

ELECTRONIC CIGARETTE RESTRICTIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronda Rudd Menlove

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill amends provisions of the Uniform Driver License Act, provisions relating to the state system of public education, the Utah Criminal Code, and the Utah Code of Criminal Procedure to place restrictions on the provision, obtaining, and possession of an electronic cigarette and to enforce those restrictions.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ makes it a class A misdemeanor to knowingly acquire, use, display, or transfer a false or altered driver license certificate or identification card to procure an electronic cigarette;
- ▶ provides that the State Board of Education may, and local boards of education and governing boards of charter schools shall, adopt rules that prohibit the illicit use, possession, or distribution of an electronic cigarette;
- ▶ prohibits an electronic cigarette in a correctional or a mental health facility and provides criminal penalties for violation of this prohibition;
- ▶ makes it a misdemeanor to provide an electronic cigarette to a person under 19 years of age;
- ▶ makes it a class C misdemeanor for an 18 year old person to buy, attempt to buy, accept, or possess an electronic cigarette;
- ▶ provides that a person under the age of 18 who buys, attempts to buy, accepts, or has in the person's possession an electronic cigarette is subject to the jurisdiction of

- 30 the Juvenile Court;
- 31 ▶ describes when the sale of an electronic cigarette is required to be face-to-face and
- 32 provides criminal penalties for violation of those requirements;
- 33 ▶ addresses enforcement of, and investigation of violations of, the provisions of this
- 34 bill;
- 35 ▶ describes when free distribution of an electronic cigarette is prohibited and
- 36 provides criminal penalties for violation of those prohibitions; and
- 37 ▶ makes technical changes.

38 Monies Appropriated in this Bill:

39 None

40 Other Special Clauses:

41 None

42 Utah Code Sections Affected:

43 AMENDS:

- 44 **53-3-229**, as last amended by Laws of Utah 2005, Chapter 197
- 45 **53-3-810**, as last amended by Laws of Utah 2005, Chapter 197
- 46 **53A-11-908**, as last amended by Laws of Utah 2007, Chapter 161
- 47 **76-8-311.3**, as last amended by Laws of Utah 2008, Chapter 382
- 48 **76-10-101**, as last amended by Laws of Utah 1998, Chapter 412
- 49 **76-10-104**, as last amended by Laws of Utah 2000, Chapter 176
- 50 **76-10-105**, as last amended by Laws of Utah 2002, Chapter 212
- 51 **76-10-105.1**, as last amended by Laws of Utah 2009, Chapters 307 and 341
- 52 **76-10-111**, as last amended by Laws of Utah 1990, Chapter 14
- 53 **77-39-101**, as last amended by Laws of Utah 2006, Chapter 342

54

55 *Be it enacted by the Legislature of the state of Utah:*

56 Section 1. Section **53-3-229** is amended to read:

57 **53-3-229. Prohibited uses of license certificate -- Penalty.**

- 58 (1) It is a class C misdemeanor for a person to:
- 59 (a) lend or knowingly permit the use of a license certificate issued to the person, by a
60 person not entitled to it;
- 61 (b) display or to represent as the person's own a license certificate not issued to the
62 person;
- 63 (c) refuse to surrender to the division or a peace officer upon demand any license
64 certificate issued by the division;
- 65 (d) use a false name or give a false address in any application for a license or any
66 renewal or duplicate of the license certificate, or to knowingly make a false statement, or to
67 knowingly conceal a material fact or otherwise commit a fraud in the application;
- 68 (e) display a canceled, denied, revoked, suspended, or disqualified driver license
69 certificate as a valid driver license certificate;
- 70 (f) knowingly acquire, use, display, or transfer an item that purports to be an authentic
71 driver license certificate issued by a governmental entity if the item is not an authentic driver
72 license certificate issued by that governmental entity; or
- 73 (g) alter any information on an authentic driver license certificate so that it no longer
74 represents the information originally displayed.
- 75 (2) The provisions of Subsection (1)(e) do not prohibit the use of a person's driver
76 license certificate as a means of personal identification.
- 77 (3) It is a class A misdemeanor to knowingly:
- 78 (a) [~~knowingly~~] issue a driver license certificate with false or fraudulent information;
- 79 (b) [~~knowingly~~] issue a driver license certificate to a person younger than 21 years of
80 age if the driver license certificate is not distinguished as required for a person younger than
81 21 years of age under Section 53-3-207; or
- 82 (c) [~~knowingly~~] acquire, use, display, or transfer a false or altered driver license
83 certificate to procure [~~cigarettes, tobacco, or tobacco products.~~];
- 84 (i) a cigarette;
- 85 (ii) an electronic cigarette, as defined in Section 76-10-101;

