

39-17-1504. Sale or distribution to minors unlawful -- Proof of age requirement.

(a) It is unlawful for any person to sell or distribute any tobacco product to another person who has not attained eighteen (18) years of age or to purchase a tobacco product on behalf of such person under eighteen (18) years of age.

(b) It is unlawful for any person to persuade, entice, send or assist a person who has not attained eighteen (18) years of age to purchase, acquire, receive or attempt to purchase, acquire or receive a tobacco product. This section and § 39-17-1505 shall not be deemed to preclude law enforcement efforts involving the use of individuals under eighteen (18) years of age if the minor's parent or legal guardian has consented to this action.

(c) No person shall distribute tobacco product samples in or on any public street, sidewalk, or park.

(d) A person engaged in the sale or distribution of tobacco products shall demand proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser or recipient may be under twenty-seven (27) years of age. In the case of distribution by mail, the distributor of tobacco products shall obtain from the addressee an affirmative statement that the person is eighteen (18) years of age or older, and shall inform the recipient that the person is strictly prohibited from distributing any tobacco product, as defined by this part, to any person under eighteen (18) years of age.

(e) It is unlawful for any person to sell or distribute any electronic cigarette to another person who has not attained eighteen (18) years of age or to purchase an electronic cigarette on behalf of such person under eighteen (18) years of age.

HISTORY: Acts 1994, ch. 872, § 4; 1995, ch. 470, §§ 2, 3; 1999, ch. 354, §§ 1, 2, 4; 2011, ch. 501, § 4; 2013, ch. 319, § 2..

39-17-1505. Prohibited purchases or possession by minors -- Penalties.

(a) It is unlawful for a person who has not attained eighteen (18) years of age to possess a tobacco product, to purchase or accept receipt of a tobacco product, or to present or offer to any person any purported proof of age which is false, fraudulent, or not actually that person's own for the purpose of purchasing or receiving any tobacco product.

(b) Any person who violates this section shall be issued a citation by a law enforcement officer or school principal who has evidence of the violation. The citation shall require the person to appear in the juvenile court for the county in which the violation is alleged to have occurred. At the time of issuance of the citation, the tobacco product shall be seized as contraband by the law enforcement officer or school principal.

(c) A violation of this section is a civil offense, the penalty for which is a civil penalty of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00). Upon its determination that the person has violated this section, the juvenile court shall determine the amount of the civil penalty and shall order the destruction of the tobacco product. The juvenile court may, in its discretion, also impose community service work not to exceed fifty (50) hours or successful completion of a prescribed teen court program for a second or subsequent violation within a one-year period.

(d) A minor who is cooperating with law enforcement officers in an operation designed to test the compliance of other persons with this part shall not be subject to sanctions under this section.

(e) As used in this section, "law enforcement officer" means an officer, employee or agent of government who is authorized by law to investigate the commission or suspected commission of violations of Tennessee law.

(f) It is not unlawful for a person under eighteen (18) years of age to handle or transport:

(1) Tobacco or tobacco products as a part of and in the course of the person's employment; provided, that the person is under the supervision of another employee who is at least twenty-one (21) years of age; or

(2) Tobacco as part of an educational project that has been developed by the person for entry and display at an agricultural fair or other agricultural competition or event.

(g) Nothing in this section shall be construed to prohibit a person under eighteen (18) years of age from handling or transporting tobacco as part of and in the course of the person's involvement in any aspect of the agricultural production or storage of tobacco, the sale of raw tobacco at market or the transportation of raw tobacco to a processing facility.

HISTORY: Acts 1994, ch. 872, § 5; 1999, ch. 354, §§ 5-7; 2001, ch. 341, § 11.

39-17-1506. Required postings.

(a) Every person who sells tobacco products at retail shall post conspicuously and keep so posted at the place of business a sign, no smaller than ninety-three and one-half (93 1/2) square inches, to ensure that it is likely to be read at each point of sale, stating the following:

STATE LAW STRICTLY PROHIBITS THE SALE
OF TOBACCO PRODUCTS OR SMOKING PARAPHERNALIA
TO PERSONS UNDER THE AGE OF EIGHTEEN (18) YEARS
PROOF OF AGE MAY BE REQUIRED

(b) Unless another notice is required by federal law, the notice required by this section and the notice required by § 39-15-411 shall be the only notice regarding tobacco products required to be posted or maintained in any store that sells tobacco products at retail.

