

Alabama Act 97-423

Youth Access to Tobacco Products

CHAPTER 11

SALE OF TOBACCO PRODUCTS REGULATED BY THE ALCOHOLIC BEVERAGE CONTROL BOARD

Sec.

28-11-1	Legislative intent.	28-11-9.	Permits: disciplinary actions.
28-11-2	Definitions.	28-11-10.	Funds: deposit and appropriations
28-11-3.	Enforcement of laws.	28-11-11.	Annual report.
28-11-4.	Rules and regulations.	28-11-12.	Advisory board.
28-11-5.	Funds: use.	28-11-13.	Minors; unlawful and lawful actions.
28-11-6.	Distribution: original factory-wrapped container.	28-11-14.	Minors; penalties.
28-11-7.	Permits; generally.	28-11-15.	Construction with other law.
28-11-8.	Permits; unlawful actions and penalties.		

§ 28-11-1. Legislative intent.

It is the intent of the Legislature to prohibit access to tobacco and tobacco products by minors and thereby prevent all of the following:

- (1) The possibility of addiction to tobacco or tobacco products by minors.
- (2) Potential health problems associated with the use of tobacco or tobacco products.
- (3) The failure by this state to comply with federal guidelines or grant funding requirements, when applicable, which relate to the establishment by the state of programs and policies dealing with the sale of tobacco or tobacco products to minors.

§ 28-11-2. Definitions.

For purposes of this chapter, the following terms have the following meanings unless the context clearly indicates otherwise:

- (1) BOARD The Alabama Alcoholic Beverage Control Board.
- (2) DISTRIBUTION To sell, barter, exchange, or give tobacco or tobacco products for promotional purposes or for gratis.
- (3) MINOR Any person under the age of 19 years.
- (4) PERSON. Any natural person, firm, partnership, association, company, corporation, or other entity. Person does not include a manufacturer or wholesaler of tobacco or tobacco products nor does it include employees of the permit holder.
- (5) PROOF OF IDENTIFICATION. Any one or more of the following documents used for purposes of determining the age of a person purchasing, attempting to purchase, or receiving tobacco or tobacco products:

- a. A valid driver's license issued by any state and bearing the photograph of the presenting person.
- b. United States Uniform Service Identification.
- c. A valid passport.
- d. A valid identification card issued by any state agency for the purpose of identification and bearing the photograph and date of birth of the presenting individual.
- e. For legal mail order purposes only a valid signed certification that will verify the individual is 19 years of age or older.

(6) RESPONSIBLE VENDOR PROGRAM A program administered by the board to encourage and support vendors in training employees in legal and responsible sales practices.

(7) SAMPLER Any business or person who distributes tobacco or tobacco products for promotional purposes.

(8) TOBACCO or TOBACCO PRODUCTS. Tobacco or any product containing tobacco, including, but not limited to, the following:

- a. Cigarettes.
- b. Cigars.
- c. Chewing tobacco.
- d. Snuff.
- e. Pipe tobacco.
- f. Smokeless tobacco.

(9) TOBACCO PERMIT. A permit issued by the board to allow the permit holder to engage in the distribution of tobacco or tobacco products at the location identified in the permit.

§ 28-11-3. Enforcement of laws.

The board, in conjunction with federal, state, and local law enforcement agencies, shall enforce state and federal laws that prohibit the distribution of tobacco or tobacco products to minors. Notwithstanding the foregoing, for purposes of inspections and enforcement actions undertaken pursuant to this section, minors may be enlisted to attempt to purchase or purchase tobacco products, provided that such persons shall have the prior written consent of a parent or legal guardian, and provided further that such persons shall be directly supervised during the conduct of each inspection or enforcement action by an enforcement agent of the board, or by a sheriff or head of police of any county, city, town or other political subdivision, or by a deputy or officer thereof. No minor may misrepresent his or her age for the purpose of purchasing or attempting to purchase tobacco products. If questioned about his or her age during an attempt to purchase or receive tobacco products, a minor shall state his or her true age. A photograph or

video recording of any minor assisting in an inspection or enforcement action shall be taken prior to the investigation. The appearance of a minor participating in an inspection or enforcement action shall not be altered at the time of the inspection. The minor shall be under the age of 18.

§ 28-11-4. Rules and regulations.

Pursuant to its rule making authority, the board may promulgate rules and regulations that have the full force and effect of law, for purposes of, but not limited to, the following:

(1) Establishing permits for the distribution of tobacco or tobacco products.

(2) Preventing the distribution of tobacco products to minors.

(3) Conducting annual random compliance tests to assure compliance with applicable state and federal guidelines regarding the distribution of tobacco or tobacco products to minors. The tests may utilize minors and may involve any person or location engaged in the distribution of tobacco.

