR SESSION

HOUSE BILL NO. 2159

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE UNSICKER.

4764H.02I

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Section A. Sections 407.925, 407.926, 407.927, 407.929, 407.931, 407.933, and 407.934, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 407.925, 407.926, 407.927, 407.929, 407.931, 407.933, 407.934, and 407.1615, to read as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]~~ **including** 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]~~ **and** 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]~~ **alcohol and tobacco** control or any owner or
12 employee of an establishment that sells tobacco, alternative nicotine products, or vapor products,
13 for the purpose of aiding the registrant, agent or employee to determine whether or not the person
14 is ~~[at least eighteen years of age]~~ **a minor** when such person desires to purchase or possess
15 tobacco products, alternative nicotine products, or vapor products procured from a registrant.
16 Upon such presentation, the owner or employee of the establishment shall compare the
17 photograph and physical characteristics noted on the license, identification card or passport with
18 the physical 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.

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

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

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

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

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

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

(1) For the first violation per location within two years, a reprimand shall be issued by the division of ~~[liquor]~~ **alcohol and tobacco** control;

(2) For the second violation per location within two years, the division of ~~[liquor]~~ **alcohol and tobacco** control shall issue a citation prohibiting the outlet from selling tobacco products, alternative nicotine 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]~~ **alcohol**
38 **and tobacco** control shall issue a citation prohibiting the outlet from selling tobacco products,
39 alternative nicotine 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]~~ **alcohol and tobacco** control shall issue a citation prohibiting the outlet from
42 selling tobacco 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]~~ **alcohol and tobacco** 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]~~ **alcohol and tobacco** control for
6 enforcement purposes pursuant 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]~~ **alcohol and tobacco** control and the department of mental health a
9 complete list of every establishment which sells cigarettes, other tobacco products, alternative
10 nicotine products, or vapor products in this state.

11 4. The division of ~~[liquor]~~ **alcohol and tobacco** control shall have the authority to
12 inspect stores and tobacco outlets for compliance with all laws related to access of tobacco
13 products, alternative nicotine products, or vapor products to minors. The division may employ

14 a ~~[person seventeen years of age]~~ **minor**, with parental consent **if the minor is under eighteen**
15 **years of age**, to attempt to purchase tobacco for the purpose of inspection or enforcement of
16 tobacco laws.

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

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

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

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

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

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

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

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

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

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

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

47 (11) The state, county, municipal or other local law enforcement agency shall maintain
48 records of each visit to an establishment where a minor is used by the state, county, municipal
49 or other local law enforcement agency for a period of at least one year following the incident,

50 regardless of whether a violation occurs at each visit, and such records shall, at a minimum,
51 include the following information:

- 52 (a) The signed consent form of the minor's parent or legal guardian, **if necessary**;
- 53 (b) A ~~Polaroid~~ photograph of the minor;
- 54 (c) A photocopy of the minor's valid identification, showing the minor's correct date of
55 birth;
- 56 (d) An information sheet completed by the minor on a form approved by the supervisor;
57 and
- 58 (e) The name of each establishment visited by the minor, and the date and time of each
59 visit.

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

407.1615. 1. As used in this section, the following terms mean:

- 2 (1) **"Alternative nicotine product", the same meaning as defined under section**
3 **407.925;**
- 4 (2) **"Flavored product", any tobacco product, alternative nicotine product, or**
5 **vapor product that has a distinguishable taste or aroma imparted either prior to or during**
6 **consumption of the product including, but not limited to, tastes or aromas relating to any**
7 **alcoholic beverage, candy, chocolate, cocoa, dessert, fruit, herb, honey, menthol, mint,**
8 **spice, vanilla, or wintergreen. A product shall be presumed to be a flavored product if the**
9 **product claims, expresses, or implies to have, or advertises as having, a flavor or aroma**
10 **other than tobacco;**
- 11 (3) **"Tobacco product", the same meaning as defined under section 407.925;**
- 12 (4) **"Vapor product", the same meaning as defined under section 407.925.**

13 **2. No person or entity shall sell tobacco products, alternative nicotine products, or**
14 **vapor products that are a flavored product.**

15 **3. Any person or entity who sells or distributes tobacco products, alternative**
16 **nicotine products, or vapor products by mail or through the internet in this state in**
17 **violation of subsection 1 of this section shall be assessed a fine of two hundred fifty dollars**
18 **for the first violation and five hundred dollars for each subsequent violation.**