

HOUSE BILL 2158

By Baum

AN ACT to amend Tennessee Code Annotated, Title 39;
Title 43; Title 47; Title 57; Title 67 and Title 68,
relative to tobacco products.

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

SECTION 1. Tennessee Code Annotated, Title 57, is amended by adding the following
as a new chapter:

57-8-101. Short title.

This part is known and may be cited as the "Tobacco Product Retail Licensing
Act."

57-8-102. Purpose and intent.

The purpose of this chapter is to regulate the sale and distribution of tobacco
products, including vapor products. It is the intent of the general assembly that the sale
and distribution of tobacco products is strictly prohibited unless specifically provided for
in this chapter or as otherwise provided in state law. The regulation and control of such
products in this state are in the interest of public health and safety through the state's
ability to efficiently enforce the requirements and restrictions contained in this chapter.

57-8-103. Definitions.

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

(1) "Age-restricted venue" means a legal establishment that affirmatively
restricts access to its buildings or facilities at all times to persons who are twenty-
one (21) years of age or older by requiring each person who attempts to gain
entry to those buildings or facilities to submit for inspection an acceptable form of

identification for the express purpose of determining if the person is twenty-one (21) years of age or older;

(2) "Cigar" means a roll of tobacco other than a cigarette that is wrapped entirely or in part in leaf tobacco or another substance containing tobacco;

(3) "Cigar bar" means a legal establishment that:

(A) Holds a valid license or permit for the on-premises consumption of alcoholic beverages;

(B) Generates a portion of its total annual gross income from the on-site sale of cigars and the rental of humidors;

(C) Does not knowingly sell products or services, or permit entrance to the premises, to a person who is less than twenty-one (21) years of age; and

(D) Does not permit vaping or the smoking of products other than cigars on the premises;

(4) "Cigarette" means:

(A) A roll of tobacco wrapped in paper or in a substance not containing tobacco; and

(B) A roll of tobacco wrapped in a substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette;

(5) "Compliance check" means the manner in which the commission ensures that licensed tobacco product retailers are complying with the requirements of this chapter. Compliance checks may involve the use of a

natural person who is sixteen (16) years of age or older and less than twenty-one (21) years of age to purchase or attempt to purchase tobacco products;

(6) "Delivery sale":

(A) Means the sale of a tobacco product to a person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction; and

(B) Includes:

(i) The sale of a tobacco product when the sale is conducted by telephone, other voice transmission, mail, the internet, or an app-based service; and

(ii) Delivery by tobacco product retailers or third parties by any means, including curbside pick-up;

(7) "Director" means the director of the commission;

(8) "Electronic smoking device" includes a component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine;

(9) "Moveable place of business" means a form of business that is operated out of a kiosk, truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions;

(10) "Nicotine" means a form of the chemical nicotine, including a salt or complex, regardless of whether the chemical is naturally or synthetically derived, and includes nicotinic alkaloids and nicotine analogs and any substance intended to mimic or replicate the pharmacological effect of nicotine;

(11) "Person" means a natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity;

(12) "Retail tobacco store" means a retail store that derives its largest category of sales from tobacco products and accessories;

(13) "Retail vapor product store" means a retail store that derives its largest category of sales from vapor products and accessories;

(14) "Sale" or "Sell" means the transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever;

(15) "Tobacco product" means a product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether smoked, heated, activated, chewed, inhaled, absorbed, dissolved, snorted, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, pouch, gum, a vapor product, and any substance that may be aerosolized or vaporized by such device, or a component, part, or accessory regardless of whether such product contains tobacco or nicotine, including, but not limited to, filters, rolling papers, blunt or hemp wraps, hookahs, flavor enhancers, or pipes. "Tobacco product" does not mean drugs, devices, or a combination of products approved for sale by the United States food and drug administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 301-392);

(16) "Tobacco product retailer" means a person who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco products at retail to a consumer; and

(17) "Vapor product" means:

(A) An electronic smoking device that may be used to deliver aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah; and

(B) Does not include drugs, devices, or combination products authorized for sale by the United States food and drug administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 301-392).

