

**Superseded 5/12/2015**

**76-10-105.1 Requirement of direct, face-to-face sale of tobacco products and electronic cigarettes -- Supremacy clause -- Penalties.**

- (1) As used in this section:
  - (a) "Cigarette tobacco" means a product that consists of loose tobacco that contains or delivers nicotine and is intended for use by a consumer in a cigarette.
  - (b) "Pipe tobacco" means a product that consists of loose tobacco that contains or delivers nicotine and is intended to be smoked by a consumer in a pipe.
  - (c) "Retailer" means a person who sells cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco to individuals for personal consumption or who operates a facility where a vending machine or a self-service display is permitted under Subsection (3)(b).
  - (d) "Self-service display" means a display of cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco products to which the public has access without the intervention of a retail employee.
  - (e) "Smokeless tobacco" means a product that consists of cut, ground, powdered, or leaf tobacco that contains nicotine and that is intended to be placed in the oral cavity.
- (2)
  - (a) Except as provided in Subsection (3), a retailer may sell cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, and smokeless tobacco only in a direct, face-to-face exchange between:
    - (i) an employee of the retailer; and
    - (ii) the purchaser.
  - (b) Examples of methods that are not permitted include vending machines and self-service displays.
  - (c) Subsections (2)(a) and (b) do not prohibit the use or display of locked cabinets containing cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco if the locked cabinets are accessible only to the retailer or the retailer's employees.
- (3) The following sales are permitted as exceptions to Subsection (2):
  - (a) mail-order sales, if the provisions of Section 59-14-509 are met;
  - (b) sales from vending machines, including vending machines that sell packaged, single cigarettes or cigars, and self-service displays that are located in a separate and defined area within a facility where the retailer ensures that no person younger than 19 years of age is present, or permitted to enter, at any time, unless accompanied by a parent or legal guardian; and
  - (c) sales by a retailer from a retail store which derives at least 80% of its revenue from tobacco and tobacco related products and where the retailer ensures that no person younger than 19 years of age is present, or permitted to enter at any time, unless accompanied by a parent or legal guardian.
- (4) Any ordinance, regulation, or rule adopted by the governing body of a political subdivision of the state or by a state agency that affects the sale, placement, or display of cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco that is not essentially identical to the provisions of this section and Section 76-10-102 is superseded.
- (5)
  - (a) A parent or legal guardian who accompanies a person younger than 19 years of age into an area described in Subsection (3)(b) or into a retail store as described in Subsection (3)(c) and permits the person younger than 19 years of age to purchase or otherwise take a cigar,

cigarette, electronic cigarette, or tobacco in any form is guilty of providing tobacco as provided for in Section 76-10-104 and the penalties provided for in that section.

- (b) Nothing in this section may be construed as permitting a person to provide tobacco to a minor in violation of Section 76-10-104.
- (6) Violation of Subsection (2) or (3) is a:
  - (a) class C misdemeanor on the first offense;
  - (b) class B misdemeanor on the second offense; and
  - (c) class A misdemeanor on the third and all subsequent offenses.