

TO AMEND THE CRIMINAL CODE OF THE CHOCTAW NATION OF OKLAHOMA

IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION

RONALD PERRY INTRODUCED THE FOLLOWING COUNCIL BILL

A COUNCIL BILL

TO AMEND the Criminal Code of the Choctaw Nation of Oklahoma by enacting and inserting the Choctaw Nation of Oklahoma Tobacco Control Act.

WHEREAS, Article IX, Section 4 of the Constitution of the Choctaw Nation of Oklahoma (the "Nation") provides that the Tribal Council (the "Council") shall enact legislation, rules and regulations not inconsistent with the Constitution for the general good of the Choctaw Nation and for the administration and regulation of the affairs of the Choctaw Nation;

WHEREAS, on December 20, 2019, an amendment to the Federal Food, Drug, and Cosmetic Act was passed by the federal government making it illegal, under federal law, for a retailer to sell any tobacco product – including cigarettes, cigars and e-cigarettes – to anyone under the age of 21.

WHEREAS, the Council now finds it is in the best interest of the Nation to enact "The Choctaw Nation of Oklahoma Tobacco Control Act and amend the Criminal Code of the Nation by incorporating and adopting all proposed changes in Exhibit A. See Exhibit A;

THEREFORE BE IT ENACTED by the Council that this Bill be cited as approval to enact "The Choctaw Nation of Oklahoma Tobacco Control Act."


THEREFORE BE IT ENACTED, by the Council that this Bill be cited as approval that the Criminal Code of the Choctaw Nation of Oklahoma by incorporating and adopting all proposed changes in The Choctaw Nation of Oklahoma Tobacco Control Act, attached as Exhibit A.

BE IT FURTHER ENACTED, by the Council that this Bill be cited as approval to amend the Criminal Code of the Choctaw Nation of Oklahoma by inserting "The Choctaw Nation of Oklahoma Tobacco Control Act", beginning on Section 1230 of the Criminal Code of the Choctaw Nation of Oklahoma and ending on Section 1237, effective immediately.

BE IT FURTHER ENACTED, by the Council that this Bill be cited as approval to amend the Criminal Code of the Choctaw Nation of Oklahoma by reserving Section 1239 to 1244 for future use.

CERTIFICATION

I, the undersigned, as speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that eleven ( 11 ) members answered roll call and that a quorum was present at the Regular Session of the Tribal Council at Tuskahoma, Oklahoma on February 8, 2020.. I further certify that the foregoing Council Bill CB- 62 -20 was adopted at such meeting by the affirmative vote of eleven (11) members, zero (0 ) negative votes, and zero (0 ) abstaining.

  
Thomas Williston, Speaker  
Choctaw Nation Tribal Council

  
Ronald Perry, Secretary  
Choctaw Nation Tribal Council

  
Gary Batton, Chief  
Choctaw Nation of Oklahoma

Date 3.17.2020

## EXHIBIT A-PROPOSED CHANGES TO CRIMINAL CODE

### **Choctaw Nation Tobacco Control Act**

#### **Section 1230. Short Title**

Section 1230 through Section 1236 of this code may be cited as the “Choctaw Nation Tobacco Control Act.”

#### **Section 1231. Definitions**

1. "Person" means any individual, firm, fiduciary, partnership, corporation, trust, or association, however formed;
2. "Proof of age" means a tribal identification card (issued by a federally recognized tribe), driver license, license for identification only, or other generally accepted means of identification that describes the individual as twenty-one (21) years of age or older and contains a photograph or other likeness of the individual and appears on its face to be valid;
3. "Tobacco product" means any product that contains tobacco and is intended for human consumption;
4. "Transaction scan" means the process by which a seller checks, by means of a transaction scan device, the validity of a driver license or other government-issued photo identification;
5. "Transaction scan device" means any commercial device or combination of devices used at a point of sale or entry that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver license or other government-issued photo identification; and
6. "Vapor product" shall mean noncombustible products, that may or may not contain nicotine, that employ a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce a vapor in a solution or other form. "Vapor products" shall include any vapor cartridge or other container with or without nicotine or other form that is intended to be used with an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and any vapor cartridge or other container of a solution, that may or may not contain nicotine, that

## EXHIBIT A-PROPOSED CHANGES TO CRIMINAL CODE

is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo or electronic device

### **Section 1232. Unlawful to Sell or Furnish Tobacco or Vapor Products to Persons Under Twenty-One Years of Age—Punishment**

- A. It is unlawful for any person to sell, give or furnish in any manner any tobacco product or vapor product to another person who is under twenty-one (21) years of age, or to purchase in any manner a tobacco product or vapor product on behalf of any such person. It shall not be unlawful for an employee under twenty-one (21) years of age to handle tobacco products or vapor products when required in the performance of the employee's duties.
- B. A person engaged in the sale or distribution of tobacco products 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 may be under twenty-one (21) years of age. If an individual engaged in the sale or distribution of tobacco products or vapor products has demanded proof of age from a prospective purchaser or recipient who is not under twenty-one (21) years of age, the failure to subsequently require proof of age shall not constitute a violation of this subsection.
- C. Any person convicted of violating subsection A or B of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine in the amount of not less than Twenty-Five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00) or by imprisonment for a term not to exceed thirty (30) days for each offense, or by both such fine and imprisonment.
- D. *Defenses:* Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to prosecution under subsections A or B of this section. A person cited for violation of this section shall be deemed to have reasonably relied upon proof of age, and such person shall not be found guilty of such violation, if such person proves that:
  - a. The individual who purchased or received the tobacco product presented a tribal identification card, driver's license or other government-issued photo identification

## EXHIBIT A-PROPOSED CHANGES TO CRIMINAL CODE

purporting to establish that such individual was twenty-one (21) years of age or older; and

- b. The person cited for the violation confirmed the validity of the tribal identification card, driver's license or other government-issued photo identification presented by such individual by performing a transaction scan by means of a transaction scan device.
- c. Provided, that this defense shall not relieve from liability any person cited for a violation of this section if such person failed to exercise reasonable diligence to determine whether the physical description and picture appearing on the driver's license or other government-issued photo identification was that of the individual who presented it. The availability of the defense described in this subsection does not affect the availability of any other defense under any other provision of law.

