

FIRST REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
HOUSE SUBSTITUTE FOR

# HOUSE BILL NO. 381

## 91ST GENERAL ASSEMBLY

1128S.11T

2001

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### AN ACT

To repeal sections 149.015, 407.927, 407.929 and 407.931, RSMo 2000, relating to the sale of tobacco products to minors, and to enact in lieu thereof fourteen new sections relating to the same subject, with penalty provisions and an effective date for certain sections.

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

Section A. Sections 149.015, 407.927, 407.929 and 407.931, RSMo 2000, are repealed  
2 and fourteen new sections enacted in lieu thereof, to be known as sections 149.015, 149.200,  
3 149.203, 149.206, 149.212, 149.215, 407.924, 407.926, 407.927, 407.928, 407.929, 407.931,  
4 407.933 and 407.934, to read as follows:

149.015. 1. A tax shall be levied upon the sale of cigarettes at an amount equal to eight  
2 and one-half mills per cigarette, until such time as the general assembly appropriates an amount  
3 equal to twenty-five percent of the net federal reimbursement allowance to the health initiatives  
4 fund, then the tax shall be six and one-half mills per cigarette beginning July first of the fiscal  
5 year immediately after such appropriation. As used in this section, "net federal reimbursement  
6 allowance" shall mean that amount of the federal reimbursement allowance in excess of the  
7 amount of state matching funds necessary for the state to make payments required by subsection  
8 1 of section 208.471, RSMo, or, if the payments exceed the amount so required, the actual  
9 payments made for the purposes specified in subsection 1 of section 208.471, RSMo.  
10 2. The tax shall be evidenced by stamps which shall be furnished by and purchased from  
11 the director or by an impression of the tax by the use of a metering machine when authorized by  
12 the director as provided in this chapter, and the stamps or impression shall be securely affixed

**EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

13 to one end of each package in which cigarettes are contained. All cigarettes must be stamped  
14 before being sold in this state.

15 3. Cigarette tax stamps shall be purchased only from the director. All stamps shall be  
16 purchased by the director in proper denominations, shall contain such appropriate wording as the  
17 director may prescribe, and shall be of such design, character, color combinations, color changes,  
18 sizes and material as the director may, by [his] rules and regulations, determine to afford the  
19 greatest security to the state. It shall be the duty of the director to manufacture or contract for  
20 revenue stamps required by this chapter; provided that if the stamps are contracted for, the  
21 manufacturer thereof shall be within the jurisdiction of the criminal and civil courts of this state,  
22 unless the stamps cannot be obtained in this state at a fair price or of acceptable quality. If  
23 stamps are manufactured outside of the state, the director shall take any precautions which he  
24 deems necessary to safeguard the state against forgery and misdelivery of any stamps. The  
25 director may require of the manufacturer from whom stamps are purchased a bond in an amount  
26 to be determined by him commensurate with the monetary value of the stamps, containing such  
27 conditions as he may deem necessary in order to protect the state against loss.

28 4. It shall be the intent of this chapter that the impact of the tax levied hereunder be  
29 absorbed by the consumer or user and when the tax is paid by any other person, the payment shall  
30 be considered as an advance payment and shall thereafter be added to the price of the cigarettes  
31 and recovered from the ultimate consumer or user with the person first selling the cigarettes  
32 acting as an agent of the state for the payment and collection of the tax to the state, except that  
33 in furtherance of the intent of this chapter no refund of any tax collected and remitted by a  
34 retailer upon gross receipts from a sale of cigarettes subject to tax [under] **pursuant to this**  
35 **chapter shall be claimed [under] pursuant to chapter 144, RSMo, for any amount illegally or**  
36 **erroneously overcharged or overcollected as a result of imposition of sales tax by the retailer**  
37 **upon amounts representing the tax imposed [under] pursuant to this chapter and any such tax**  
38 **shall either be refunded to the person who paid such tax or paid to the director. The**  
39 **director may recoup from any retailer any tax illegally or erroneously overcharged or**  
40 **overcollected unless such tax has been refunded to the person who paid such tax.**

41 5. In making sales of cigarettes in the state, a wholesaler shall keep a record of the  
42 amount of tax on his gross sales. The tax shall be evidenced by appropriate stamps attached to  
43 each package of cigarettes sold. **Notwithstanding any other law to the contrary, no tax stamp**  
44 **need be attached to a package of cigarettes transported in the state between wholesalers**  
45 **or distributors unless and until such package is sold to a retailer or consumer.**

46 6. The tax on any cigarettes contained in packages of four, ten, twenty or similar  
47 quantities to be used solely for distribution as samples shall be computed on a per cigarette basis  
48 at the rate set forth in this section, and payment of the tax shall be remitted to the director at such

49 time and in such manner as he may prescribe.