86 (iii) tobacco; or

87 (iv) a tobacco product.

88 (4) A person may not use, display, or transfer a false or altered driver license
89 certificate to procure alcoholic beverages, gain admittance to a place where alcoholic
90 beverages are sold or consumed, or obtain employment that may not be obtained by a minor in
91 violation of Section 32A-1-301.

92 (5) It is a third degree felony if a person's acquisition, use, display, or transfer of a
93 false or altered driver license certificate:

94 (a) aids or furthers the person's efforts to fraudulently obtain goods or services; or

95 (b) aids or furthers the person's efforts to commit a violent felony.

96 Section 2. Section **53-3-810** is amended to read:

97 **53-3-810. Prohibited uses of identification card -- Penalties.**

98 (1) It is a class C misdemeanor to:

99 (a) lend or knowingly permit the use of an identification card issued to the person, by
100 a person not entitled to it;

101 (b) display or to represent as the person's own an identification card not issued to the
102 person;

103 (c) refuse to surrender to the division or a peace officer upon demand any
104 identification card issued by the division;

105 (d) use a false name or give a false address in any application for an identification card
106 or any renewal or duplicate of the identification card, or to knowingly make a false statement,
107 or to knowingly conceal a material fact in the application;

108 (e) display a revoked identification card as a valid identification card;

109 (f) knowingly acquire, use, display, or transfer an item that purports to be an authentic
110 identification card issued by a governmental entity if the item is not an authentic identification
111 card issued by that governmental entity; or

112 (g) alter any information contained on an authentic identification card so that it no
113 longer represents the information originally displayed.

114 (2) It is a class A misdemeanor to knowingly:

115 (a) [~~knowingly~~] issue an identification card with false or fraudulent information;

116 (b) [~~knowingly~~] issue an identification card to any person younger than 21 years of
117 age if the identification card is not distinguished as required for a person younger than 21
118 years of age under Section 53-3-806; or

119 (c) [~~knowingly~~] acquire, use, display, or transfer a false or altered identification card
120 to procure [~~cigarettes, tobacco, or tobacco products.~~]:

121 (i) a cigarette;

122 (ii) an electronic cigarette, as defined in Section 76-10-101;

123 (iii) tobacco; or

124 (iv) a tobacco product.

125 (3) A person may not knowingly use, display, or transfer a false or altered
126 identification card to procure alcoholic beverages, gain admittance to a place where alcoholic
127 beverages are sold or consumed, or obtain employment that may not be obtained by a minor in
128 violation of Section 32A-1-301.

129 (4) It is a third degree felony if a person's acquisition, use, display, or transfer of a
130 false or altered identification card:

131 (a) aids or furthers the person's efforts to fraudulently obtain goods or services; or

132 (b) aids or furthers the person's efforts to commit a violent felony.