57-8-104. Tobacco product enforcement fund.

(a) There is created the tobacco product enforcement fund. Fees and penalties collected pursuant to this chapter must be deposited into the fund. Money in the fund must be invested by the state treasurer in accordance with § 9-4-603. The fund must be administered by the commission.

(b) Money in the fund does not revert to the state general fund, but remains available for use by the commission for the administration and enforcement of this title.

57-8-105. Delegation of power or duties by commission.

The commission may delegate a power or duty of the commission to the director.

57-8-106. License required -- Application -- Fees -- Issuance and denial -- License display.

(a) All applications must be submitted on a form supplied by the commission and must contain the following information:

(1) The name, address, and telephone number of the applicant;

(2) The business name, address, and telephone number of each location

for which a license is sought;

(3) The name and mailing address authorized by each applicant to receive all communications and notices required by, authorized by, or for the purpose of enforcing this chapter;

(4) Proof that each location for which a tobacco product retailer's license is sought has been issued all necessary state and local licenses and permits for the operation of the business and for each product sold at each location;

(5) Whether or not an applicant has admitted violating, or has been found to have violated, this chapter or another local, state, or federal law governing the sale of tobacco products and, if so, the dates and locations of all such violations within the previous five (5) years;

(6) A signed affidavit affirming that the applicant has not sold and will not sell a tobacco product without a license required by this chapter;

(7) Whether the retailer engages in the sale of all tobacco products, including vapor products, or only non-vapor tobacco products;

(8) Whether the retail location will operate a tobacco product vending machine, or function as a cigar bar, retail tobacco store, or retail vapor product store, and proof that the venue meets the definition of those establishments, as applicable;

(9) A statement by the applicant that the contents of the application are complete, true, and correct;

(10) The signature of the applicant; and

(11) Such other information as the commission deems necessary for the administration or enforcement of this chapter as specified on the application form required by this section.

(b) All applicants and licensed tobacco product retailers shall inform the commission in writing of any change in the information submitted on an application for a tobacco product retailer's license within thirty (30) business days of a change.

(c) Each application for an annual tobacco product retail license must include payment to the commission a one-time, nonrefundable fee in the amount of two hundred fifty dollars (\$250) when the initial application is submitted for review. A tobacco product retail license under this section must not be issued until the applicant has paid to the commission the annual license fee.

(d) Upon the receipt of a complete and adequate application for a tobacco product retailer license, the commission may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete an investigation of the application or the applicant as deemed necessary.

(e) A license shall not be issued to an applicant:

(1) Who has been convicted of a felony under the laws of this state, any other state, or the United States;

(2) Who has had a state or local license or permit in this state related to the sale or distribution of tobacco products revoked;

(3) Who is not twenty-one (21) years of age or older;

(4) Who intends to carry on the business authorized by the license as the agent or on behalf of another;

(5) Who seeks authorization for a tobacco product retailer's license at a moveable place of business;

(6) Who has not paid fees or penalties resulting from a violation of this chapter, title 39, chapter 17, part 15, part 16, or part 18, or taxes owed pursuant to title 67, chapter 4, part 10; or

(7) Who has a history of noncompliance with federal, state, or local laws, rules, or regulations relating to the sale of tobacco products, including vapor products.

(f) A tobacco product retailer who is denied a license may petition for a redetermination of the commission's denial in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(g) All fees and interest upon proceeds of fees must be used exclusively to fund the regulation and enforcement of this title. Fees are nonrefundable except as may be required by law.

(h) The license of a tobacco product retailer must be prominently displayed in a publicly visible location at the licensed location and on the establishment's website, if applicable.

57-8-107. License renewal and expiration -- Licenses not transferable.

(a) The fee for the renewal of a tobacco product retailer's license is two hundred fifty dollars (\$250), and must be included with the application for renewal. A tobacco product retailer's license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a tobacco product retailer's license is one (1) year from the date of issuance.

(b) Each tobacco product retailer shall apply for the renewal of their license and submit the licensure fee no earlier than sixty (60) days and no later than thirty (30) days prior to expiration of the current license.

