

SECOND REGULAR SESSION

HOUSE BILL NO. 2673

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE TAYLOR.

5679H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 407.924, 407.925, 407.926, 407.927, 407.929, 407.931, 407.933, and 407.934, RSMo, and to enact in lieu thereof fourteen new sections relating to tobacco products, with penalty provisions and an emergency clause.

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Section A. Sections 407.924, 407.925, 407.926, 407.927, 407.929, 407.931, 407.933, 2 and 407.934, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known 3 as sections 196.1200, 196.1205, 196.1210, 196.1215, 196.1220, 196.1225, 407.924, 407.925, 4 407.926, 407.927, 407.929, 407.931, 407.933, and 407.934, to read as follows:

196.1200. 1. As used in sections 196.1200 to 196.1225, the following terms mean:

- 2 **(1) "Alternative nicotine product", the same meaning as in section 407.925;**
3 **(2) "Cigar", any roll for smoking, except cigarettes, made chiefly of tobacco or any**
4 **substitute thereof. "Cigar" shall also include any tobacco product manufactured or**
5 **packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is**
6 **designed or intended to be filled by the consumer with loose tobacco or other fillers;**
7 **(3) "Department", the department of revenue;**
8 **(4) "Director", the director of the department of revenue;**
9 **(5) "Finished new tobacco product", any new tobacco product that will not be**
10 **subject to any additional processing before sale to a consumer;**
11 **(6) "New tobacco product", any alternative nicotine product, cigar, or vapor**
12 **product;**

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.

13 (a) That was not commercially distributed or sold, including, but not limited to,
14 products distributed or sold in test markets, in the United States as of February 15, 2007;
15 or

16 (b) That had a modification in design, a modification of a component or part, or
17 a change in the content or amount of any additive or ingredient, at any time after February
18 15, 2007, for which the U.S. Food and Drug Administration has issued a regulation or other
19 formal guidance determining that such a modification alters the product to such an extent
20 that it is no longer substantially equivalent to a product commercially distributed or sold
21 prior to February 15, 2007;

22 (7) "New tobacco product manufacturer", any person who manufactures,
23 fabricates, assembles, processes, mixes, prepares, labels, repacks, or relabels a finished new
24 tobacco product. "New tobacco product manufacturer" includes an owner of a brand or
25 formula for a new tobacco product who contracts with another person to complete the
26 fabrication and assembly of the product to the brand or formula owner's standard;

27 (8) "Vapor product", the same meaning as in section 407.925.

196.1205. 1. Beginning June 1, 2020, or another date not more than thirty days
2 following a premarket tobacco application submission deadline issued by the U.S. Food
3 and Drug Administration, whichever is later, every new tobacco product manufacturer
4 whose new tobacco products are sold in this state, whether directly or through a
5 distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver
6 on a form prescribed by the director, a certification to the director certifying, under
7 penalty of perjury, the following:

8 (1) A premarket tobacco application has been submitted to the U.S. Food and Drug
9 Administration with respect to each new tobacco product that is sold in the state by the
10 new tobacco product manufacturer; and

11 (2) The date the premarket tobacco application was submitted to the U.S. Food and
12 Drug Administration.

13

14 In addition to the foregoing, each new tobacco product manufacturer shall provide a copy
15 of the cover page of the premarket tobacco application with evidence of receipt of said
16 application by the U.S. Food and Drug Administration.

17 2. The director shall maintain a directory on the department's website and make
18 available to the public a list of all new tobacco products that may lawfully be distributed
19 or sold in the state. The director shall add each new tobacco product that is compliant with
20 this section to the new tobacco product directory within thirty days after the filing of
21 proper certification by a new tobacco product manufacturer.