133 Section 3. Section **53A-11-908** is amended to read:

134 **53A-11-908. Extracurricular activities -- Prohibited conduct -- Reporting of**
135 **violations -- Limitation of liability.**

136 (1) The Legislature recognizes that:

137 (a) participation in student government and extracurricular activities may confer
138 important educational and lifetime benefits upon students, and encourages school districts and
139 charter schools to provide a variety of opportunities for all students to participate in such
140 activities in meaningful ways;

141 (b) there is no constitutional right to participate in these types of activities, and does

142 not through this section or any other provision of law create such a right;

143 (c) students who participate in student government and extracurricular activities,
144 particularly competitive athletics, and the adult coaches, advisors, and assistants who direct
145 those activities, become role models for others in the school and community;

146 (d) these individuals often play major roles in establishing standards of acceptable
147 behavior in the school and community, and establishing and maintaining the reputation of the
148 school and the level of community confidence and support afforded the school; and

149 (e) it is of the utmost importance that those involved in student government, whether
150 as officers or advisors, and those involved in competitive athletics and related activities,
151 whether students or staff, comply with all applicable laws and rules of behavior and conduct
152 themselves at all times in a manner befitting their positions and responsibilities.

153 (2) (a) The State Board of Education may, and local boards of education and
154 governing boards of charter schools shall, adopt rules implementing this section that apply to
155 both students and staff.

156 (b) Those rules shall include prohibitions against the following types of conduct, while
157 in the classroom, on school property, during school sponsored activities, or regardless of the
158 location or circumstance, affecting a person or property described in Subsections
159 53A-11-902(5)(a) through (d):

160 (i) use of foul, abusive, or profane language while engaged in school related activities;

161 (ii) illicit use, possession, or distribution of controlled substances or drug
162 paraphernalia, and the use, possession, or distribution of an electronic cigarette as defined in
163 Section 76-10-101, tobacco, or alcoholic beverages contrary to law; and

164 (iii) hazing, demeaning, or assaultive behavior, whether consensual or not, including
165 behavior involving physical violence, restraint, improper touching, or inappropriate exposure
166 of body parts not normally exposed in public settings, forced ingestion of any substance, or
167 any act which would constitute a crime against a person or public order under Utah law.

168 (3) (a) School employees who reasonably believe that a violation of this section may
169 have occurred shall immediately report that belief to the school principal, district

170 superintendent, or chief administrative officer of a charter school.

171 (b) Principals who receive a report under Subsection (3)(a) shall submit a report of the
172 alleged incident, and actions taken in response, to the district superintendent or the
173 superintendent's designee within 10 working days after receipt of the report.

174 (c) Failure of a person holding a professional certificate to report as required under
175 this Subsection (3) constitutes an unprofessional practice.

176 (4) Limitations of liability set forth under Section 53A-11-1004 apply to this section.
177 Section 4. Section **76-8-311.3** is amended to read:

178 **76-8-311.3. Items prohibited in correctional and mental health facilities --**

179 **Penalties.**

180 (1) As used in this section:

181 (a) "Contraband" means any item not specifically prohibited for possession by
182 offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

183 (b) "Controlled substance" means any substance defined as a controlled substance
184 under Title 58, Chapter 37, Utah Controlled Substances Act.

185 (c) "Correctional facility" means:

186 (i) any facility operated by or contracting with the Department of Corrections to house
187 offenders in either a secure or nonsecure setting;

188 (ii) any facility operated by a municipality or a county to house or detain criminal
189 offenders;

190 (iii) any juvenile detention facility; and

191 (iv) any building or grounds appurtenant to the facility or lands granted to the state,
192 municipality, or county for use as a correctional facility.

193 (d) "Electronic cigarette" is as defined in Section 76-10-101.

194 [~~(d)~~] (e) "Medicine" means any prescription drug as defined in Title 58, Chapter 17b,
195 Pharmacy Practice Act, but does not include any controlled substances as defined in Title 58,
196 Chapter 37, Utah Controlled Substances Act.

197 [~~(e)~~] (f) "Mental health facility" [~~has the same meaning~~] is as defined in Section

198 62A-15-602.

199 ~~[(f)]~~ (g) "Offender" means a person in custody at a correctional facility.

200 ~~[(g)]~~ (h) "Secure area" ~~[has the same meaning as provided]~~ is as defined in Section
201 76-8-311.1.