§ 28-11-5. Funds; use.

The board may use funding, if available, from the Department of Mental Health and Mental Retardation, other state or federal agencies, grants, and private or public organizations to enforce this chapter and to provide and distribute tobacco prevention materials to retail tobacco merchants. The materials shall provide information regarding state and federal laws that prohibit access to tobacco or tobacco products by minors and other appropriate information. The board may also provide consultation services for establishing programs to minimize or eliminate sales of tobacco or tobacco products to minors pursuant to the responsible vendor program.

§ 28-11-6. Distribution; original factory-wrapped container.

No tobacco or tobacco product, except cigars, shall be distributed unless in an original factory-wrapped container. This prohibition also applies to the distribution of single cigarettes and packages containing less than 20 cigarettes.

§ 28-11-7. Permits; generally.

(a) Any person who distributes tobacco products within this state shall first obtain a permit from the board for each location of distribution. There is no fee for the permit.

(b) Any person who maintains a tobacco or tobacco product vending machine on his or her property in this state shall first obtain a permit from the board for each machine at each machine location. The permit for each machine shall be posted in a conspicuous place on the machine.

(c) A permit shall be valid only for the location specified in the permit application.

{d) A permit is not transferable or assignable and shall be renewed annually. Notwithstanding the foregoing, if a location for which a permit is obtained is sold or transferred, the permit shall be transferred to the person obtaining control of the location and shall be valid for 30 days after the transfer during which time a new permit shall be obtained.

(c) If feasible, the board may, by rule or regulation, establish procedures for the issuance and renewal of permits which combine tobacco permit procedures with the application and licensing procedures for alcoholic beverages.

§ 28-11-8. Permits; unlawful actions and penalties.

It shall be unlawful for any person to distribute tobacco or tobacco products without first obtaining from the board the appropriate permit. Failure to obtain or display a valid permit by January 1, 1998, shall result in issuance of a warning citation. The board shall conduct an information and education campaign by its Responsible Vendor Program to inform distributors of tobacco products at retail or in vending machines of the requirements of this law. Failure to obtain or display a valid permit pursuant to this chapter after January 1, 1998, shall constitute a misdemeanor offense. Each violation for selling tobacco products without a valid permit shall be treated as a separate offense and be punishable as follows: For the first violation by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) and for each subsequent violation by a fine of not less than five hundred dollars (\$500) nor more than one thousand five hundred dollars (\$1,500).

§ 28-11-9. Permits; disciplinary actions.

(a) Subject to the Alabama Administrative Procedure Act, Chapter 22 of Title 41, the board shall have full and final authority as to the suspension, revocation for cause of any permit issued pursuant to this chapter.

(1) The board may appoint a hearing commission of at least three persons which may do all of the following:

- a. Hear and decide all contested applications for permits.
- b. Hear and decide all charges against any permit holder or employee of a permit holder for violations of this chapter, the law, or the regulations of the board.
- c. Revoke or suspend permits as provided in this chapter.
- d. Levy administrative fines upon permit holders or employees permit holders.

(2) No member of the hearing commission shall participate in the hearing or disposition of

any application for a permit or charge against a permit holder or an employee of a permit holder if he or she has an interest therein or was involved in the investigation.

(b) The board, or a hearing commission appointed by the board, upon finding that a permit holder or any partner, member, employee, officer, or director of the permit holder has violated any of the laws of this state or the United State relating to the manufacture, sale, possession, or transportation of tobacco or tobacco products or that the permit holder has acted in a manner prejudicial to the welfare, health, peace, temperance, and safety of the people of the community or of the state, may upon due notice and hearing, levy administrative fines or suspend or revoke the permit issued by the board, or a combination of all three. In all cases where the board or hearing commission shall levy all administrative fine, or suspend or revoke a permit, it shall set forth its findings of fact, the evidence from which the findings of facts are made, and tile reasons upon which its actions are based.

(c) The fines as specified in subsection (e) shall be applicable per each violation. The permit holder or employee shall remit the administrative fine to the board within seven calendar days from the day that the administrative fine is levied. Failure by the permit holder to pay the administrative fine within that time period shall result in an automatic suspension of the permit until dw administrative fine is paid.

(d) The maximum length of suspension of a permit pursuant to l his chapter shall be one year. A permit holder shall be ineligible to hold a permit pursuant to this chapter for the location where the violation occurred until the expiration or removal of the suspension. A permit holder whose permit is revoked f,% the board or the hearing commission shall be, at the discretion of the board or hearing commission, ineligible to hold a permit pursuant to this chapter until the expiration of one year from the date the permit is revoked at the location where the violation occurred.

