

FIRST REGULAR SESSION

HOUSE BILL NO. 503

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CHRIST.

0836H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 407.924, 407.925, 407.926, 407.927, 407.929, 407.931, 407.932, 407.933, and 407.934, RSMo, and to enact in lieu thereof nine 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Section A. Sections 407.924, 407.925, 407.926, 407.927, 407.929, 407.931, 407.932, 2 407.933, and 407.934, RSMo, are repealed and nine new sections enacted in lieu thereof, to 3 be known as sections 407.924, 407.925, 407.926, 407.927, 407.929, 407.931, 407.932, 4 407.933, and 407.934, to read as follows:

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

4 2. Beginning January 1, 2003, the division of [~~liquor~~] **alcohol and tobacco** control 5 shall submit an annual report to the general assembly on the effectiveness of sections 6 [~~407.925~~] **407.924** to 407.934 in reducing tobacco possession by [~~minors~~] **persons under** 7 **twenty-one years of age** and the enforcement activities by the division for violations of 8 sections [~~407.925~~] **407.924** to 407.934.

407.925. As used in sections [~~407.925~~] **407.924** to 407.934, the following terms 2 mean:

3 (1) "Alternative nicotine product", any noncombustible product containing nicotine 4 that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by 5 any other means. Alternative nicotine product does not include any vapor product, 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.

6 product or any product regulated as a drug or device by the United States Food and Drug
7 Administration under Chapter V of the Food, Drug, and Cosmetic Act;

8 (2) "Center of youth activities", any playground, school or other facility, when such
9 facility is being used primarily by persons under ~~[the age of eighteen]~~ **twenty-one years of**
10 **age** for recreational, educational or other purposes;

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

12 (4) ~~["Minor", a person under the age of eighteen;~~

13 ~~(5)]~~ "Municipality", the city, village or town within which tobacco products,
14 alternative nicotine products or vapor products are sold or distributed or, in the case of
15 tobacco products, alternative nicotine products or vapor products that are not sold or
16 distributed within a city, village or town, the county in which they are sold or distributed;

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

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

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

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

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

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

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

43 ~~[(13)]~~ **(12)** "Vending machine", any mechanical electric or electronic, self-service
44 device which, upon insertion of money, tokens or any other form of payment, dispenses
45 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]~~ **under twenty-one** years of age.

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

8 3. Alternative nicotine products and vapor products shall only be sold to persons
9 ~~[eighteen]~~ **twenty-one** years of age or older, shall be subject to local and state sales tax, but
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
13 28, 2015, when tested in accordance with the method described in 16 CFR 1700.20 as in
14 effect on 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
25 out the provisions of this subsection. Any rule or portion of a rule, as that term is defined in
26 section 536.010, that is created under the authority delegated in this section shall become
27 effective only if it complies with and is subject to all of the provisions of chapter 536 and, if
28 applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the
29 powers vested with the general assembly under chapter 536 to review, to delay the effective
30 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant
31 of rulemaking authority and any rule proposed or adopted after August 28, 2015, shall be
32 invalid and void.

33 (5) The provisions of this subsection and any rules adopted hereunder shall be null,
34 void, and of no force and effect upon the effective date of the final regulations issued by the

35 federal Food and Drug Administration or from any other federal agency if such regulations
36 mandate child-resistant effectiveness standards for nicotine liquid containers.

407.927. The owner of an establishment at which tobacco products, alternative
2 nicotine products, vapor products, or rolling papers are sold at retail or through vending
3 machines shall cause to be prominently displayed in a conspicuous place at every display
4 from which tobacco products, alternative nicotine products, or vapor products are sold and on
5 every vending machine 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~~
9 ~~age of eighteen~~ **twenty-one years of age** or for such person to purchase, attempt to purchase
10 or possess cigarettes, other tobacco products, alternative nicotine products or vapor
11 products."; and

12 (2) Include a depiction of a pack of cigarettes at least two inches high defaced by a
13 red 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
3 product, or vapor product samples shall require proof of age from a prospective purchaser or
4 recipient if an ordinary person would conclude on the basis of appearance that such
5 prospective purchaser or recipient may be under ~~the age of eighteen~~ **twenty-one years of**
6 **age**.

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

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

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

26 4. Reasonable reliance on proof of age or on the appearance of the purchaser or
27 recipient shall be a defense to any action for a violation of subsections 1, 2 and 3 of section
28 407.931. No person shall be liable for more than one violation of subsections 2 and 3 of
29 section 407.931 on any single day.

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

4 2. All vending machines that dispense tobacco products, alternative nicotine products,
5 or vapor products shall be located within the unobstructed line of sight and under the direct
6 supervision of an adult responsible for preventing persons ~~[less than eighteen]~~ **under twenty-**
7 **one** years of age from purchasing any tobacco product, alternative nicotine product, or vapor
8 product from such machine or shall be equipped with a lock-out device to prevent the
9 machines from being operated until the person responsible for monitoring sales from the
10 machines disables the lock. Such locking device shall be of a design that prevents it from
11 being left in an unlocked condition and which will allow only a single sale when activated. A
12 locking device shall not be required on machines that are located in areas where persons ~~[less~~
13 ~~than eighteen]~~ **under twenty-one** years of age are not permitted or prohibited by law. An
14 owner of an establishment whose vending machine is not in compliance with the provisions
15 of this subsection shall be subject to the penalties contained in subsection 5 of this section. A
16 determination of noncompliance may be made by a local law enforcement agency or the
17 division of ~~[liquor]~~ **alcohol and tobacco** 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]~~ **person under twenty-one**
22 **years of age**, or sell any individual cigarettes to any person in this state. This subsection shall
23 not apply to the distribution by family members 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
25 violates 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
30 products, or vapor products are available for sale who violates subsection 3 of this section, in

