

As Reported by the House Criminal Justice Committee

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H. B. No. 258

Representative Carruthers

Cosponsors: Representatives Richardson, Abrams, Williams, Schmidt

A BILL

To amend sections 2927.02, 3767.01, and 4301.74 of
the Revised Code to increase fines for
repeatedly selling tobacco products to minors
and to apply the public nuisance law to places
where such sales occur.

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

Section 1. That sections 2927.02, 3767.01, and 4301.74 of
the Revised Code be amended to read as follows:

Sec. 2927.02. (A) As used in this section and sections
2927.021 and 2927.022 of the Revised Code:

(1) "Age verification" means a service provided by an
independent third party (other than a manufacturer, producer,
distributor, wholesaler, or retailer of cigarettes, other
tobacco products, alternative nicotine products, or papers used
to roll cigarettes) that compares information available from a
commercially available database, or aggregate of databases, that
regularly are used by government and businesses for the purpose
of age and identity verification to personal information
provided during an internet sale or other remote method of sale

to establish that the purchaser is twenty-one years of age or 19
older. 20

(2) (a) "Alternative nicotine product" means, subject to 21
division (A) (2) (b) of this section, an electronic smoking 22
device, vapor product, or any other product or device that 23
consists of or contains nicotine that can be ingested into the 24
body by any means, including, but not limited to, chewing, 25
smoking, absorbing, dissolving, or inhaling. 26

(b) "Alternative nicotine product" does not include any of 27
the following: 28

(i) Any cigarette or other tobacco product; 29

(ii) Any product that is a "drug" as that term is defined 30
in 21 U.S.C. 321(g) (1); 31

(iii) Any product that is a "device" as that term is 32
defined in 21 U.S.C. 321(h); 33

(iv) Any product that is a "combination product" as 34
described in 21 U.S.C. 353(g). 35

(3) "Cigarette" includes clove cigarettes and hand-rolled 36
cigarettes. 37

(4) "Distribute" means to furnish, give, or provide 38
cigarettes, other tobacco products, alternative nicotine 39
products, or papers used to roll cigarettes to the ultimate 40
consumer of the cigarettes, other tobacco products, alternative 41
nicotine products, or papers used to roll cigarettes. 42

(5) "Electronic smoking device" means any device that can 43
be used to deliver aerosolized or vaporized nicotine or any 44
other substance to the person inhaling from the device including 45
an electronic cigarette, electronic cigar, electronic hookah, 46

vaping pen, or electronic pipe. "Electronic smoking device" 47
includes any component, part, or accessory of such a device, 48
whether or not sold separately, and includes any substance 49
intended to be aerosolized or vaporized during the use of the 50
device. "Electronic smoking device" does not include any product 51
that is a drug, device, or combination product, as those terms 52
are defined or described in 21 U.S.C. 321 and 353(g). 53

(6) "Proof of age" means a driver's license, a commercial 54
driver's license, a military identification card, a passport, or 55
an identification card issued under sections 4507.50 to 4507.52 56
of the Revised Code that shows that a person is eighteen years 57
of age or older. 58

(7) "Tobacco product" means any product that is made or 59
derived from tobacco or that contains any form of nicotine, if 60
it is intended for human consumption or is likely to be 61
consumed, whether smoked, heated, chewed, absorbed, dissolved, 62
inhaled, or ingested by any other means, including, but not 63
limited to, a cigarette, an electronic smoking device, a cigar, 64
pipe tobacco, chewing tobacco, snuff, or snus. "Tobacco product" 65
also means any component or accessory used in the consumption of 66
a tobacco product, such as filters, rolling papers, pipes, blunt 67
or hemp wraps, and liquids used in electronic smoking devices, 68
whether or not they contain nicotine. "Tobacco product" does not 69
include any product that is a drug, device, or combination 70
product, as those terms are defined or described in 21 U.S.C. 71
321 and 353(g). 72