(e) The following administrative fines may be levied for violations of this chapter against valid permit holders or employees, or both:

(1) Upon conviction for a first violation by the permit holder or an employee of the permit holder, the board or hearing commission may offer the permit holder an opportunity to provide training sessions administered by the Responsible Vendor Program in lieu of an administrative fine upon the permit holder and the employee, if the violation is by an employee, of not more than two hundred dollars (\$200).

(2) Upon conviction of a second violation at the same location within a two-year period, the board or hearing commission may levy an administrative fine upon the permit holder and the employee, if the violation is by an employee, of not more than four hundred dollars (\$400).

(3) Upon conviction of a third or subsequent violation at the same location within a two-year period, the board or hearing commission may levy an administrative fine upon the permit holder and the employee, if the violation is by an employee, of not more than seven hundred fifty dollars (\$750).

(4) Upon conviction of a fourth or subsequent violation at the same location within a two-year period, the board or hearing commission may levy an administrative fine upon the permit holder and the employee, if the violation is by an employee, of not more than one thousand dollars (\$1,000) and may suspend or revoke the permit.

(f) Before imposition of any administrative fine, the permit holder shall be afforded all procedural rights to due process in addition to those rights guaranteed by the Alabama Administrative Procedure Act, Chapter 22 of Title 41.

§ 28-11-10. Funds; deposit and appropriations.

All funds collected pursuant to this chapter shall be deposited into the State General Fund.

§ 28-11-11. Annual report.

The board shall issue an annual report to the Governor, the Legislature, and the Attorney General concerning compliance by state retail merchants with this chapter. The report shall contain all of the following:

(1) The total number of retail distributors of tobacco products, categorized by type of retail outlet.

(2) The number of citations reported to the board, categorized by type of retail outlet.

(3) The total number of successful compliance checks, categorized by type of retail outlet.

(4) The extent and nature of organized educational and government activities intended to promote, encourage, or otherwise secure compliance with state and federal laws prohibiting the sale or distribution of tobacco products to minors.

(5) Information as to the level of access and availability of tobacco products to minors.

(6) Noted impediments to implementation of this chapter, as well as recommendations for alleviating the same.

§ 28-11-12. Advisory board.

(a) An advisory board shall be established to monitor the implementation of this chapter. The advisory board shall meet at least quarterly. Representation shall consist of one representative from each of the following:

- (1) The Office of the Governor.
 - (2) The Office of the Attorney General.
 - (3) The Department of Mental Health and Mental Retardation. (4) The Department of Public Health.
 - (5) The Alcoholic Beverage Control Board.
 - (6) The Senate as appointed by the Lieutenant Governor.
 - (7) The House of Representatives as appointed by the Speaker of the House of Representatives.
 - (8) The Alabama Oilmen's Association and the Alabama Convenience Store Operators as appointed by the Governor and selected from three nominees submitted by the association.
 - (9) The Alabama Retail Association as appointed by the Governor and selected from three nominees submitted by the association.
 - (10) The Alabama Grocers' Association as appointed by the Governor and selected from three nominees submitted by the association.
- (b) The membership of the advisory board shall be inclusive and reflect the racial, gender, geographic, urban/rural and economic diversity of the state.
 - (c) The chair of the advisory board shall be a representative from the board who shall be responsible for the conduct of the meetings and any correspondence derived there from.
 - (d) Other than the legislative appointees, each representative shall be appointed by his or her respective department head, and shall hold the appointment for a one-year term.
 - (e) A representative may be reappointed as deemed appropriate by his or her department head, or in the case of legislative appointees, the Lieutenant Governor or Speaker of the House of Representatives.
 - (f) The advisory board may issue written recommendations for program modification to the board.

§ 28-11-13. Minors; unlawful and lawful actions.

It is unlawful for any minor to purchase, use, possess, or transport tobacco or tobacco products within this state. It shall not be unlawful for a minor employee of a tobacco permit holder to handle, transport, or sell tobacco or tobacco products if the minor employee is acting within the line and scope of employment and the permit holder, or an employee of the permit holder who is 21 years of age or older, is present.

§ 28-11-14. Minors; penalties.

Any tobacco or tobacco product found in the possession of a minor is contraband and subject to seizure by law enforcement. Any minor violating Section 28-11-13 shall be issued a citation similar to a uniform non-traffic citation and shall be fined not less than ten dollars (\$10) nor more than fifty dollars (\$50) for each violation. The minor shall not be required to pay any other court costs or fees. Any statute or law to the contrary notwithstanding, disposition of any violation shall be within the jurisdiction of the district or municipal court and not the juvenile court. Violations shall not be considered criminal offenses and shall be administratively adjudicated by the district or municipal court.

§ 28-11-15. Construction with other law.

This chapter shall be read in pari materia with Section 13A-12-3.