202 (2) Notwithstanding Section 76-10-500, a correctional or mental health facility may
203 provide by rule that no firearm, ammunition, dangerous weapon, implement of escape,
204 explosive, controlled substance, spirituous or fermented liquor, medicine, or poison in any
205 quantity may be:

206 (a) transported to or upon a correctional or mental health facility;

207 (b) sold or given away at any correctional or mental health facility;

208 (c) given to or used by any offender at a correctional or mental health facility; or

209 (d) knowingly or intentionally possessed at a correctional or mental health facility.

210 (3) It is a defense to any prosecution under this section if the accused in committing
211 the act made criminal by this section with respect to:

212 (a) ~~[with respect to]~~ a correctional facility operated by the Department of Corrections,
213 acted in conformity with departmental rule or policy;

214 (b) ~~[with respect to]~~ a correctional facility operated by a municipality, acted in
215 conformity with the policy of the municipality;

216 (c) ~~[with respect to]~~ a correctional facility operated by a county, acted in conformity
217 with the policy of the county; or

218 (d) ~~[with respect to]~~ a mental health facility, acted in conformity with the policy of the
219 mental health facility.

220 (4) (a) Any person who transports to or upon a correctional facility, or into a secure
221 area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of
222 escape with intent to provide or sell it to any offender, is guilty of a second degree felony.

223 (b) Any person who provides or sells to any offender at a correctional facility, or any
224 detainee at a secure area of a mental health facility, any firearm, ammunition, dangerous
225 weapon, or implement of escape is guilty of a second degree felony.

226 (c) Any offender who possesses at a correctional facility, or any detainee who
227 possesses at a secure area of a mental health facility, any firearm, ammunition, dangerous
228 weapon, or implement of escape is guilty of a second degree felony.

229 (d) Any person who, without the permission of the authority operating the correctional
230 facility or the secure area of a mental health facility, knowingly possesses at a correctional
231 facility or a secure area of a mental health facility any firearm, ammunition, dangerous
232 weapon, or implement of escape is guilty of a third degree felony.

233 (e) Any person violates Section 76-10-306 who knowingly or intentionally transports,
234 possesses, distributes, or sells any explosive in a correctional facility or mental health facility.

235 (5) (a) A person is guilty of a third degree felony who, without the permission of the
236 authority operating the correctional facility or secure area of a mental health facility,
237 knowingly transports to or upon a correctional facility or into a secure area of a mental health
238 facility any:

239 (i) spirituous or fermented liquor;

240 (ii) medicine, whether or not lawfully prescribed for the offender; or

241 (iii) poison in any quantity.

242 (b) A person is guilty of a third degree felony who knowingly violates correctional or
243 mental health facility policy or rule by providing or selling to any offender at a correctional
244 facility or detainee within a secure area of a mental health facility any:

245 (i) spirituous or fermented liquor;

246 (ii) medicine, whether or not lawfully prescribed for the offender; or

247 (iii) poison in any quantity.

248 (c) An inmate is guilty of a third degree felony who, in violation of correctional or
249 mental health facility policy or rule, possesses at a correctional facility or in a secure area of a
250 mental health facility any:

251 (i) spirituous or fermented liquor;

252 (ii) medicine, other than medicine provided by the facility's health care providers in
253 compliance with facility policy; or

254 (iii) poison in any quantity.

255 (d) A person is guilty of a class A misdemeanor who, with the intent to directly or
256 indirectly provide or sell any tobacco product or electronic cigarette to an offender, directly or
257 indirectly:

258 (i) transports, delivers, or distributes any tobacco product or electronic cigarette to an
259 offender or on the grounds of any correctional facility;

260 (ii) solicits, requests, commands, coerces, encourages, or intentionally aids another
261 person to transport any tobacco product or electronic cigarette to an offender or on any
262 correctional facility, if the person is acting with the mental state required for the commission
263 of an offense; or

264 (iii) facilitates, arranges, or causes the transport of any tobacco product or electronic
265 cigarette in violation of this section to an offender or on the grounds of any correctional
266 facility.