(c) A tobacco product retailer that fails to timely submit a renewal application and the renewal fee is ineligible for license renewal and must submit a new application pursuant to this chapter.

(d) A tobacco product retailer's license is not assignable or transferrable from one (1) person to another or from one (1) location to another. A person who obtains a license as a tobacco product retailer who ceases to do business as specified in the license, who does not commence business within sixty (60) days of the issuance of the license, or whose license is suspended or revoked, shall immediately surrender the license to the commission.

(e) A new tobacco product retailer's license is required whenever a retail location has a change in ownership.

57-8-108. Penalties -- Suspension and revocation -- Hearings.

(a) In addition to any other penalty authorized by law, the commission may assess a civil penalty of five hundred dollars (\$500) and suspend or revoke a tobacco product retailer's license if the commission finds, based upon a preponderance of the evidence, after the tobacco product retailer is afforded notice and an opportunity to be heard, that the tobacco product retailer or its agents or employees:

- (1) Have violated this chapter or a rule of the commission; or
- (2) Have violated any other local, state, or federal law applicable to the sale of tobacco products.

(b) If a tobacco product retailer sells or offers for sale a tobacco product to a person under twenty-one (21) years of age, the commission may assess a civil penalty of:

- (1) For a first violation, two thousand five hundred dollars (\$2,500); and
- (2) For a second or subsequent violation, twenty thousand dollars (\$20,000), and may suspend the license of the retailer for an appropriate period as determined by the commission.

(c) A tobacco product retailer is liable for all violations committed by its agent or employee, and all penalties assessed are the responsibility of the tobacco product retailer.

(d) All penalties collected must be deposited into the tobacco product enforcement fund and used exclusively to enforce this chapter and the rules of the commission.

(e) A penalty of the commission is appealable in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, within ten (10) days of receiving notice of the issuance of the penalty. The commission must provide notice of the issuance of a penalty by United States certified mail, return receipt requested.

57-8-109. Seizure of contraband.

(a)

(1) All tobacco products that are sold or offered for sale in violation of this chapter or rules of the commission are deemed contraband and may be seized by the director or the director's employees, officers, or agents without a warrant.

(2) The director or the director's employees, officers, or agents shall give notice of a seizure to the tobacco product retailer and the person from which the property was seized. A notice of seizure must be provided by United States certified mail, return receipt requested, and inform the tobacco product retailer or person in possession of the right to file a claim for return of the seized property in accordance with rules of the commission.

(b)

(1) The tobacco product retailer or the person from whom the property was seized may file a claim for the return of the property with the director within thirty (30) days of receiving the notice of seizure. If the claim is not timely filed,

the tobacco product retailer or person forfeits any interest in and right or title to the property.

(2) Upon receipt of a claim to recover seized property, the director shall hold a hearing in accordance with the contested case hearing provisions of the Uniform Administrative Procedures Act, codified in title 4, chapter 5, part 3.

(3) The director shall return the seized property to the tobacco product retailer or person who filed the claim unless at the hearing the director or the director's designee finds by a preponderance of the evidence that the tobacco product retailer or person was not in compliance with this chapter or a rule of the commission.

(4) The director or the director's designee shall grant or deny the claim for return of the property by mailing a notice of final determination to the tobacco product retailer or person who made the claim by United States certified mail, return receipt requested.

(c) A tobacco product retailer who possessed or offered for sale tobacco products in violation of this chapter or a rule of the commission is responsible for reimbursing the costs of transportation, storage, and disposal of the seized property to the commission.

57-8-110. Age verification -- Signage required.

(a) A tobacco product retailer shall not sell a tobacco product to another person, regardless of age or appearance of age, without first verifying by means of a government-issued photo identification card that the recipient is at least twenty-one (21) years of age.

(b) A tobacco product retailer operating an age-restricted venue shall also demand a government-issued photo identification card from a person who enters the venue at the point of entry regardless of age or appearance of age.