(8) "Vapor product" means a product, other than a 73
cigarette or other tobacco product as defined in Chapter 5743. 74
of the Revised Code, that contains or is made or derived from 75
nicotine and that is intended and marketed for human 76

consumption, including by smoking, inhaling, snorting, or 77
sniffing. "Vapor product" includes any component, part, or 78
additive that is intended for use in an electronic smoking 79
device, a mechanical heating element, battery, or electronic 80
circuit and is used to deliver the product. "Vapor product" does 81
not include any product that is a drug, device, or combination 82
product, as those terms are defined or described in 21 U.S.C. 83
321 and 353(g). "Vapor product" includes any product containing 84
nicotine, regardless of concentration. 85

(9) "Vending machine" has the same meaning as "coin 86
machine" in section 2913.01 of the Revised Code. 87

(B) No manufacturer, producer, distributor, wholesaler, or 88
retailer of cigarettes, other tobacco products, alternative 89
nicotine products, or papers used to roll cigarettes, no agent, 90
employee, or representative of a manufacturer, producer, 91
distributor, wholesaler, or retailer of cigarettes, other 92
tobacco products, alternative nicotine products, or papers used 93
to roll cigarettes, and no other person shall do any of the 94
following: 95

(1) Give, sell, or otherwise distribute cigarettes, other 96
tobacco products, alternative nicotine products, or papers used 97
to roll cigarettes to any person under twenty-one years of age; 98

(2) Give away, sell, or distribute cigarettes, other 99
tobacco products, alternative nicotine products, or papers used 100
to roll cigarettes in any place that does not have posted in a 101
conspicuous place a legibly printed sign in letters at least 102
one-half inch high stating that giving, selling, or otherwise 103
distributing cigarettes, other tobacco products, alternative 104
nicotine products, or papers used to roll cigarettes to a person 105
under twenty-one years of age is prohibited by law; 106

(3) Knowingly furnish any false information regarding the 107
name, age, or other identification of any person under twenty- 108
one years of age with purpose to obtain cigarettes, other 109
tobacco products, alternative nicotine products, or papers used 110
to roll cigarettes for that person; 111

(4) Manufacture, sell, or distribute in this state any 112
pack or other container of cigarettes containing fewer than 113
twenty cigarettes or any package of roll-your-own tobacco 114
containing less than six-tenths of one ounce of tobacco; 115

(5) Sell cigarettes or alternative nicotine products in a 116
smaller quantity than that placed in the pack or other container 117
by the manufacturer; 118

(6) Give, sell, or otherwise distribute alternative 119
nicotine products, papers used to roll cigarettes, or tobacco 120
products other than cigarettes over the internet or through 121
another remote method without age verification. 122

(C) No person shall sell or offer to sell cigarettes, 123
other tobacco products, or alternative nicotine products by or 124
from a vending machine, except in the following locations: 125

(1) An area within a factory, business, office, or other 126
place not open to the general public; 127

(2) An area to which persons under twenty-one years of age 128
are not generally permitted access; 129

(3) Any other place not identified in division (C) (1) or 130
(2) of this section, upon all of the following conditions: 131

(a) The vending machine is located within the immediate 132
vicinity, plain view, and control of the person who owns or 133
operates the place, or an employee of that person, so that all 134

cigarettes, other tobacco product, and alternative nicotine 135
product purchases from the vending machine will be readily 136
observed by the person who owns or operates the place or an 137
employee of that person. For the purpose of this section, a 138
vending machine located in any unmonitored area, including an 139
unmonitored coatroom, restroom, hallway, or outer waiting area, 140
shall not be considered located within the immediate vicinity, 141
plain view, and control of the person who owns or operates the 142
place, or an employee of that person. 143

(b) The vending machine is inaccessible to the public when 144
the place is closed. 145

(c) A clearly visible notice is posted in the area where 146
the vending machine is located that states the following in 147
letters that are legibly printed and at least one-half inch 148
high: 149