267 (e) A person is guilty of a class A misdemeanor who, without the permission of the
268 authority operating the correctional or mental health facility, fails to declare or knowingly
269 possesses at a correctional facility or in a secure area of a mental health facility any:

270 (i) spirituous or fermented liquor;

271 (ii) medicine; or

272 (iii) poison in any quantity.

273 (f) A person is guilty of a class B misdemeanor who, without the permission of the
274 authority operating the correctional facility, knowingly engages in any activity that would
275 facilitate the possession of any contraband by an offender in a correctional facility. The
276 provisions of Subsection (5)(d) regarding any tobacco product or electronic cigarette take
277 precedence over this Subsection (5)(f).

278 (g) Exemptions may be granted for worship for Native American inmates pursuant to
279 Section 64-13-40.

280 (6) The possession, distribution, or use of a controlled substance at a correctional
281 facility or in a secure area of a mental health facility shall be prosecuted in accordance with

282 Title 58, Chapter 37, Utah Controlled Substances Act.

283 (7) The department shall make rules under Title 63G, Chapter 3, Utah Administrative
284 Rulemaking Act, to establish guidelines for providing written notice to visitors that providing
285 any tobacco product or electronic cigarette to offenders is a class A misdemeanor.

286 Section 5. Section **76-10-101** is amended to read:

287 **76-10-101. Definitions.**

288 As used in this part:

289 [~~(1) "Place of business" means any and all places such as shops, stores, factories,
290 public garages, offices, theaters, recreation and dance halls, poolrooms, cafes, cafeterias,
291 cabarets, restaurants, hotels, lodging houses, streetcars, buses, interurban and railway
292 passenger coaches and waiting rooms.]~~

293 (1) "Cigar" means a product that contains nicotine, is intended to be burned under
294 ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in
295 any substance containing tobacco, other than any roll of tobacco that is a cigarette as
296 described in Subsection (2).

297 (2) "Cigarette" means a product that contains nicotine, is intended to be burned under
298 ordinary conditions of use, and consists of:

299 (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco;
300 or

301 (b) any roll of tobacco wrapped in any substance containing tobacco which, because
302 of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely
303 to be offered to, or purchased by, consumers as a cigarette described in Subsection (2)(a).

304 (3) "Electronic cigarette" means any device, other than a cigarette or cigar, intended to
305 deliver vapor containing nicotine into a person's respiratory system.

306 (4) "Place of business" includes:

307 (a) a shop;

308 (b) a store;

309 (c) a factory;

- 310 (d) a public garage;
- 311 (e) an office;
- 312 (f) a theater;
- 313 (g) a recreation hall;
- 314 (h) a dance hall;
- 315 (i) a poolroom;
- 316 (j) a café;
- 317 (k) a cafeteria;
- 318 (l) a cabaret;
- 319 (m) a restaurant;
- 320 (n) a hotel;
- 321 (o) a lodging house;
- 322 (p) a streetcar;
- 323 (q) a bus;
- 324 (r) an interurban or railway passenger coach;
- 325 (s) a waiting room; and
- 326 (t) any other place of business.

327 [~~(2)~~] (5) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other
328 lighted smoking equipment.

329 Section 6. Section **76-10-104** is amended to read:

330 **76-10-104. Providing a cigar, cigarette, electronic cigarette, or tobacco to a**
331 **minor -- Penalties.**

332 (1) Any person who knowingly, intentionally, recklessly, or with criminal negligence
333 provides any cigar, cigarette, electronic cigarette, or tobacco in any form, to any person under
334 19 years of age, is guilty of a class C misdemeanor on the first offense, a class B misdemeanor
335 on the second offense, and a class A misdemeanor on subsequent offenses.