(c) Each licensed tobacco product retailer shall post conspicuously and keep so posted within six feet (6') of each register where tobacco products are available for purchase a sign, no smaller than ninety-three and one-half square inches (93 1/2 sq. in.), stating the following:

STATE LAW STRICTLY PROHIBITS THE SALE OF TOBACCO
PRODUCTS, INCLUDING VAPOR PRODUCTS, TO PERSONS UNDER THE
AGE OF TWENTY-ONE (21) YEARS. PROOF OF AGE IS REQUIRED.

57-8-111. Delivery sales prohibited.

All sales of tobacco products must be conducted in-person in the licensed location. It is unlawful for a licensed tobacco product retailer or the retailer's agents or employees to sell, offer for sale, or deliver a tobacco product to a consumer in a manner other than an in-person, over-the-counter transaction at the location of the tobacco product retailer's licensed retail store.

57-8-112. Compliance checks.

(a) Compliance with this chapter and commission rules must be monitored by the commission.

(b) All licensed premises must be open to inspection by the commission or its officers, agents, or employees during regular business hours.

(c) The commission shall conduct a compliance check of each licensed tobacco product retailer's premises at least annually to ensure compliance with this chapter and the rules of the commission. The commission shall use a lottery system to conduct licensee compliance checks using a person under twenty-one (21) years of age to

attempt to purchase a tobacco product at the licensed premises. The commission shall prescribe by rule the manner in which to conduct a compliance check via the lottery system and the percentage of licensees that must be checked by lottery each year.

(d) If a licensed tobacco product retailer violates this chapter, a rule of the commission, or the Prevention of Youth Access to Tobacco, Smoking Hemp, and Vapor Products Act, compiled in title 39, chapter 17, part 15, the commission shall conduct an additional unannounced compliance check within one hundred eighty (180) days after the violation.

57-8-113. Licensee database.

(a) The commission shall create, maintain, and publish an online database that lists the active licensed tobacco product retailers. The database must be updated at least monthly, and must include, but is not limited to, for each licensee:

- (1) The business name, address, telephone number, and website, if any;
- (2) The license holder, address, and telephone number;
- (3) The registered agent's name and address;
- (4) The date the first license was issued;
- (5) The date the current license was issued;
- (6) The expiration date of the current license;
- (7) Whether tobacco products or non-vapor tobacco products, or both, are sold at the retail location;
- (8) Whether the retail location will operate a tobacco product vending machine, or function as a cigar bar, retail tobacco store, or retail vapor product store; and
- (9) The commission may contract with a third-party service provider to create and maintain the database.

(b) The commission may, upon request, provide to the department of health, the office of the attorney general and reporter, a law enforcement agency, and an agency authorized to enforce or administer federal, state, or local tobacco laws, rules, or regulations information relating to each licensee operating within the jurisdiction of the requesting entity. Such information must be prescribed by rule of the commission, and an entity receiving such information must only use the information in accordance with rules prescribed by the commission.

57-8-114. Conflicts of law -- Severability.

(a) To the extent that this chapter conflicts with another provision of state law, this chapter controls. It is the intent of the general assembly that other provisions of state law that may be given effect remain enforceable, including, but not limited to:

(1) The Prevention of Youth Access to Tobacco, Smoking Hemp, and Vapor Products Act, compiled in title 39, chapter 17, part 15;

(2) The Children's Act for Clean Indoor Air, compiled in title 39, chapter 17, part 16;

(3) The Non-Smoker Protection Act, compiled in title 39, chapter 17, part 18;

(4) The regulation of tobacco sales and tobacco inspections under title 43, chapter 19; and

(5) Fees, taxes, and penalties collected and assessed under tobacco tax laws, codified in title 67.

(b) The fees and penalties prescribed by this chapter are in addition to all other fees and penalties required or assessed under state law, as applicable.

(c) If any provision of this chapter or its application to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this

chapter that can be given effect without the invalid provision or application, and to that end, the provisions of this chapter are severable.

SECTION 2. Tennessee Code Annotated, Section 67-4-1029, is amended by deleting the section.

SECTION 3. For purposes of promulgating rules and carrying out administrative duties necessary to effectuate this act, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect January 1, 2027, the public welfare requiring it.