### **Section 1233. Employee Notice and Acknowledgement**

- A. Every person engaged in the business of selling tobacco products or vapor products at retail shall notify each individual employed by that person as a retail sales clerk that tribal law:
  1. Prohibits the sale or distribution of tobacco products or vapor products to any person under twenty-one (21) years of age and the purchase or receipt of tobacco products or vapor products by any person under twenty-one (21) years of age; and
  2. Requires that proof of age be demanded 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-one (21) years of age.
- B. This notice shall be provided before the individual commences work as a retail sales clerk. The individual shall signify that he or she has received the notice required by this section by signing a form stating as follows:

"I understand that law prohibits the sale or distribution of tobacco products or vapor products to persons under twenty-one (21) years of age and out-of-package sales, and requires proof of age of purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser or recipient may be under twenty-one (21) years of

## EXHIBIT A-PROPOSED CHANGES TO CRIMINAL CODE

age. I promise, as a condition of my employment, to obey the law. I understand that violations by me may be punishable by fines.”

### **Section 1234. Tobacco Vending Machine Requirements**

- A. It shall be a misdemeanor for any person to sell tobacco products or vapor products through a vending machine unless the vending machine is located:
  - a. In areas of businesses, offices, or other places that are not open to the public; or
  - b. In places that are open to the public, but to which persons under the age of twenty-one (21) are not admitted.
- B. Any person convicted of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine in the amount of not less than Twenty-Five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00) or by imprisonment for a term not to exceed thirty (30) days for each offense, or by both such fine and imprisonment.

### **Section 1235. Receipt of Tobacco Products by Persons Under Twenty-One (21) Years of Age**

- A. It shall be unlawful for any person who is under twenty-one (21) years of age to purchase, receive, or have in their possession a tobacco product, or to present or offer to any person any purported proof of age which is false or fraudulent for the purpose of purchasing or receiving any tobacco product. It shall not be unlawful for an employee under twenty-one (21) years of age to handle tobacco products when required in the performance of the employee's duties.
- B. Any person convicted of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished:
  - 1. For a first conviction, by:
    - a. a fine of not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00),
    - b. assignment to and completion of twenty (20) hours of community service, or
    - c. any combination of fine or community service;
  - 2. For a second or subsequent conviction, by:

## EXHIBIT A-PROPOSED CHANGES TO CRIMINAL CODE

- a. a fine of not less than Twenty-Five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00),
  - b. assignment to and completion of Fifty (50) hours of community service, or
  - c. any combination of fine or community service.
- C. The court may assess additional community service hours in lieu of any fine specified in this section.

### **Section 1236. Refusal of Minor to Disclose Place Where and Person from Whom Obtained**

Any minor in possession of cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product and being by any tribal police officer, public safety officer, police officer, constable, juvenile court officer, truant officer, or teacher in any school, asked where and from whom such cigarettes, cigarette papers, cigars, snuff, chewing tobacco, or any other form of tobacco product were obtained, who shall refuse to furnish such information, shall be guilty of a misdemeanor and upon conviction thereof before the district court, or any judge of the district court, such minor being of the age of sixteen (16) years or upwards shall be sentenced to pay a fine not exceeding Five Dollars (\$5.00) or to assignment and completion of community service, not exceeding fifty (50) hours, or both; if such minor shall be under the age of sixteen (16) years, he or she shall be certified by such magistrate to the juvenile division of said court for such action as said court shall deem proper.

### **Section 1237. Smoking in Certain Public Place Prohibited—Punishment**

- A. The possession of lighted tobacco in any form is a public nuisance and dangerous to public health and is hereby prohibited when such possession is in any indoor place used by or open to the public, public transportation, or any indoor workplace of the Choctaw Nation of Oklahoma, except where specifically allowed by law.
- B. All buildings and other properties, or portions thereof, owned or operated by the Choctaw Nation shall be designated as nonsmoking.
- C. All buildings, or portions thereof, owned by an educational facility of the Choctaw Nation of Oklahoma shall be designated as nonsmoking. All campuses, buildings and grounds, or portions thereof, owned or operated by the Choctaw Nation of Oklahoma shall be designated as tobacco free, including smoking or smokeless tobacco.

## EXHIBIT A-PROPOSED CHANGES TO CRIMINAL CODE

- D. No smoking shall be allowed within twenty-five (25) feet of the entrance or exit of any building specified in subsection A, B, or C of this section.
- E. The restrictions provided in this section shall not apply to casinos, guest rooms at a hotel and other areas where the Tribal Council or other tribal officials or boards authorized by the Tribal Council have specifically authorized tobacco products.
- F. Any person who knowingly violates the provisions of this section is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00).

### **Section 1238. Severability.**

If any provision of the Choctaw Nation Tobacco Control Act is found to be unenforceable by a court of the Choctaw Nation of Oklahoma or to be in conflict with any laws of the Choctaw Nation of Oklahoma, such provision shall be deemed stricken and the rest of the Choctaw Nation Tobacco Control Act shall remain in full force and effect.

Sections 1239 – 1243. Reserved