"It is illegal for any person under the age of 21 to 150
purchase tobacco or alternative nicotine products." 151

(D) The following are affirmative defenses to a charge 152
under division (B) (1) of this section: 153

(1) The person under twenty-one years of age was 154
accompanied by a parent, spouse who is twenty-one years of age 155
or older, or legal guardian of the person under twenty-one years 156
of age. 157

(2) The person who gave, sold, or distributed cigarettes, 158
other tobacco products, alternative nicotine products, or papers 159
used to roll cigarettes to a person under twenty-one years of 160
age under division (B) (1) of this section is a parent, spouse 161
who is twenty-one years of age or older, or legal guardian of 162
the person under twenty-one years of age. 163

(E) It is not a violation of division (B)(1) or (2) of 164
this section for a person to give or otherwise distribute to a 165
person under twenty-one years of age cigarettes, other tobacco 166
products, alternative nicotine products, or papers used to roll 167
cigarettes while the person under twenty-one years of age is 168
participating in a research protocol if all of the following 169
apply: 170

(1) The parent, guardian, or legal custodian of the person 171
under twenty-one years of age has consented in writing to the 172
person under twenty-one years of age participating in the 173
research protocol. 174

(2) An institutional human subjects protection review 175
board, or an equivalent entity, has approved the research 176
protocol. 177

(3) The person under twenty-one years of age is 178
participating in the research protocol at the facility or 179
location specified in the research protocol. 180

(F)(1) Whoever violates division (B)(1), (2), (4), (5), or 181
(6) or (C) of this section is guilty of illegal distribution of 182
cigarettes, other tobacco products, or alternative nicotine 183
products. Except as otherwise provided in ~~this division~~division 184
(F) of this section, illegal distribution of cigarettes, other 185
tobacco products, or alternative nicotine products is a 186
misdemeanor of the fourth degree. If the offender previously has 187
been convicted of a violation of division (B)(1), (2), (4), (5), 188
or (6) or (C) of this section, illegal distribution of 189
cigarettes, other tobacco products, or alternative nicotine 190
products is a misdemeanor of the third degree. 191

~~(2)~~(2) (a) Notwithstanding division (A)(2) of section 192

2929.28 of the Revised Code, if an offender is convicted of or 193
pleads guilty to a violation of division (B)(1) of this section, 194
the court shall impose a fine in the following amount: 195

(i) Except as otherwise provided in divisions (F)(2)(a) 196
(ii), (iii), (iv), and (v) of this section, not more than two 197
hundred fifty dollars; 198

(ii) Except as otherwise provided in divisions (F)(2)(a) 199
(iii), (iv), and (v) of this section, if an offender has 200
previously been convicted of or pleaded guilty to a violation of 201
division (B)(1) of this section, not more than five hundred 202
dollars; 203

(iii) Except as otherwise provided in divisions (F)(2)(a) 204
(iv) and (v) of this section, if an offender previously has been 205
convicted of or pleaded guilty to two or more violations of 206
division (B)(1) of this section, five hundred dollars; 207

(iv) Except as otherwise provided in division (F)(2)(a)(v) 208
of this section, if an offender previously has been convicted of 209
or pleaded guilty to three or more violations of division (B)(1) 210
of this section, one thousand dollars; 211

(v) If an offender previously has been convicted of or 212
pleaded guilty to four or more violations of division (B)(1) of 213
this section, one thousand five hundred dollars. 214

(b) The financial sanctions required by division (F)(2)(a) 215
of this section are in lieu of the financial sanctions described 216
in division (A)(2) of section 2929.28 of the Revised Code, but 217
are in addition to any other sanctions or penalties that may 218
apply to the offender, including other financial sanctions under 219
that section or a jail term under section 2929.24 of the Revised 220
Code. 221