22 **3. Notwithstanding the provisions of subsections 1 and 2 of this section, if a new**
23 **tobacco product manufacturer can demonstrate to the director that the U.S. Food and**
24 **Drug Administration has issued a rule, guidance, or any other formal statement that**
25 **temporarily exempts a new tobacco product from the federal premarket tobacco**
26 **application requirements, the new tobacco product may be added to the new tobacco**
27 **product directory upon request by the new tobacco product manufacturer and sufficient**
28 **evidence that the new tobacco product is temporarily exempt from federal enforcement**
29 **action.**

196.1210. The director shall designate a fee, not to exceed five hundred dollars per
2 **new tobacco product to be paid by each new tobacco product manufacturer, that**
3 **reasonably reflects the cost incurred by the department for processing the certifications**
4 **required by section 196.1205 and for the operation of the new tobacco product directory.**

196.1215. 1. Any new tobacco product manufacturer that has made a certification
2 **as required pursuant to section 196.1205 shall notify the director within thirty days of**
3 **receiving either of the following:**

4 **(1) An order issued by the U.S. Food and Drug Administration with regard to a**
5 **new tobacco product pursuant to 21 U.S.C. Section 387e or 21 U.S.C. Section 387j; or**

6 **(2) Any notice of action taken by the U.S. Food and Drug Administration affecting**
7 **the ability of the new tobacco product to be introduced or delivered into interstate**
8 **commerce for commercial distribution.**

9 **2. If the U.S. Food and Drug Administration takes a negative action resulting in the**
10 **removal of the new tobacco product from interstate commerce, then the director shall**
11 **remove that new tobacco product from the new tobacco product directory, subject to**
12 **recertification.**

196.1220. 1. Beginning July 1, 2020, it shall be unlawful for any manufacturer,
2 **distributor, or retailer to distribute or sell any new tobacco product that has not**
3 **sufficiently complied with the new tobacco product certification requirements pursuant to**
4 **section 196.1205.**

5 **2. There shall be a rebuttable presumption that an alternative nicotine product,**
6 **cigar, or vapor product distributed or sold in this state that is not listed on the new tobacco**
7 **product directory is being distributed or sold, as applicable, unlawfully in the state.**

8 **3. Notwithstanding subsection 2 of this section, if a manufacturer of cigars that**
9 **were distributed or sold prior to February 15, 2007, can provide a list of such cigars with**
10 **evidence of the date of market entry to the director, such cigars shall be included on the**
11 **directory described.**

12 **4. A knowing violation of subsection 1 of this section shall result in a fine of five**
13 **hundred dollars. Each distribution or sale in this state of a new tobacco product that is not**
14 **listed on the directory shall be considered a separate violation.**

196.1225. 1. The director shall have authority, as appropriate, to promulgate rules
2 **and regulations only to the extent that such rules and regulations are necessary and proper**
3 **to enforce and implement the provisions of section 196.1200 to 196.1220.**

4 **2. Any rule or portion of a rule, as that term is defined in section 536.010, that is**
5 **created under the authority delegated in this section shall become effective only if it**
6 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
7 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**
8 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**
9 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
10 **grant of rulemaking authority and any rule proposed or adopted after the effective date**
11 **of this act shall be invalid and void.**

 407.924. 1. The division of [~~liquor~~] **alcohol and tobacco control** within the department
2 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 reducing
5 tobacco possession by [~~minors~~] **persons under twenty-one years of age** and the enforcement
6 activities by the division for violations of sections 407.925 to 407.934.

7 **3. The division of behavioral health within the department of mental health shall**
8 **be responsible for ensuring that the state is in compliance with and satisfies all reporting**
9 **and enforcement obligations pursuant to 42 U.S.C. Section 300x-26, as amended, and any**
10 **rule or regulation promulgated by the U.S. Department of Health and Human Services**
11 **pursuant to 42 U.S.C. Section 300x-26, as amended, including, but not limited to, annually**
12 **preparing and submitting to the Secretary of the Department of Health and Human**
13 **Services a report, as required by federal law, describing:**

14 **(1) The activities carried out by the division of behavioral health, in coordination**
15 **with the division of alcohol and tobacco control, to ensure that tobacco retailers do not sell**
16 **alternative nicotine products, tobacco products, or vapor products to persons under the**
17 **age of twenty-one;**

18 **(2) The extent of success the division of behavioral health, in coordination with the**
19 **division of alcohol and tobacco control, has achieved in ensuring that retailers do not sell**
20 **alternative nicotine products, tobacco products, and vapor products to individuals under**
21 **the age of twenty-one; and**