336 (2) For purposes of this section "provides":

337 (a) includes selling, giving, furnishing, sending, or causing to be sent; and

338 (b) does not include the acts of the United States Postal Service or other common
339 carrier when engaged in the business of transporting and delivering packages for others or the
340 acts of a person, whether compensated or not, who transports or delivers a package for another
341 person without any reason to know of the package's content.

342 Section 7. Section **76-10-105** is amended to read:

343 **76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, or**
344 **tobacco by a minor -- Penalty -- Compliance officer authority -- Juvenile court**
345 **jurisdiction.**

346 (1) Any 18 year old person who buys or attempts to buy, accepts, or has in ~~[his]~~ the
347 person's possession any cigar, cigarette, electronic cigarette, or tobacco in any form is guilty of
348 a class C misdemeanor and subject to:

349 (a) a minimum fine or penalty of \$60; and

350 (b) participation in a court-approved tobacco education program, which may include a
351 participation fee.

352 (2) Any person under the age of 18 who buys or attempts to buy, accepts, or has in
353 ~~[his]~~ the person's possession any cigar, cigarette, electronic cigarette, or tobacco in any form is
354 subject to the jurisdiction of the Juvenile Court and:

355 (a) a minimum fine or penalty of \$60; and

356 (b) participation in a court-approved tobacco education program, which may include a
357 participation fee.

358 (3) A compliance officer appointed by a board of education under Section 53A-3-402
359 may issue citations for violations of this section committed on school property. Cited
360 violations shall be reported to the appropriate juvenile court.

361 Section 8. Section **76-10-105.1** is amended to read:

362 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products and**
363 **electronic cigarettes -- Supremacy clause -- Penalties.**

364 (1) As used in this section:

365 ~~[(a) "Cigarette" means a product which contains nicotine, is intended to be burned~~

366 ~~under ordinary conditions of use, and consists of:]~~

367 ~~[(i) any roll of tobacco wrapped in paper or in any substance not containing tobacco;~~
368 ~~or]~~

369 ~~[(ii) any roll of tobacco wrapped in any substance containing tobacco which, because~~
370 ~~of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely~~
371 ~~to be offered to, or purchased by, consumers as a cigarette described in Subsection (1)(a).]~~

372 ~~[(b) "Cigar" means a product which contains nicotine, is intended to be burned under~~
373 ~~ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in~~
374 ~~any substance containing tobacco, other than any roll of tobacco which is a cigarette within~~
375 ~~the meaning of Subsection (1)(a).]~~

376 ~~[(c)]~~ (a) "Cigarette tobacco" means a product that consists of loose tobacco that
377 contains or delivers nicotine and is intended for use by a consumer in a cigarette.

378 ~~[(d)]~~ (b) "Pipe tobacco" means a product that consists of loose tobacco that contains or
379 delivers nicotine and is intended to be smoked by a consumer in a pipe.

380 ~~[(e)]~~ (c) "Retailer" means a person who sells cigarettes, electronic cigarettes, cigars,
381 cigarette tobacco, pipe tobacco, or smokeless tobacco to individuals for personal consumption
382 or who operates a facility where a vending machine or a self-service display is permitted under
383 Subsection (3)(b).

384 ~~[(f)]~~ (d) "Self-service display" means a display of cigarettes, electronic cigarettes,
385 cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco products to which the public has
386 access without the intervention of a retail employee.

387 ~~[(g)]~~ (e) "Smokeless tobacco" means a product that consists of cut, ground, powdered,
388 or leaf tobacco that contains nicotine and that is intended to be placed in the oral cavity.

389 (2) (a) Except as provided in Subsection (3), a retailer may sell cigarettes, electronic
390 cigarettes, cigars, cigarette tobacco, pipe tobacco, and smokeless tobacco only in a direct,
391 face-to-face exchange between:

392 (i) an employee of the retailer; and

393 (ii) the purchaser.

394 (b) Examples of methods that are not permitted include vending machines and
395 self-service displays.

396 (c) Subsections (2)(a) and (b) do not prohibit the use or display of locked cabinets
397 containing cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, or
398 smokeless tobacco if the locked cabinets are accessible only to the retailer or the retailer's
399 employees.

