

FIRST REGULAR SESSION

HOUSE BILL NO. 502

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SCHARNHORST (Sponsor), STORCH, JONES (117),
DEEKEN AND CARTER (Co-sponsors).

1075L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 407.925, 407.928, 407.929, and 407.931, RSMo, and to enact in lieu thereof four 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Section A. Sections 407.925, 407.928, 407.929, and 407.931, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 407.925, 407.928, 407.929,
3 and 407.931, 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;

6 (3) "Minor", a person under the age of eighteen;

7 (4) "Municipality", the city, village or town within which tobacco products are sold or
8 distributed or, in the case of tobacco products that are not sold or distributed within a city, village
9 or town, the county in which they are sold or distributed;

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

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

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

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

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

23 (10) **"Self-service display", a display that contains tobacco products and is located**
24 **in an area openly accessible to consumers and from which such consumers can readily**
25 **access tobacco products without the assistance of the sales clerk or store attendant; except**
26 **that a display that holds tobacco products behind locked doors shall not constitute a self-**
27 **service display;**

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

30 (12) **"Tobacco specialty store", an establishment that derives seventy-five percent**
31 **of its revenue from tobacco products;**

32 [(11)] (13) "Vending machine", any mechanical electric or electronic, self-service device
33 which, upon insertion of money, tokens or any other form of payment, dispenses tobacco
34 products.

407.928. No person or entity shall sell individual packs of cigarettes or smokeless
2 tobacco products unless such packs satisfy one of the following conditions prior to the time of
3 sale:

4 (1) It is sold through a vending machine; [or]

5 (2) It is displayed behind the check-out counter [or it is within the unobstructed line of
6 sight of the sales clerk or store attendant from the checkout counter] ; **or**

7 (3) **It is sold through a self-service display that is located in a tobacco specialty**
8 **store.**

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, agent or employee
12 to determine whether or not the person is at least eighteen years of age when such person desires
13 to purchase or possess tobacco products procured from a registrant. Upon such presentation, the
14 owner or employee of the establishment shall compare the photograph and physical
15 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, **and 4** of section
24 407.931. No person shall be liable for more than one violation of subsections 2 [and] , 3, **and**
25 **4** of 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 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] **6** of this section. A determination of noncompliance may be made by a local
14 law enforcement agency or the division of liquor control. Nothing in this section shall apply to
15 a vending machine if located in a factory, private club or other location not generally accessible
16 to the general public.

17 3. **By January 1, 2010, all self-service displays that dispense tobacco products shall**
18 **be located in tobacco specialty stores. An owner of an establishment whose self-service**
19 **display is not in compliance with the provisions of this subsection shall be subject to the**
20 **penalties contained in subsection 6 of this section. A determination of noncompliance may**

21 **be made by a local law enforcement agency or the division of liquor control. Nothing in**
22 **this subsection shall apply to a vending machine permitted under subsection 2 of this**
23 **section.**

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

27 [4.] **5.** Any person including, but not limited to, a sales clerk, owner or operator who
28 violates subsection 1, 2 [or] , 3, **or 4** of this section or section 407.927 shall be penalized as
29 follows:

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

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

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

33 [5.] **6.** Any owner of the establishment where tobacco products are available for sale who
34 violates subsection 3 **or 4** of this section, in addition to the penalties established in subsection
35 [4] **5** of this section, shall be penalized in the following manner:

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

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

41 (3) For the third violation per location within two years, the division of liquor control
42 shall issue a citation prohibiting the outlet from selling tobacco products for a forty-eight-hour
43 period;

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

47 [6.] **7.** Any owner of the establishment where tobacco products are available for sale who
48 violates subsection 3 **or 4** of this section shall not be penalized pursuant to this section if such
49 person documents the following:

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

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

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

59 [7.] **8.** The exemption in subsection [6] **7** of this section shall not apply to any person
60 who is considered the general owner or operator of the outlet where tobacco products are
61 available for sale if:

62 (1) Four or more violations per location of subsection 3 **or 4** of this section occur within
63 a one-year period; or

64 (2) Such person knowingly violates or knowingly allows his or her employees to violate
65 subsection 3 **or 4** of this section.

66 [8.] **9.** If a sale is made by an employee of the owner of an establishment in violation of
67 sections 407.925 to 407.934, the employee shall be guilty of an offense established in
68 subsections 1, 2 [and] , 3, **and 4** of this section. If a vending machine is in violation of section
69 407.927, the owner of the establishment shall be guilty of an offense established in subsections
70 [3 and] 4 **and 5** of this section. If a sample is distributed by an employee of a company
71 conducting the sampling, such employee shall be guilty of an offense established in subsections
72 [3 and] 4 **and 5** of this section.

73 [9.] **10.** 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, **or 4** of this
75 section shall conclusively be presumed to have reasonably relied on proof of age of the purchaser
76 or recipient, and such person shall not be found guilty of such violation if such person raises and
77 proves as 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.] **11.** 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.

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