HISTORY: Acts 1994, ch. 872, § 6; 1999, ch. 354, § 8.

39-17-1507. Vending machine sales.

(a) It is unlawful for any person to sell tobacco products through a vending machine unless the vending machine is located in any of the following locations:

(1) In areas of factories, businesses, offices, or other places that are not open to the public;

(2) In places that are open to the public but to which persons under eighteen (18) years of age are denied access;

(3) In places where alcoholic beverages are sold for consumption on the premises, but only if the vending machine is under the continuous supervision of the owner or lessee of the premises or an employee of the owner or lessee of the premises, and is inaccessible to the public when the establishment is closed; and

(4) In other places, but only if the machine is under the continuous supervision of the owner or lessee of the premises or an employee of the owner or lessee of the premises, or the machine can be operated only by the use of a token purchased from the owner or lessee of the premises or an employee of the owner or lessee of the premises prior to each purchase, and is inaccessible to the public when the establishment is closed.

(b) In any place where supervision of a vending machine, or operation by token is required by this section, the person responsible for that supervision or the sale of the token shall demand proof of age from a prospective purchaser if an ordinary person would conclude on the basis of appearance that the prospective purchaser may be under twenty-seven (27) years of age.

HISTORY: Acts 1994, ch. 872, § 7; 1999, ch. 354, §§ 9, 10.

39-17-1508. Required packaging.

It is unlawful for any person to sell cigarettes or smokeless tobacco products except in the original, sealed package in which they were placed by the manufacturer that bears the health warning required by federal law.

HISTORY: Acts 1994, ch. 872, § 8; 1999, ch. 354, § 11.

39-17-1509. Enforcement -- Inspections -- Reporting -- Civil penalties.

(a) The department shall enforce this part in a manner that may reasonably be expected to reduce the extent to which tobacco products are sold or distributed to persons under eighteen (18) years of age, and shall conduct random, unannounced inspections at locations where tobacco products are sold or distributed to ensure compliance with this part.

(b) A person who violates § 39-17-1504, § 39-17-1506, § 39-17-1507 or § 39-17-1508 shall receive only a warning letter for the person's first violation and shall not receive a civil penalty for the person's first violation. A person who violates § 39-17-1504, § 39-17-1506, § 39-17-1507 or § 39-17-1508 is subject to a civil penalty of not more than five hundred dollars (\$500) for the person's second violation, not more than one thousand dollars (\$1,000) for the person's third violation and not more than one thousand five hundred dollars (\$1,500) for the person's fourth or subsequent violation. For purposes of determining whether a violation is the person's first, second, third, fourth or subsequent violation, the commissioner shall count only those violations that occurred within the previous five (5) years. A civil penalty shall be assessed in the following manner:

(1) The commissioner shall issue the assessment of civil penalty against any person responsible for the violation;

(2) Any person against whom an assessment has been issued may secure a review of the assessment by filing with the commissioner a written petition setting forth the person's reasons for objection to the assessment and asking for a hearing before the commissioner;

(3) Any hearing before the commissioner shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. An appeal from the final order of the commissioner may be taken by the person to whom the assessment was issued, and the appeal proceedings shall be conducted in accordance with the judicial review provisions of the Uniform Administrative Procedures Act, codified in §§ 4-5-322 and 4-5-323; and

(4) If a petition for review is not filed within thirty (30) days after the date the person received the assessment, the person shall be deemed to have consented to the assessment, and it shall become final. Whenever an assessment has become final, the commissioner may apply to the chancery court of Davidson County for a judgment in the amount of the assessment and seek execution on the judgment. The chancery court of Davidson County shall treat a person's failure to file a petition for review of an assessment as a confession of judgment in the amount of the assessment.

(c) A person who demanded, was shown, and reasonably relied upon proof of age

shall not be liable for a civil penalty for a violation of § 39-17-1504 or § 39-17-1507. In the case of distribution of tobacco products by mail, a person who obtained a statement from the addressee that the addressee is at least eighteen (18) years of age shall not be liable for a civil penalty so long as that distributor of tobacco products informed the addressee that Tennessee law prohibits the distribution of any tobacco products, as defined by this part, to a person under eighteen (18) years of age.