22 **(3) The strategies utilized by the division of behavioral health, in coordination with**
23 **the division of alcohol and tobacco control, to ensure that retailers do not sell alternative**
24 **nicotine products, tobacco products, or vapor products to persons under the age of twenty-**
25 **one.**

26 **4. The department of mental health shall have authority to promulgate additional**
27 **rules and regulations that are necessary and proper to ensure the state satisfies the**
28 **enforcement and reporting obligations pursuant to subsection 3 of this section. Any rule**
29 **or portion of a rule, as that term is defined in section 536.010, that is created under the**
30 **authority delegated in this section shall become effective only if it complies with and is**
31 **subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This**
32 **section and chapter 536 are nonseverable and if any of the powers vested with the general**
33 **assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove**
34 **and annul a rule are subsequently held unconstitutional, then the grant of rulemaking**
35 **authority and any rule proposed or adopted after the effective date of this act shall be**
36 **invalid and void.**

37 **5. Any authority delegated by the general assembly within sections 407.924 to**
38 **407.934 shall be strictly construed and limited in scope to reducing tobacco use and**
39 **possession by persons under the age of twenty-one through the enforcement of state and**
40 **federal law. If the general assembly has not expressly delegated authority concerning the**
41 **subject matter of sections 407.924 to 407.934, then the powers remain vested exclusively in**
42 **the general assembly.**

407.925. As used in sections 407.925 to 407.934, the following terms mean:

2 (1) "Alternative nicotine product", any noncombustible product containing nicotine that
3 is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any
4 other means. Alternative nicotine product does not include any vapor product, tobacco product
5 or any product regulated as a drug or device by the United States Food and Drug Administration
6 under Chapter V of the Food, Drug, and Cosmetic Act;

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

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

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

12 **(3) "Division", the division of alcohol and tobacco control within the department**
13 **of public safety;**

14 ~~[(5)]~~ **(4) "Municipality", the city, village or town within which tobacco products,**
15 **alternative nicotine products or vapor products are sold or distributed or, in the case of tobacco**

16 products, alternative nicotine products or vapor products that are not sold or distributed within
17 a city, village or town, the county in which they are sold or distributed;

18 (5) "Nicotine liquid container", a bottle or other container of liquid or other
19 substance containing varying amounts of nicotine, flavorings, or other chemicals that is
20 sold, marketed, or intended for use in a vapor product. A "nicotine liquid container" shall
21 not include a liquid or other substance containing nicotine in a cartridge that is sold,
22 marketed, or intended for use in a vapor product, provided that such cartridge is prefilled
23 and sealed by the manufacturer and not intended to be opened by the consumer;

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

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

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

33 (9) "Sample", a tobacco product, alternative nicotine product, or vapor product
34 distributed to members of the general public at no cost or at nominal cost for product
35 promotional purposes;

36 (10) "Sampling", the distribution to members of the general public of tobacco product,
37 alternative nicotine product or vapor product samples;

38 (11) "Tobacco products", any substance containing tobacco leaf **that is intended for**
39 **human consumption**, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff,
40 chewing tobacco, or dipping tobacco but does not include alternative nicotine products, or vapor
41 products;

42 (12) "Vapor product", any noncombustible product containing nicotine that employs a
43 heating element, power source, electronic circuit, or other electronic, chemical or mechanical
44 means, regardless of shape or size, that can be used to produce vapor from nicotine in a **liquid**
45 solution [~~or other form~~]. Vapor product includes any electronic cigarette, electronic cigar,
46 electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other
47 [~~container of~~] nicotine [~~in a solution or other form~~] **liquid container** that is intended to be used
48 with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar
49 product or device. **Vapor product also includes any device classified by the U.S. Food and**
50 **Drug Administration as an electronic nicotine delivery system.** Vapor product does not
51 include any alternative nicotine product [~~or tobacco product~~];

52 (13) "Vending machine", any mechanical electric or electronic, self-service device
53 which, upon insertion of money, tokens or any other form of payment, dispenses tobacco
54 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]~~ **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 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 be sold to persons
9 ~~[eighteen]~~ **twenty-one** years of age or older, **and** 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 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 pre-filled 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)]~~ **(3)** 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 date,
30 or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of
31 rulemaking authority and any rule proposed or adopted after August 28, 2015, shall be invalid
32 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 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 ~~[+8]~~ **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]~~ **thirty**.