400 (3) The following sales are permitted as exceptions to Subsection (2):

401 (a) mail-order sales, if the provisions of Section 59-14-509 are met;

402 (b) sales from vending machines, including vending machines that sell packaged,
403 single cigarettes or cigars, and self-service displays that are located in a separate and defined
404 area within a facility where the retailer ensures that no person younger than 19 years of age is
405 present, or permitted to enter, at any time, unless accompanied by a parent or legal guardian;
406 and

407 (c) sales by a retailer from a retail store which derives at least 80% of its revenue from
408 tobacco and tobacco related products and where the retailer ensures that no person younger
409 than 19 years of age is present, or permitted to enter at any time, unless accompanied by a
410 parent or legal guardian.

411 (4) Any ordinance, regulation, or rule adopted by the governing body of a political
412 subdivision of the state or by a state agency that affects the sale, placement, or display of
413 cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco
414 that is not essentially identical to the provisions of this section and Section 76-10-102 is
415 superseded.

416 (5) (a) A parent or legal guardian who accompanies a person younger than 19 years of
417 age into an area described in Subsection (3)(b) or into a retail store as described in Subsection
418 (3)(c) and permits the person younger than 19 years of age to purchase or otherwise take a
419 cigar, cigarette, electronic cigarette, or tobacco in any form is guilty of providing tobacco as
420 provided for in Section 76-10-104 and the penalties provided for in that section.

421 (b) Nothing in this section may be construed as permitting a person to provide tobacco

422 to a minor in violation of Section 76-10-104.

423 (6) Violation of Subsection (2) or (3) is a:

424 (a) class C misdemeanor on the first offense;

425 (b) class B misdemeanor on the second offense; and

426 (c) class A misdemeanor on the third and all subsequent offenses.

427 Section 9. Section **76-10-111** is amended to read:

428 **76-10-111. Prohibition of gift or free distribution of smokeless tobacco or**
429 **electronic cigarettes -- Exceptions.**

430 (1) The Legislature finds that:

431 (a) smokeless tobacco, or chewing tobacco, is harmful to the health of individuals who
432 use those products because research indicates that they may cause mouth or oral cancers;
433 [that]

434 (b) the use of smokeless tobacco among juveniles in this state is increasing rapidly;
435 [~~and that~~]

436 (c) the use of electronic cigarettes may lead to unhealthy behavior such as the use of
437 tobacco products; and

438 (d) it is necessary to restrict the gift of [~~these~~] the products described in this
439 Subsection (1) in the interest of the health of the citizens of this state.

440 (2) Except as provided in Subsection (3), it is unlawful for a manufacturer, wholesaler,
441 and retailer to give or distribute without charge any smokeless tobacco [~~or~~], chewing tobacco,
442 or electronic cigarette in this state. Any person who violates this section is guilty of a class C
443 misdemeanor for the first offense, and is guilty of a class B misdemeanor for any subsequent
444 offense.

445 (3) (a) Smokeless tobacco [~~or~~], chewing tobacco, or an electronic cigarette may be
446 distributed to adults without charge at professional conventions where the general public is
447 excluded.

448 (b) Subsection (2) does not apply to [~~retailers, manufacturers, or distributors who give~~
449 ~~smokeless tobacco or chewing tobacco to persons of legal age upon their purchase of other~~

450 ~~tobacco products:] a retailer, manufacturer, or distributor who gives smokeless tobacco,~~
451 chewing tobacco, or an electronic cigarette to a person of legal age upon the person's purchase
452 of another tobacco product or electronic cigarette.

453 Section 10. Section **77-39-101** is amended to read:

454 **77-39-101. Investigation of sales of alcohol and tobacco to under age persons.**

455 (1) As used in this section, "electronic cigarette" is as defined in Section 76-10-101.