50 7. The revenue generated by the additional two mills tax imposed effective August 13,  
51 1982, less any three percent reduction allowed [under] **pursuant to** the provisions of section  
52 149.021, shall be placed in a separate fund entitled "The Fair Share Fund". Such moneys in the  
53 fair share fund shall be distributed to the schools in this state on an average daily attendance  
54 basis, except as provided in section 163.031, RSMo.

55 8. The revenue generated by the additional two mills tax imposed effective October 1,  
56 1993, less any three percent reduction allowed [under] **pursuant to** the provisions of section  
57 149.021, shall be deposited in the health initiatives fund created in section 191.831, RSMo.  
58 When the general assembly appropriates an amount equal to twenty-five percent of the net  
59 federal reimbursement allowance to the health initiatives fund, this subsection shall expire. The  
60 additional two mills tax levied [under] **pursuant to** this section shall not apply to an amount of  
61 stamped cigarettes in the possession of licensed wholesalers on October 1, 1993, up to thirty-five  
62 percent of the total cigarette sales made by such licensed wholesaler during the six months  
63 immediately preceding October 1, 1993.

**149.200. 1. It is unlawful for any person to:**

2 (1) **Sell or distribute in this state; to acquire, hold, own, possess or transport for**  
3 **sale or distribution in this state; or to import, or cause to be imported into this state for sale**  
4 **or distribution in this state, any cigarettes that do not comply with all requirements**  
5 **imposed by or pursuant to federal law and implementing regulations, including but not**  
6 **limited to the filing of ingredients lists pursuant to section 7 of the Federal Cigarette**  
7 **Labeling and Advertising Act (15 U.S.C. 1335a); the permanent imprinting on the primary**  
8 **packaging of the precise package warning labels in the precise format specified in section**  
9 **4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333); the rotation of**  
10 **label statements pursuant to section 4(c) of the Federal Cigarette Labeling and Advertising**  
11 **Act (15 U.S.C. 1335(c)); restrictions on the importation, transfer and sale of previously**  
12 **exported tobacco products pursuant to Section 9302 of Public Law 105-33, the Balanced**  
13 **Budget Act of 1997, as amended; requirements of Title IV of Public Law 106-476, the**  
14 **Imported Cigarette Compliance Act of 2000; or**

15 (2) **Alter the package of any cigarettes, prior to sale or distribution to the ultimate**  
16 **consumer, so as to remove, conceal or obscure:**

17 (a) **Any statement, label, stamp, sticker or notice indicating that the manufacturer**  
18 **did not intend the cigarettes to be sold, distributed or used in the United States, including**  
19 **but not limited to labels stating "For Export Only", "U.S. Tax Exempt", "For Use Outside**  
20 **U.S.", or similar wording; or**

21 (b) **Any health warning that is not the precise warning statement in the precise**

22 format specified in section 4 of the Federal Cigarette Labeling and Advertising Act (15  
23 U.S.C. 1333).

24       2. It shall be unlawful for any person to affix any tax stamp or meter impression  
25 required to this chapter to the package of any cigarettes that does not comply with the  
26 requirements of subdivision (1) of subsection 1 of this section or that is altered in violation  
27 of subdivision (2) of subsection 1 of this section.

28       3. This section shall not apply to cigarettes allowed to be imported or brought into  
29 the United States for personal use, or to cigarettes sold or intended to be sold as duty-free  
30 merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C.  
31 1555(b) and any implementing regulations; provided, however, that this act shall apply to  
32 any such cigarettes that are brought back into the customs territory for resale within the  
33 customs territory.

34       4. Any person who violates this section, whether acting knowingly or recklessly, is  
35 guilty of a class D felony.

36       5. As used in this section, "package" means a pack, box, carton or container of any  
37 kind in which cigarettes are offered for sale, sold or otherwise distributed to consumers.

