Part 15
Prevention of Youth Access to Tobacco and Vapor Products Act

39-17-1501. Short title.

This part shall be known and may be cited as the Prevention of Youth Access to Tobacco and Vapor Products Act.

Acts 1994, ch. 872, 1; 2011, ch. 501, 1; 2015, ch. 353, 1.

39-17-1502. Purpose and intent.

(a) The purpose of this part is to reduce the access of persons under eighteen (18) years of age to tobacco products by strengthening existing prohibitions against the sale and distribution of tobacco products and prohibiting the purchase or receipt of tobacco products by such persons, limiting the sale of tobacco products through vending machines, restricting the distribution of tobacco product samples, prohibiting the sale of cigarettes or smokeless tobacco products other than in unopened packages, and random, unannounced inspections of locations where tobacco products are sold or distributed, providing for the report required to be submitted to the United States department of health and human services pursuant to Section 1926 of the Public Health Service Act (42 U.S.C. 300x-26), and ensuring uniform regulations with respect to tobacco products within this state.

(b) The purpose of this part is also to prohibit the sale or distribution of vapor products to, or purchase of vapor products on behalf of, persons under eighteen (18) years of age.

(c) It is the intent of the general assembly that this part be equitably enforced so as to ensure the eligibility for and receipt of any federal funds or grants that the state of Tennessee now receives or may receive relating to this part.

Acts 1994, ch. 872, 2; 2011, ch. 501, 2; 2015, ch. 353, 2.

39-17-1503. Part definitions.

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

(1) Beedies or bidis means a product containing tobacco that is wrapped in temburni leaf (*dispyros melanoxylon*) or tendu leaf (*diospyros exculpra*), or any other product that is offered to, or purchased by, consumers as beedies or bidis. For purposes of this chapter, beedies or bidis shall be considered a tobacco product;

(2) Commissioner means the commissioner of agriculture or the commissioner's duly authorized representative;

(3) Department means the department of agriculture;

(4) Person means any individual, firm, fiduciary, partnership, corporation, trust, or association;

(5) Proof of age means a driver license or other generally accepted means of identification that describes the individual as eighteen (18) years of age or older, contains a photograph or other likeness of the individual, and appears on its face to be valid. Except in the case of distribution by mail, the distributor shall obtain a statement from the addressee that the addressee is eighteen (18) years of age or older;

(6) Public place means any public street, sidewalk or park, or any area open to the general public in any publicly owned or operated building;

(7) Sample means a tobacco product distributed to members of the general public at no cost for the purpose of promoting the product;

(8) Sampling means the distribution of samples to members of the general public in a public place;

(9) Tobacco product means any product that contains tobacco and is intended for human consumption, including, but not limited to, cigars, cigarettes and bidis; and

(10) Vapor product:

(A) Means any noncombustible product containing nicotine or any other substance that employs a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce or emit vapor;

(B) Includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product, and any vapor cartridge or other container of a solution containing nicotine or any other substance that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product; and

(C) Does not include any product regulated under Chapter V of the Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.).

Acts 1994, ch. 872, 3; 1995, ch. 470, 1; 1999, ch. 354, 3; 2002, ch. 511, 1, 2; 2011, ch. 501, 3; 2015, ch. 353, 3.

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 or vapor product to another person who has not attained eighteen (18) years of age or to purchase a tobacco or vapor 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 or vapor 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 or vapor product samples in or on any public street, sidewalk, or park.

(d) A person engaged in the sale or distribution of tobacco or vapor 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 or vapor 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 or vapor product, as defined by this part, to any person under eighteen (18) years of age.

(e) [Deleted by 2015 amendment]

Acts 1994, ch. 872, 4; 1995, ch. 470, 2, 3; 1999, ch. 354, 1, 2, 4; 2011, ch. 501, 4; 2013, ch. 319, 2; 2015, ch. 353, 4-6.

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 either a tobacco or vapor product, to purchase or accept receipt of either product, or to present or offer to any person any purported proof of age that is false, fraudulent, or not actually that person's own for the purpose of purchasing or receiving any tobacco or vapor 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 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 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, tobacco products, or vapor 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 or vapor products 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.

Acts 1994, ch. 872, 5; 1999, ch. 354, 5-7; 2001, ch. 341, 11; 2015, ch. 353, 7-10.

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) 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.

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.

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.

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 is not liable for a civil penalty for a violation of 39-17-1504 or 39-17-1507. In the case of distribution of any tobacco or vapor product by mail, a person who obtained a statement from the addressee that the addressee is at least eighteen (18) years of age is not liable for a civil penalty so long as that distributor of the tobacco or vapor product informed the addressee that 39-17-1504 prohibits the distribution of tobacco and vapor products 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 any tobacco or vapor product is 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.

Acts 1994, ch. 872, 10; 1999, ch. 354, 12; 2015, ch. 353, 11, 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.

Acts 1999, ch. 354, 13.

39-17-1511. Maintenance of smoking paraphernalia in area inaccessible to customers.

(a) For the purpose of this section:

(1) Counter means the point of purchase at a retail establishment;

(2) Retail establishment means a place of business open to the general public for the sale of goods or services; and

(3) Smoking paraphernalia means:

(A) A cigarette holder;

(B) A smoking pipe made of metal, wood, acrylic, glass, stone, or plastic with or without screens, permanent screens, hashish heads or punctured metal bowls;

(C) A water pipe; or

(D) Rose and pen combinations; and

(4) Smoking paraphernalia does not include a smoking pipe or smoking device when sold at retail, if the smoking pipe or smoking device is primarily made of briar, meerschaum, clay or corn cob.

(b) All smoking paraphernalia shall be maintained behind the counter of a retail establishment in an area inaccessible to a customer or in a locked display case that makes the products unavailable to a customer without the assistance of an employee.

(c) **(1)** A violation of this section is punishable as provided in 39-17-1509.

(2) If smoking paraphernalia is sold in violation of this section by an employee, the owner or operator of the retail establishment where the employee sold the products shall be in violation of this section.

Acts 2013, ch. 194, 1.

39-17-1512. Liquid nicotine containers to satisfy federal child-resistant effectivenesss standards. [Effective on January 1, 2016]

(a) As used in this section, liquid nicotine container:

(1) Means a bottle or other container that contains liquid nicotine or any other substance containing nicotine, where the liquid or other substance is sold, marketed, or intended for use in a vapor product; and

(2) Does not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed, or intended for use in a vapor product; provided, that such cartridge is prefilled and sealed by the manufacturer, and not intended to be opened by the consumer.

(b) Unless specifically preempted by federal law, a liquid nicotine container used in conjunction with a vapor product that is sold at retail in this state shall satisfy the child-resistant effectiveness standards under 16 CFR 1700.15(b)(1) when tested in accordance with the requirements of 16 CFR 1700.20.

Acts 2015, ch. 353, 13.

39-17-1513. Department of agriculture encouraged to study effects of sale and distribution of vapor products to persons under 18.

The department of agriculture is urged to study the effects of the sale and distribution of vapor products to persons under eighteen (18) years of age and is encouraged to make recommendations to the legislature with regard to reducing such sale and distribution.

Acts 2015, ch. 353, 14.

39-17-1514 39-17-1550. [Reserved.]

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 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.

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