

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
Regular Session, 2019

As Engrossed: H2/28/19
A Bill

HOUSE BILL 1519

By: Representatives L. Johnson, F. Allen, Bentley, Breaux, Cloud, Coleman, Cozart, Evans, Hillman, Kelly, Love, Magie, Richardson, S. Smith, *Crawford, D. Ferguson*

By: Senators Irvin, Bledsoe, J. English, K. Hammer, *Hill*

For An Act To Be Entitled

AN ACT TO PROHIBIT THE SALE OF TOBACCO PRODUCTS, VAPOR PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, E-LIQUID PRODUCTS, AND CIGARETTE PAPERS TO A PERSON UNDER TWENTY-ONE (21) YEARS OF AGE; AND FOR OTHER PURPOSES.

Subtitle

TO PROHIBIT THE SALE OF TOBACCO PRODUCTS, VAPOR PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, E-LIQUID PRODUCTS, AND CIGARETTE PAPERS TO A PERSON UNDER TWENTY-ONE (21) YEARS OF AGE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 5-27-227(b)(1)(B), concerning the prohibition of minors purchasing, using, or possessing tobacco products, vapor products, alternative nicotine products, e-liquid products, and cigarette papers, is amended to read as follows:

(B) For the purpose of obtaining or attempting to obtain tobacco in any form, a vapor product, alternative nicotine product, e-liquid product, any component of a vapor product, alternative nicotine product, or e-liquid product, or cigarette papers, falsely represent himself or herself to be ~~eighteen (18)~~ twenty-one (21) years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the minor's age.



SECTION 2. Arkansas Code § 5-27-227, concerning the prohibition of minors purchasing, using, or possessing tobacco products, vapor products, alternative nicotine products, e-liquid products, and cigarette papers, is amended to add an additional subsection to read as follows:

(m)(1) As used in this section, "minor" means a person who is under twenty-one (21) years of age.

(2) "Minor" does not include a person who is under twenty-one (21) years of age if the person presents a military identification card establishing that he or she is a member of the United States Armed Forces.

SECTION 3. Arkansas Code § 5-78-102 is amended to read as follows:

5-78-102. Possession of cigarette or tobacco product, vapor product, alternative nicotine product, or e-liquid product by minor – Confiscation – Additional punishment – Definition.

(a)(1) As used in this section, "minor" means a person who is under twenty-one (21) years of age.

(2) "Minor" does not include a person who is under twenty-one (21) years of age if the person presents a military identification card establishing that he or she is a member of the United States Armed Forces.

(b) A cigarette or tobacco product, vapor product, alternative nicotine product, or e-liquid product, or a component of a vapor product, alternative nicotine product, or e-liquid product found in the possession of a ~~person under eighteen (18) years of age~~ minor may be confiscated by a certified law enforcement officer or a school official and immediately destroyed.

~~(b)(c)~~ (c) If a minor who is found by a court to be in violation of any criminal statute is also found to have been in possession of a cigarette or tobacco product, vapor product, alternative nicotine product, or e-liquid product, or a component of a vapor product, alternative nicotine product, or e-liquid product at the time of the violation of the criminal statute, the court may order the minor to perform up to three (3) hours of community service and to enroll in a tobacco education program, in addition to any other punishment imposed by the court for the violation of the criminal statute.

~~(e)(1)(d)(1)~~ Any additional punishment ordered by the court under

subsection ~~(b)~~ (c) of this section is not a criminal offense and shall not be recorded as a criminal offense in the records of this state.

(2) All records of a proceeding under this section shall be permanently expunged from any record created or maintained by any agency, department, county, or municipality.