149.203. 1. The director may revoke or suspend the license or licenses of any  
2 wholesaler pursuant to the procedures set forth in section 149.035 upon finding a violation  
3 of section 149.200, or any implementing rule promulgated by the director pursuant to this  
4 chapter. In addition, the director may impose on any person a civil penalty in an amount  
5 not to exceed the greater of five hundred percent of the retail value of the cigarettes  
6 involved or five thousand dollars, upon finding a violation by such person of sections  
7 149.200 to 149.215, or any implementing rule promulgated by the director pursuant to this  
8 chapter.

9       2. Cigarettes that are acquired, held, owned, possessed, transported in, imported  
10 into, or sold or distributed in this state in violation of sections 149.200 to 149.215 or  
11 196.1000 to 196.1003 shall be deemed contraband pursuant to section 149.055 and are  
12 subject to seizure and forfeiture as provided therein. Any cigarettes shall be deemed  
13 contraband whether the violation of sections 149.200 to 149.215 is knowing or otherwise.

149.206. A violation of sections 149.200 to 149.215 shall constitute an unlawful  
2 trade practice as provided in section 407.020, RSMo, and in addition to any remedies or  
3 penalties set forth in sections 149.200 to 149.215, shall be subject to any remedies or  
4 penalties available for a violation of that section.

149.212. Sections 149.200 to 149.215 shall be enforced by the director provided, that  
2 at the request of the director or the director's duly authorized agent, the state highway  
3 patrol and all local police authorities shall enforce the provisions of sections 149.200 to

4 **149.215.** The attorney general has concurrent power with the prosecuting attorneys of the  
5 states to enforce the provisions of sections 149.200 to 149.215. Any person who sells,  
6 distributes, or manufactures cigarettes and sustains direct economic or commercial injury  
7 as a result of a violation of sections 149.200 to 149.215 may bring an action in good faith  
8 for appropriate injunctive relief.

2 **149.215.** If any provision of sections 149.200 to 149.212 is held invalid, the  
remainder of such sections shall not be affected.

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

3 **2.** Beginning January 1, 2003, the division of liquor control shall submit an annual  
4 report to the general assembly on the effectiveness of sections 407.925 to 407.934 in  
5 reducing tobacco possession by minors and the enforcement activities by the division for  
6 violations of sections 407.925 to 407.934.

2 **407.926. 1.** Any person or entity who sells tobacco products shall deny the sale of  
such tobacco products to any person who is less than eighteen years of age.

3 **2.** Any person or entity who sells or distributes tobacco products by mail or  
4 through the Internet in this state in violation of subsection 1 of this section shall be assessed  
5 a fine of two hundred and fifty dollars for the first violation and five hundred dollars for  
6 each subsequent violation.

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

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

9 (2) Include a depiction of a pack of cigarettes at least two inches high defaced by a red  
10 diagonal diameter of a surrounding red circle, and the words "Under 18".

2 **407.928.** No person or entity shall sell individual packs of cigarettes or smokeless  
tobacco products unless such packs satisfy one of the following conditions prior to the time  
3 of 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  
6 of sight of the sales clerk or store attendant from the checkout counter.

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

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

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

407.931. 1. It shall be unlawful for any person to [engage in tobacco product  
2 distribution] **sell, provide or distribute tobacco products** to persons under eighteen years of  
3 age.

4       **2. By January 1, 2002, all vending machines that dispense tobacco products shall**  
5 **be located within the unobstructed line of sight and under the direct supervision of an**  
6 **adult responsible for preventing persons less than eighteen years of age from purchasing**  
7 **any tobacco product from such machine or shall be equipped with a lock-out device to**  
8 **prevent the machines from being operated until the person responsible for monitoring sales**  
9 **from the machines disables the lock. Such locking device shall be of a design that prevents**  
10 **it from being left in an unlocked condition and which will allow only a single sale when**  
11 **activated. A locking device shall not be required on machines that are located in areas**

12 where persons less than eighteen years of age are not permitted or prohibited by law. An  
13 owner of an establishment whose vending machine is not in compliance with the provisions  
14 of this subsection shall be subject to the penalties contained in subsection 5 of this section.  
15 A determination of noncompliance may be made by a local law enforcement agency or the  
16 division of liquor control. Nothing in this section shall apply to a vending machine if  
17 located in a factory, private club or other location not generally accessible to the general  
18 public.