31 addition to the penalties established in subsection 4 of this section, shall be penalized in the
32 following manner:

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

35 (2) For the second violation per location within two years, the division of ~~[Liquor]~~
36 **alcohol and tobacco** control shall issue a citation prohibiting the outlet from selling tobacco
37 products, alternative nicotine products, or vapor products for a twenty-four-hour period;

38 (3) For the third violation per location within two years, the division of ~~[Liquor]~~
39 **alcohol and tobacco** control shall issue a citation prohibiting the outlet from selling tobacco
40 products, alternative nicotine products, or vapor products for a forty-eight-hour period;

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

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

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

53 (2) A signed statement by the employee stating that the employee has been trained
54 and understands the state laws and federal regulations regarding the sale of tobacco products,
55 alternative nicotine products, or vapor products to ~~[minors]~~ **persons under twenty-one years**
56 **of age**; 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]~~ **alcohol and tobacco** 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, alternative
62 nicotine products, or vapor products are available for 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
66 violate 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]~~ **407.924** to 407.934, the employee shall be guilty of an offense established
69 in subsections 1, 2 and 3 of this section. If a vending machine is in violation of section
70 407.927, the owner of the establishment shall be guilty of an offense established in
71 subsections 3 and 4 of this section. If a sample is distributed by an employee of a company
72 conducting the sampling, such employee shall be guilty of an offense established in
73 subsections 3 and 4 of this section.

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

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

 407.932. **1.** Nothing in sections ~~[407.925]~~ **407.924** to 407.932 shall prohibit local
2 political subdivisions from enacting more stringent ordinances or rules.

3 **2. Notwithstanding the provisions of subsection 1 of this section, no political**
4 **subdivision shall deny a license to a qualified applicant for a tobacco products license,**
5 **an alternative nicotine products license, or a vapor products license if the new license**
6 **being sought is for the same location that had a license within the previous twenty-four**
7 **months. Any new licensee shall remain eligible for a tobacco products license, an**
8 **alternative nicotine products license, or a vapor products license, or the renewal thereof,**
9 **provided that such licensee is in compliance with applicable rules and laws. The**
10 **provisions of this subsection shall not be construed to require the political subdivision to**
11 **increase the total number of tobacco products licenses, alternative nicotine products**
12 **licenses, or vapor products licenses issued by the political subdivision.**

13 **3. Notwithstanding the provisions of subsection 1 of this section, the state hereby**
14 **sets twenty-one as the minimum age to purchase tobacco products, alternative nicotine**
15 **products, and vapor products and hereby preempts, supersedes, and nullifies only the**
16 **portion of any local laws, ordinances, orders, rules, or regulations enacted by any**
17 **county, municipality, or other political subdivision that set a higher minimum age to**
18 **purchase such products.**

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

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

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

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

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

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

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

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

4. The division of [~~liquor~~] **alcohol and tobacco** control shall have the authority to inspect stores and tobacco outlets for compliance with all laws related to access of tobacco products, alternative nicotine products, or vapor products to [~~minors~~] **persons under twenty-one years of age**. The division may employ a person [~~seventeen~~] **sixteen years of age or older and under twenty-one** years of age, with parental consent **for a person under eighteen years of age**, to attempt to purchase tobacco for the purpose of inspection or enforcement of tobacco laws.

5. The supervisor of the division of [~~liquor~~] **alcohol and tobacco** control shall not use [~~minors~~] **persons under twenty-one years of age** to enforce the provisions of this chapter

20 unless the supervisor promulgates rules that establish standards for the use of ~~[minors]~~
21 **persons under twenty-one years of age**. The supervisor shall establish mandatory
22 guidelines for the use of ~~[minors]~~ **persons under twenty-one years of age** in investigations
23 by a state, county, municipal or other local law enforcement authority which shall be followed
24 by such authority and which shall, at a minimum, provide for the following:

25 (1) The ~~minor~~ **person** shall be ~~[seventeen]~~ **sixteen years of age or older and under**
26 **twenty-one** years of age;

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

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

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

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

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

44 (7) The ~~minor~~ **person** shall answer truthfully any questions about his or her age and
45 shall not remain silent when asked questions regarding his or her age;

46 (8) The ~~minor~~ **person** shall not lie to the seller of the tobacco product, alternative
47 nicotine product, or vapor product to induce a sale of tobacco products;

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

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

53 (11) The state, county, municipal or other local law enforcement agency shall
54 maintain records of each visit to an establishment where a ~~minor~~ **person under twenty-one**
55 **years of age** is used by the state, county, municipal or other local law enforcement agency for

56 a period of at least one year following the incident, regardless of whether a violation occurs at
57 each visit, and such records shall, at a minimum, include the following information:

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

60 (b) A ~~[Polaroid]~~ photograph of the ~~[minor]~~ **person;**

61 (c) A photocopy of the ~~[minor's]~~ **person's** valid identification, showing the ~~[minor's]~~
62 **person's** correct date of birth;

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

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

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

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