(3) Whoever violates division (B) (3) of this section is 222
guilty of permitting a person under twenty-one years of age to 223
use cigarettes, other tobacco products, or alternative nicotine 224
products. Except as otherwise provided in this division, 225
permitting a person under twenty-one years of age to use 226
cigarettes, other tobacco products, or alternative nicotine 227
products is a misdemeanor of the fourth degree. If the offender 228
previously has been convicted of a violation of division (B) (3) 229
of this section, permitting a person under twenty-one years of 230
age to use cigarettes, other tobacco products, or alternative 231
nicotine products is a misdemeanor of the third degree. 232

(G) Any cigarettes, other tobacco products, alternative 233
nicotine products, or papers used to roll cigarettes that are 234
given, sold, or otherwise distributed to a person under twenty- 235
one years of age in violation of this section and that are used, 236
possessed, purchased, or received by a person under twenty-one 237
years of age in violation of section 2151.87 of the Revised Code 238
are subject to seizure and forfeiture as contraband under 239
Chapter 2981. of the Revised Code. 240

Sec. 3767.01. As used in all sections of the Revised Code 241
relating to nuisances: 242

(A) "Place" includes any building, erection, or place or 243
any separate part or portion thereof or the ground itself; 244

(B) "Person" includes any individual, corporation, 245
association, partnership, trustee, lessee, agent, or assignee; 246

(C) "Nuisance" means any of the following: 247

(1) That which is defined and declared by statutes to be a 248
nuisance; 249

(2) Any place in or upon which lewdness, assignation, or 250

prostitution is conducted, permitted, continued, or exists, or 251
any place, in or upon which lewd, indecent, lascivious, or 252
obscene films or plate negatives, film or plate positives, films 253
designed to be projected on a screen for exhibition films, or 254
glass slides either in negative or positive form designed for 255
exhibition by projection on a screen, are photographed, 256
manufactured, developed, screened, exhibited, or otherwise 257
prepared or shown, and the personal property and contents used 258
in conducting and maintaining any such place for any such 259
purpose. This chapter shall not affect any newspaper, magazine, 260
or other publication entered as second class matter by the post- 261
office department. 262

(3) Any room, house, building, boat, vehicle, structure, 263
or place where beer or intoxicating liquor is manufactured, 264
sold, bartered, possessed, or kept in violation of law and all 265
property kept and used in maintaining the same, and all property 266
designed for the unlawful manufacture of beer or intoxicating 267
liquor and beer or intoxicating liquor contained in the room, 268
house, building, boat, structure, or place, or the operation of 269
such a room, house, building, boat, structure, or place as 270
described in division (C) (3) of this section where the operation 271
of that place substantially interferes with public decency, 272
sobriety, peace, and good order. "Violation of law" includes, 273
but is not limited to, sales to any person under the legal 274
drinking age as prohibited in division (A) of section 4301.22 or 275
division (A) of section 4301.69 of the Revised Code and any 276
violation of section 2913.46 or 2925.03 of the Revised Code. 277

(4) Any place in which a pattern of continuous or repeated 278
violations of division (B) (1) of section 2927.02 of the Revised 279
Code has occurred. 280

Sec. 4301.74. Any person subject to an injunction, 281
temporary or permanent, granted pursuant to division (D) or (E) 282
of section 3767.05 of the Revised Code involving a condition 283
described in division (C) (3) ~~or (4)~~ of section 3767.01 of the 284
Revised Code shall obey such injunction. If such person violates 285
such injunction, the court or in vacation a judge thereof, may 286
summarily try and punish the violator. The proceedings for 287
punishment for contempt shall be commenced by filing with the 288
clerk of the court from which such injunction issued information 289
under oath setting out the alleged facts constituting the 290
violation, whereupon the court shall forthwith cause a warrant 291
to issue under which the defendant shall be arrested. The trial 292
may be had upon affidavits, or either party may demand the 293
production and oral examination of the witnesses. 294

Section 2. That existing sections 2927.02, 3767.01, and 295
4301.74 of the Revised Code are hereby repealed. 296