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

23 [3.] 4. Any person, including, but not limited to, a sales clerk, owner or operator  
24 who violates subsection 1 [or], 2 or 3 of this section or section 407.927 shall be [fined]  
25 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 are available for sale  
30 who violates subsection 3 of this section, in addition to the penalties established in  
31 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  
33 by the division of liquor control;
- 34 (2) For the second violation per location within two years, the division of liquor  
35 control shall issue a citation prohibiting the outlet from selling tobacco products for a  
36 twenty-four hour period;
- 37 (3) For the third violation per location within two years, the division of liquor  
38 control shall issue a citation prohibiting the outlet from selling tobacco products for a  
39 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  
44 who violates subsection 3 of this section shall not be penalized pursuant to this section if  
45 such person documents the following:

- 46 (1) An in-house or other tobacco compliance employee training program was in  
47 place to provide the employee with information on the state and federal regulations

48 regarding tobacco sales to minors. Such training program must be attended by all  
49 employees who sell tobacco products to the general public;

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

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

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

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

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

63 [4.] 8. If a sale is made by an employee of the owner of an establishment in violation  
64 of sections 407.925 to [407.932,] **407.934**, the employee shall be guilty of an offense established  
65 in subsections 1, 2 and 3 of this section. If a vending machine is in violation of section 407.927,  
66 the owner of the establishment shall be guilty of an offense established in subsections [2 and 3]  
67 **3 and 4** of this section. If a sample is distributed by an employee of a company conducting the  
68 sampling, such employee shall be guilty of an offense established in subsections [2 and 3] **3 and**  
69 **4** of this section.

70 9. A person cited for selling, providing or distributing any tobacco product to any  
71 individual less than eighteen years of age in violation of subsection 1, 2 or 3 of this section  
72 shall conclusively be presumed to have reasonably relied on proof of age of the purchaser  
73 or recipient, and such person shall not be found guilty of such violation if such person  
74 raises and proves as an affirmative defense that:

75 (1) Such individual presented a driver's license or other government-issued photo  
76 identification purporting to establish that such individual was eighteen years of age or  
77 older.

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

2 **407.933. 1.** No person less than eighteen years of age shall purchase, attempt to  
3 purchase or possess cigarettes or other tobacco products unless such person is an employee  
of a seller of cigarettes or tobacco products and is in such possession to effect a sale in the



4 course of employment, or an employee of the division of liquor control for enforcement  
5 purposes pursuant to subsection 5 of section 407.934.

6 2. Any person less than eighteen years of age shall not misrepresent his or her age  
7 to purchase cigarettes or tobacco products.

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

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

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

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

3 2. Beginning January 1, 2002, the department of revenue shall permit persons to  
4 designate through the Internet or by including a place on all sales tax license applications,  
5 for the applicant to designate himself or herself as a seller of tobacco 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  
8 available to the division of liquor control and the department of mental health a complete  
9 list of every establishment which sells cigarettes and other tobacco products in this state.

10 4. The division of liquor control shall have the authority to inspect stores and  
11 tobacco outlets for compliance with all laws related to access of tobacco products to minors.  
12 The division may employ a person seventeen years of age, with parental consent, to attempt  
13 to purchase tobacco for the purpose of inspection or enforcement of tobacco laws.

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

20 (1) The minor shall be seventeen years of age;

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

24 (3) The state, county, municipal or other local law enforcement agency shall obtain  
25 the consent of the minor's parent or legal guardian before the use of such minor on a form

26 approved by the supervisor;

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

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

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

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

37 (8) The minor shall not lie to the seller of the tobacco product to induce a sale of  
38 tobacco products;

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

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

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

49 (a) The signed consent form of the minor's parent or legal guardian;

50 (b) A Polaroid photograph of the minor;

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

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

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

57 6. If the state, county, municipal or other local law enforcement authority uses  
58 minors in investigations or in enforcing or determining violations of this chapter or any  
59 local ordinance and does not comply with the mandatory guidelines established by the  
60 supervisor of liquor control in subsection 5 of this section, the supervisor of liquor control  
61 shall not take any disciplinary action against the establishment or seller pursuant to this

62 **chapter based on an alleged violation discovered when using a minor and shall not**  
63 **cooperate in any way with the state, county, municipal or other local law enforcement**  
64 **authority in prosecuting any alleged violation discovered when using a minor.**

Section B. The repeal and reenactment of section 149.015 and the enactment of sections  
2 149.200, 149.203, 149.206, 149.209, 149.212 and 149.215 shall become effective February 1,  
3 2002.