

**77-39-101 Investigation of sales of alcohol, tobacco, and electronic cigarettes to under age persons.**

- (1) As used in this section, "electronic cigarette" is as defined in Section 76-10-101.
- (2)
  - (a) A peace officer, as defined by Title 53, Chapter 13, Peace Officer Classifications, may investigate the possible violation of:
    - (i) Section 32B-4-403 by requesting an individual under the age of 21 years to enter into and attempt to purchase or make a purchase of alcohol from a retail establishment; or
    - (ii) Section 76-10-104 by requesting an individual under the age of 19 years to enter into and attempt to purchase or make a purchase from a retail establishment of:
      - (A) a cigar;
      - (B) a cigarette;
      - (C) tobacco in any form; or
      - (D) an electronic cigarette.
  - (b) A peace officer who is present at the site of a proposed purchase shall direct, supervise, and monitor the individual requested to make the purchase.
  - (c) Immediately following a purchase or attempted purchase or as soon as practical the supervising peace officer shall inform the cashier and the proprietor or manager of the retail establishment that the attempted purchaser was under the legal age to purchase:
    - (i) alcohol; or
    - (ii)
      - (A) a cigar;
      - (B) a cigarette;
      - (C) tobacco in any form; or
      - (D) an electronic cigarette.
  - (d) If a citation or information is issued, it shall be issued within seven days of the purchase.
- (3)
  - (a) If an individual under the age of 18 years old is requested to attempt a purchase, a written consent of that individual's parent or guardian shall be obtained prior to that individual participating in any attempted purchase.
  - (b) An individual requested by the peace officer to attempt a purchase may:
    - (i) be a trained volunteer; or
    - (ii) receive payment, but may not be paid based on the number of successful purchases of alcohol, tobacco, or an electronic cigarette.
- (4) The individual requested by the peace officer to attempt a purchase and anyone accompanying the individual attempting a purchase may not during the attempted purchase misrepresent the age of the individual by false or misleading identification documentation in attempting the purchase.
- (5) An individual requested to attempt to purchase or make a purchase pursuant to this section is immune from prosecution, suit, or civil liability for the purchase of, attempted purchase of, or possession of alcohol, a cigar, a cigarette, tobacco in any form, or an electronic cigarette if a peace officer directs, supervises, and monitors the individual.
- (6)
  - (a) Except as provided in Subsection (6)(b), a purchase attempted under this section shall be conducted:
    - (i) on a random basis; and
    - (ii) within a 12-month period at any one retail establishment location not more often than:
      - (A) four times for the attempted purchase of:

- (I) a cigar;
  - (II) a cigarette;
  - (III) tobacco in any form; or
  - (IV) an electronic cigarette; and
- (B) four times for the attempted purchase of alcohol.
- (b) Nothing in this section shall prohibit an investigation under this section if:
- (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a cigar, a cigarette, tobacco in any form, or an electronic cigarette to an individual under the age established by Section 32B-4-403 or 76-10-104; and
  - (ii) the supervising peace officer makes a written record of the grounds for the reasonable suspicion.
- (7)
- (a) The peace officer exercising direction, supervision, and monitoring of the attempted purchase shall make a report of the attempted purchase, whether or not a purchase was made.
  - (b) The report required by this Subsection (7) shall include:
    - (i) the name of the supervising peace officer;
    - (ii) the name of the individual attempting the purchase;
    - (iii) a photograph of the individual attempting the purchase showing how that individual appeared at the time of the attempted purchase;
    - (iv) the name and description of the cashier or proprietor from whom the individual attempted the purchase;
    - (v) the name and address of the retail establishment; and
    - (vi) the date and time of the attempted purchase.

Amended by Chapter 114, 2010 General Session

Amended by Chapter 276, 2010 General Session