SECTION 4. Arkansas Code § 26-57-256(f)-(h), concerning the powers of the Arkansas Tobacco Control Board, are amended to read as follows:

(f) The board may consider the following factors when reviewing a possible violation:

(1) The business has adopted and enforced a written policy against selling cigarettes, tobacco products, vapor products, alternative nicotine products, or e-liquid products to ~~persons less than eighteen (18) years of age~~ minors;

(2) The business has informed its employees of the applicable laws regarding the sale of cigarettes, tobacco products, vapor products, alternative nicotine products, or e-liquid products to ~~persons less than eighteen (18) years of age~~ minors;

(3) The business required employees to verify the age of cigarette, tobacco product, vapor product, alternative nicotine product, e-liquid product, or e-liquid customers by way of photographic identification;

(4) The business has established and imposed disciplinary sanctions for noncompliance; and

(5) The appearance of the purchaser of the tobacco in any form, vapor products, alternative nicotine product, or cigarette papers was such that an ordinary prudent person would believe him or her to be of legal age to make the purchase.

(g)(1) A penalty under subsection (d) of this section for a violation of § 5-27-227 shall not be imposed upon a retailer or agent or employee of a retailer who can establish an affirmative defense that before the date of the violation the retailer or agent or employee of the retailer furnishing the tobacco in any form, vapor products, alternative nicotine products, e-liquid products, or cigarette papers reasonably relied upon proof of age that identified the person receiving the tobacco in any form, vapor products, alternative nicotine products, e-liquid products, or cigarette papers as ~~being eighteen (18) years of age or older~~ not being a minor.

(2) As used in this section, "proof of age" means any document issued by a governmental agency containing a description of the person or the person's photograph, or both, and giving the person's date of birth and includes without limitation a passport, military identification card, or driver's license.

(h) Any cigarettes, tobacco products, vapor products, alternative nicotine products, or e-liquid products found in the possession of a ~~person less than eighteen (18) years of age~~ minor may be confiscated.

SECTION 5. Arkansas Code § 26-57-256, concerning the powers of the Arkansas Tobacco Control Board, is amended to add an additional subsection to read as follows:

(1)(1) As used in this section, "minor" means a person who is under twenty-one (21) years of age.

(2) "Minor" does not include a person who is under twenty-one (21) years of age if the person presents a military identification card establishing that he or she is a member of the United States Armed Forces.

SECTION 6. Arkansas Code § 26-57-259(c), concerning nonpreemption of the Arkansas Tobacco Control Board, is amended to read as follows:

(c) Nothing in this act nor any rule of the board shall be construed or interpreted so as to require any state, county, municipal, or other local authority to exhaust any administrative remedies through the board, including without limitation the right to seize and forward to the board the state license of any vendor or retailer found to have illegally sold tobacco products, vapor products, alternative nicotine products, or e-liquid products to a ~~person less than eighteen (18) years of age~~ minor as defined in § 26-57-256, provided that the vendor or retailer shall be given a hearing before the board at the board's next regularly scheduled meeting.

SECTION 7. Arkansas Code § 9-25-101(b), concerning the age of majority and exceptions to age of majority, is amended to read as follows:

(b)(1) Any law of the State of Arkansas that presently requires a person to be of a minimum age of twenty-one (21) years to enjoy any privilege or right or to do any act or to participate in any event, election, or other activity shall be deemed to require that person to be of a minimum age of

eighteen (18) years.

(2) However, this section shall not repeal, amend, or otherwise affect any existing laws concerning or in any way relating to beer, wines, spirituous, vinous, malt liquors, or other alcoholic beverages, tobacco products, vapor products, alternative nicotine products, e-liquid products, or cigarette papers, and the sale thereof to persons under twenty-one (21) years of age.

SECTION 8. Arkansas Code § 26-57-257(r), concerning the Director of Arkansas Tobacco Control, is amended to read as follows:

(r) The enforcement of state laws relating to the prohibition of the barter or sale of tobacco in any form, vapor products, alternative nicotine products, e-liquid products, or cigarette papers to ~~minors~~ a minor as defined in § 26-57-256 by multiple state agencies shall be coordinated to avoid duplicative inspections of the same retailer by multiple state agencies.

/s/L. Johnson