456 ~~(1)~~ (2) (a) A peace officer, as defined by Title 53, Chapter 13, Peace Officer
457 Classifications, may investigate the possible violation of:

458 (i) Section 32A-12-203 by requesting an individual under the age of 21 years to enter
459 into and attempt to purchase or make a purchase of alcohol from a retail establishment; or

460 (ii) Section 76-10-104 by requesting an individual under the age of 19 years to enter
461 into and attempt to purchase or make a purchase from a retail establishment of:

462 (A) a cigar;

463 (B) a cigarette; ~~[or]~~

464 (C) tobacco in any form~~[-];~~ or

465 (D) an electronic cigarette.

466 (b) A peace officer who is present at the site of a proposed purchase shall direct,
467 supervise, and monitor the individual requested to make the purchase.

468 (c) Immediately following a purchase or attempted purchase or as soon as practical the
469 supervising peace officer shall inform the cashier and the proprietor or manager of the retail
470 establishment that the attempted purchaser was under the legal age to purchase:

471 (i) alcohol; or

472 (ii) (A) a cigar;

473 (B) a cigarette; ~~[or]~~

474 (C) tobacco in any form~~[-];~~ or

475 (D) an electronic cigarette.

476 (d) If a citation or information is issued, it shall be issued within seven days of the
477 purchase.

478 ~~[(2)]~~ (3) (a) If an individual under the age of 18 years old is requested to attempt a
479 purchase, a written consent of that individual's parent or guardian shall be obtained prior to
480 that individual participating in any attempted purchase.

481 (b) An individual requested by the peace officer to attempt a purchase may:

482 (i) be a trained volunteer; or

483 (ii) receive payment, but may not be paid based on the number of successful purchases
484 of alcohol ~~[or]~~, tobacco, or an electronic cigarette.

485 ~~[(3)]~~ (4) The individual requested by the peace officer to attempt a purchase and
486 anyone accompanying the individual attempting a purchase may not during the attempted
487 purchase misrepresent the age of the individual by false or misleading identification
488 documentation in attempting the purchase.

489 ~~[(4)]~~ (5) An individual requested to attempt to purchase or make a purchase pursuant
490 to this section is immune from prosecution, suit, or civil liability for the purchase of,
491 attempted purchase of, or possession of alcohol, a cigar, a cigarette, ~~[or]~~ tobacco in any form,
492 or an electronic cigarette if a peace officer directs, supervises, and monitors the individual.

493 ~~[(5)]~~ (6) (a) Except as provided in Subsection ~~[(5)]~~ (6)(b), a purchase attempted under
494 this section shall be conducted:

495 (i) on a random basis; and

496 (ii) within a 12-month period at any one retail establishment location not more often
497 than:

498 (A) four times for the attempted purchase of:

499 (I) a cigar;

500 (II) a cigarette; ~~[or]~~

501 (III) tobacco in any form; ~~[and]~~ or

502 (IV) an electronic cigarette; and

503 (B) four times for the attempted purchase of alcohol.

504 (b) Nothing in this section shall prohibit an investigation under this section if:

505 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a

506 cigar, a cigarette, [~~or~~] tobacco in any form, or an electronic cigarette to an individual under the
507 age established by Section 32A-12-203 or 76-10-104; and

508 (ii) the supervising peace officer makes a written record of the grounds for the
509 reasonable suspicion.

510 [~~(6)~~] (7) (a) The peace officer exercising direction, supervision, and monitoring of the
511 attempted purchase shall make a report of the attempted purchase, whether or not a purchase
512 was made.

513 (b) The report required by this Subsection [~~(6)~~] (7) shall include:

514 (i) the name of the supervising peace officer;

515 (ii) the name of the individual attempting the purchase;

516 (iii) a photograph of the individual attempting the purchase showing how that
517 individual appeared at the time of the attempted purchase;

518 (iv) the name and description of the cashier or proprietor from whom the individual
519 attempted the purchase;

520 (v) the name and address of the retail establishment; and

521 (vi) the date and time of the attempted purchase.