

RC 2927.022. Affirmative defense to a cigarette or tobacco product charge. (Effective October 17, 2019)

(A) A seller or an agent or employee of a seller may not be found guilty of a charge of a violation of section 2927.02 of the Revised Code in which the age of the purchaser or other recipient of cigarettes, other tobacco products, or alternative nicotine products is an element of the alleged violation, if the seller, agent, or employee raises and proves as an affirmative defense that all of the following occurred:

- (1) A card holder attempting to purchase or receive cigarettes, other tobacco products, or alternative nicotine products presented a driver's or commercial driver's license or an identification card.
- (2) A transaction scan of the driver's or commercial driver's license or identification card that the card holder presented indicated that the license or card was valid.
- (3) The cigarettes, other tobacco products, or alternative nicotine products were sold, given away, or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan.

(B) In determining whether a seller or an agent or employee of a seller has proven the affirmative defense provided by division (A) of this section, the trier of fact in the action for the alleged violation of section 2927.02 of the Revised Code shall consider any written policy that the seller has adopted and implemented and that is intended to prevent violations of section 2927.02 of the Revised Code. For purposes of division (A)(3) of this section, the trier of fact shall consider that reasonable reliance upon the identification presented and the completed transaction scan may require a seller or an agent or employee of a seller to exercise reasonable diligence to determine, and that the use of a transaction scan device does not excuse a seller or an agent or employee of a seller from exercising reasonable diligence to determine, the following:

- (1) Whether a person to whom the seller or agent or employee of a seller sells, gives away, or otherwise distributes cigarettes, other tobacco products, or alternative nicotine products is twenty-one years of age or older;
- (2) Whether the description and picture appearing on the driver's or commercial driver's license or identification card presented by a card holder is that of the card holder.

(C) In any criminal action in which the affirmative defense provided by division (A) of this section is raised, the registrar of motor vehicles or a deputy registrar who issued an identification card under sections 4507.50 to 4507.52 of the Revised Code shall be permitted to submit certified copies of the records of that issuance in lieu of the testimony of the personnel of or contractors with the bureau of motor vehicles in the action.

HISTORY: 148 v S 200. Eff 9-21-2000; 2014 HB 144, § 1, eff. Aug. 2, 2014; 2019 hb166, § 101.01, effective October 17, 2019.