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 control]~~ or any owner or employee of an
12 establishment that sells tobacco, alternative nicotine products, or vapor products, for the purpose
13 of aiding the ~~[registrant,]~~ agent, **owner**, or employee to determine whether or not the person is
14 at least ~~[eighteen]~~ **twenty-one** years of age 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
2 products, alternative nicotine products, or vapor products to persons under ~~[eighteen]~~ **twenty-one**
3 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]~~ **twenty-one** years
7 of age from purchasing any tobacco product, alternative nicotine product, or vapor product from
8 such machine or shall be equipped with a lock-out device to prevent the machines from being
9 operated until the person responsible for monitoring sales from the machines disables the lock.
10 Such locking device shall be of a design that prevents it from being left in an unlocked condition
11 and which will allow only a single sale when activated. A locking device shall not be required
12 on machines that are located in areas where persons less than ~~[eighteen]~~ **twenty-one** years of age
13 are not permitted or prohibited by law. An owner of an establishment whose vending machine
14 is not in compliance with the provisions of this subsection shall be subject to the penalties
15 contained in subsection 5 of this section. A determination of noncompliance may be made by
16 a local law enforcement agency or the division ~~[of liquor control]~~. Nothing in this section shall
17 apply to a vending machine if located in a factory, private club or other location not generally
18 accessible to the general public.

19 3. No person or entity shall sell, provide or distribute any tobacco product, alternative
20 nicotine product, or vapor product or rolling papers to any ~~[minor]~~ **person under twenty-one**
21 **years of age**, or sell any individual cigarettes to any person in this state. This subsection shall
22 not apply to the distribution by family members on property that is not open to the public.

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

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

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

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

28 5. Any owner of the establishment where tobacco products, alternative nicotine products,
29 or vapor products are available for sale who violates subsection 3 of this section, in addition to

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

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

34 (2) For the second violation per location within two years, the division [~~of liquor control~~]
35 shall issue a citation prohibiting the outlet from selling tobacco products, alternative nicotine
36 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 control~~]
38 shall issue a citation prohibiting the outlet from selling tobacco products, alternative nicotine
39 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 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 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~~] **persons under**
49 **twenty-one years of age**. Such training program must be attended by all employees who sell
50 tobacco products, alternative nicotine 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~~] **persons under twenty-one years**
54 **of age**; and

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

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

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

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

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

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

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

7 2. Any person less than ~~[eighteen]~~ **twenty-one** years of age 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 control~~] and the department of mental health a complete list of every
9 establishment which sells cigarettes, other tobacco products, alternative nicotine products, or
10 vapor products in this state.

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

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

23 (1) The [~~minor~~] **person** shall be **between** seventeen **and twenty** years of age;

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

27 (3) The state, county, municipal or other local law enforcement agency shall obtain the
28 consent of the [~~minor's~~] **person's** parent or legal guardian, **if the person is under eighteen years**
29 **of age**, before the use of such [~~minor~~] **person** on a 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~~] **person's** valid identification showing the [~~minor's~~] **person's** correct
32 date of birth;

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

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

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

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

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

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

48 (11) The state, county, municipal or other local law enforcement agency shall maintain
49 records of each visit to an establishment where a ~~[minor]~~ **person under twenty-one years of age**
50 is used by the state, county, municipal or other local law enforcement agency for a period of at
51 least one year following the incident, regardless of whether a violation occurs at each visit, and
52 such records shall, at a minimum, include the following information:

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

55 (b) A ~~[Polaroid]~~ photograph of the minor;

56 (c) A photocopy of the ~~[minor's]~~ **person's** valid identification, showing ~~[the minor's]~~ **his**
57 **or her** correct date of birth;

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

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

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

Section B. Because of the necessity of complying with federal regulations and the
2 importance of protecting the health and welfare of young Missourians, section A of this act is
3 deemed necessary for the immediate preservation of the public health, welfare, peace and safety,
4 and is hereby declared to be an emergency act within the meaning of the constitution, and section
5 A of this act shall be in full force and effect upon its passage and approval.

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