(d) When assessing a civil penalty, the commissioner is authorized to assess the penalty against any person or persons determined by the commissioner to be responsible, in whole or in part, for contributing to or causing the violation to occur, including, but not limited to, the owner, manager or employee of a store at which tobacco products are sold at retail, the owner, manager or employee of an establishment in which a vending machine selling tobacco products is located, and a company or any of its employees engaged in the business of sampling.

(e) (1) The owner or manager of a store that sells tobacco products at retail shall provide training to the store's employees concerning the provisions of this part. As a part of this training, each employee shall, prior to selling tobacco products at retail, sign a statement containing substantially the following words:

I understand that state law prohibits the sale of tobacco products to persons under eighteen (18) years of age and that state law requires me to obtain proof of age from a prospective purchaser of tobacco products who, based on appearance, might be as old as twenty-six (26) years of age. I promise to obey this law, and I understand that monetary or criminal penalties may be imposed on me if I violate this law.

(2) If the commissioner assesses a penalty against the store owner or manager, the owner or manager may present to the commissioner a copy of the statement described in subdivision (e)(1) that was signed by the employee who made the sale to a minor, along with a sworn statement by the owner or manager that the employee had signed the statement prior to the sale to the minor, and the name and address of the employee who made the sale. If the owner or manager does not know which employee made the sale to the minor, the owner or manager may present to the commissioner copies of the statements described in subdivision (e)(1) that were signed by all employees working at the store on the day the sale was made, along with a sworn statement that these employees had signed those statements prior to the sale to the minor.

(3) When the store owner or manager presents to the commissioner the statements described in subdivision (e)(2):

(A) If the violation is the second violation determined to have occurred at that store, the penalty against the store owner or manager shall be eliminated; or

(B) If the violation is the third or subsequent violation determined to have occurred at that store, the commissioner shall consider that evidence and any other evidence with respect to the amount of the penalty against the owner or manager.

(f) The department shall prepare annually for submission by the governor to the secretary of the United States department of health and human services the report required by Section 1926 of subpart I of Part B of Title XIX of the Public Health

Service Act, codified as 42 U.S.C. § 300x-26. The department shall prepare for submission to the general assembly and the public an annual report describing in detail the department's enforcement efforts under this part.

HISTORY: Acts 1994, ch. 872, § 10; 1999, ch. 354, § 12.

39-17-1510. Criminal penalties.

A person who violates § 39-17-1504, § 39-17-1506, § 39-17-1507, or § 39-17-1508 commits a Class C misdemeanor.

39-17-1551. Purpose of part -- Exemptions -- Authority to prohibit smoking.

(a) The general assembly intends by this part and other provisions of Tennessee Code Annotated to occupy **and preempt** the entire field of legislation concerning the regulation of tobacco products. Any law or regulation of tobacco products enacted or promulgated after March 15, 1994, by any agency or political subdivision of the state or any agency thereof is void; provided, that cities, counties and counties having a metropolitan form of government may regulate the use of tobacco products in buildings owned or leased by the political subdivisions; and provided further, that airport authorities created pursuant to the provisions of title 42; utility districts created pursuant to the provisions of title 7; and special school districts may regulate the use of tobacco products in buildings owned or leased by the entities. Notwithstanding any other provision of the law to the contrary, individual owners or operators of retail establishments located within an enclosed shopping mall shall retain the right to determine the policy on the use of tobacco products within the person's establishment.

(b) (1) Notwithstanding subsection (a) or any other provision of this title, a municipality, a county or a county having a metropolitan form of government is authorized by local ordinance or resolution to prohibit smoking on the grounds of a hospital or in the public areas immediately outside of a hospital building and its entrances, including public sidewalks.

(2) Any regulation or ordinance that is passed or adopted by a local government pursuant to the authority granted by this subsection (b) may prohibit smoking by a distance of up to fifty feet (50') from a hospital's entrance unless the application of a fifty-foot limit would place hospital patients in a potentially unsafe condition. In which case the fifty-foot limit shall be extended to such distance as is necessary to ensure patient safety as determined by the local government's legislative body in consultation with representatives of any hospitals that are subject to the regulation or ordinance.

HISTORY: Acts 1994, ch. 872, §§ 9, 12; 2011, ch. 296, § 1.

39-17-1603. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Children" means individuals who have not attained eighteen (18) years of age;

(2) "Community center" means any center operated by any city or county government that is used for children's activities;

(3) "Day care center" means any place, operated by a person, society, agency, corporation, institution or religious organization, or any other group wherein are received thirteen (13) or more children for group care for less than twenty-four (24) hours per day without transfer of custody;

(4) "Designated smoking area" means an enclosed indoor area or an outdoor area in which smoking is permitted pursuant to this part. If indoors, the smoking area shall be clearly demarcated and separate from any area in which smoking is not permitted, and shall not include more than twenty-five percent (25%) of the area of the building. The indoor smoking area shall be a fully enclosed area;

(5) "Group care home" means a home operated by any person, society, agency, corporation, or institution or any group which receives seven (7) or more children for full-time care outside their own homes in facilities owned or rented and operated by the organization;

(6) "Museum" means those indoor museums and art galleries owned or operated by the state or any political subdivision of the state, and those museums, historical societies, and art galleries owned and operated by not-for-profit corporations;

(7) "Residential treatment facility" means a residential treatment facility licensed under title 33, chapter 2, part 4;

(8) "School grounds" means any building, structure, and surrounding outdoor grounds contained within a public or private preschool, nursery school, kindergarten, elementary or secondary school's legally defined property boundaries as registered in a county register's office, and any publicly owned or leased vehicle used to transport children to or from school or any officially sanctioned or organized school event;

(9) "Smoking" means the burning of a lighted cigarette, cigar, pipe or any other substance containing tobacco;

(10) "Youth development center" means a center established under title 37, chapter 5, part 2, for the detention, treatment, rehabilitation and education of children found to be delinquent; and

(11) "Zoo" means any indoor area open to the public for the purpose of viewing animals.

HISTORY: Acts 1995, ch. 455, § 3; 2000, ch. 947, § 8L.

39-17-1604. Places where smoking is prohibited.

Smoking is not permitted, and no person shall smoke, in the following places:

(1) Child care centers; provided, that the prohibition of this section does not apply to the services provided in a private home. Adult staff members may be permitted to smoke in designated smoking areas to which children are not allowed access. However, written notification shall be given to the parent or legal guardian upon enrollment if the child care center has an indoor designated smoking area;

(2) Any room or area in a community center while the room or area is being used for children's activities;

(3) Group care homes. Adults may smoke in any fully enclosed adult staff residential quarters contained within a group care home, but not in the presence of children who reside as clients in the group care home;

(4) Health care facilities, excluding nursing home facilities. Adult staff members may be permitted to smoke in designated smoking areas to which children are not allowed access and adults may be permitted to smoke outside the facility;

(5) Museums (except when used after normal operating hours for private functions not attended by children). Adult staff members may be permitted to smoke while at work in designated smoking areas to which children are not allowed access;

(6) All public and private kindergartens, elementary and secondary schools. Adult staff members may be permitted to smoke outdoors but not within fifty feet (50') of any entrance to any building. Adults may also smoke in any fully enclosed adult staff residential quarters, but not in the presence of children attending the school;

(7) Residential treatment facilities for children and youth. Adult staff members may be permitted to smoke in designated smoking areas to which children are not allowed access;

(8) Youth development centers and facilities. Adult staff members may be permitted to smoke in designated smoking areas to which children are not allowed access;

(9) Zoos. Adult staff members may be permitted to smoke in designated smoking areas to which children are not allowed access; and

(10) School grounds; provided, that after regular school hours, adults are allowed to smoke on the property surrounding the institution, but not blocking any entrance to any building. The property shall not include any public seating areas, including, but not limited to, bleachers used for sporting events, or public restrooms.

HISTORY: Acts 1995, ch. 455, § 4; 2000, ch. 981, § 62.

39-17-1605. "No smoking" signs -- Posting notice.

(a) "No Smoking" signs, or the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a circle with a bar

across it, shall be prominently posted and properly maintained on each main building entrance where smoking is regulated by this part. The "No Smoking" signs or "No Smoking" symbols shall be prominently displayed throughout the building to ensure that the public is aware of the restriction.

(b) The following notice shall be prominently posted, including at each ticket booth, for elementary or secondary school sporting events:

"Smoking is prohibited by law in seating areas and in restrooms."

39-17-1606. Penalty -- Enforcement.

(a) An institution violating any provisions of this part or failing to take reasonable measures to enforce this part commits a Class B misdemeanor, punishable only by a fine not to exceed five hundred dollars (\$500).

(b) Any law enforcement officer may issue a citation regarding a violation of this part.

HISTORY: Acts 1995, ch. 455, § 6.