

Representative Paul Ray proposes the following substitute bill:

CIGARETTE, TOBACCO, AND NICOTINE AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

LONG TITLE

General Description:

This bill makes changes related to cigarettes, tobacco, and nicotine products.

Highlighted Provisions:

This bill:

- ▶ defines terms and amends definitions;
- ▶ amends the definition of tobacco product to include certain nicotine products and provides for the taxation of those products;
- ▶ addresses the regulation of cigarettes, tobacco, and nicotine products;
- ▶ amends criminal provisions related to cigarettes and tobacco products; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2013.

Utah Code Sections Affected:

AMENDS:

10-8-41.6, as enacted by Laws of Utah 2012, Chapter 154

17-50-333, as enacted by Laws of Utah 2012, Chapter 154



- 26 **26-42-102**, as enacted by Laws of Utah 1998, Chapter 319
- 27 **59-14-102**, as last amended by Laws of Utah 2011, Chapter 229
- 28 **76-10-101**, as last amended by Laws of Utah 2010, Chapter 114
- 29 **76-10-102**, as last amended by Laws of Utah 1986, Chapter 66
- 30 **76-10-103**, as enacted by Laws of Utah 1973, Chapter 196
- 31 **76-10-104**, as last amended by Laws of Utah 2010, Chapter 114
- 32 **76-10-105**, as last amended by Laws of Utah 2010, Chapter 114
- 33 **76-10-105.1**, as last amended by Laws of Utah 2010, Chapter 114
- 34 **76-10-111**, as last amended by Laws of Utah 2010, Chapter 114

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

37 Section 1. Section **10-8-41.6** is amended to read:

38 **10-8-41.6. Regulation of retail tobacco specialty business.**

39 (1) As used in this section:

40 (a) "Community location" means:

- 41 (i) a public or private kindergarten, elementary, middle, junior high, or high school;
- 42 (ii) a licensed child-care facility or preschool;
- 43 (iii) a trade or technical school;
- 44 (iv) a church;
- 45 (v) a public library;
- 46 (vi) a public playground;
- 47 (vii) a public park;
- 48 (viii) a youth center or other space used primarily for youth oriented activities;
- 49 (ix) a public recreational facility; or
- 50 (x) a public arcade.

51 **(b) "Nicotine product" is as defined in Section 76-10-101.**

52 ~~(b)~~ **(c)** "Retail tobacco specialty business" means a commercial establishment in
 53 which:

- 54 (i) the sale of tobacco products accounts for more than 35% of the total annual gross
- 55 receipts for the establishment;
- 56 (ii) food and beverage products, excluding gasoline sales, is less than 45% of the total

57 annual gross receipts for the establishment; and

58 (iii) the establishment is not licensed as a pharmacy under Title 58, Chapter 17b,
59 Pharmacy Practice Act.

60 [~~(c)~~] (d) "Tobacco product" means:

61 (i) any cigar, cigarette, or electronic cigarette as defined in Section 76-10-101;

62 (ii) a tobacco product as defined in Section 59-14-102, including:

63 (A) chewing tobacco; or

64 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;

65 [~~and~~]

66 (iii) tobacco paraphernalia as defined in Section 76-10-104.1~~[-];~~ and

67 (v) a nicotine product.

68 (2) The regulation of a retail tobacco specialty business is an exercise of the police
69 powers of the state, and through delegation, to other governmental entities.

70 (3) (a) Except as provided in Subsection (7), and beginning July 1, 2012, a
71 municipality shall require an entity to be licensed as a retail tobacco specialty business to
72 conduct business as a retail tobacco specialty business in a municipality.

73 (b) A municipality may issue a retail tobacco specialty business license to an entity if
74 the entity complies with the provisions of Subsection (5).

75 (4) Except as provided in Subsection (7), and beginning July 1, 2012, a business entity
76 that conducts a retail tobacco specialty business in a municipality shall be licensed by the
77 municipality as a retail tobacco specialty business.

78 (5) (a) A municipality may not issue a license to a retail tobacco specialty business if it
79 is located within:

80 (i) 1,000 feet of a community location;

81 (ii) 600 feet of another retail tobacco specialty business; or

82 (iii) 600 feet from property used or zoned for:

83 (A) agriculture use; or

84 (B) residential use.

85 (b) For purposes of Subsection (5)(a), the proximity requirements shall be measured in
86 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
87 property boundary of the community location, or agricultural or residential use, without regard

88 to intervening structures or zoning districts.

89 (6) (a) Nothing in this section:

90 (i) requires a municipality to issue a business license to a retail tobacco specialty
91 business; or

92 (ii) prohibits a municipality from adopting more restrictive requirements on a tobacco
93 specialty business than provided for in this section.

94 (b) A municipality may revoke a business license issued under this section:

95 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,
96 Part 16, Pattern of Unlawful Activity Act;

97 (ii) if a licensee violates the regulations restricting the sale and distribution of
98 cigarettes and smokeless tobacco to protect children and adolescents issued by the United
99 States Food and Drug Administration, 21 C.F.R. Part 1140; or

100 (iii) under other provisions of state law or local ordinance.

101 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has
102 a business license and is operating lawfully in a municipality on or before May 8, 2012, is
103 exempt from Subsections (4) and (5).

104 (b) A retail tobacco specialty business may maintain an exemption under Subsection
105 (7)(a) if:

106 (i) the business license is renewed continuously without relapse or permanent
107 revocation;

108 (ii) the retail tobacco specialty business is not closed for business or otherwise
109 suspends the sale of tobacco products for more than 60 consecutive days;

110 (iii) the retail tobacco specialty business does not substantially change the business
111 premises or its business operation; and

112 (iv) the retail tobacco specialty business maintains the right to operate under the terms
113 of other applicable laws, including zoning ordinances, building codes, and the business license
114 issued prior to May 8, 2012.

115 Section 2. Section **17-50-333** is amended to read:

116 **17-50-333. Regulation of retail tobacco specialty business.**

117 (1) As used in this section:

118 (a) "Community location" means:

- 119 (i) a public or private kindergarten, elementary, middle, junior high, or high school;
 120 (ii) a licensed child-care facility or preschool;
 121 (iii) a trade or technical school;
 122 (iv) a church;
 123 (v) a public library;
 124 (vi) a public playground;
 125 (vii) a public park;
 126 (viii) a youth center or other space used primarily for youth oriented activities;
 127 (ix) a public recreational facility; or
 128 (x) a public arcade.

129 (b) "Nicotine product" is as defined in Section 76-10-101.

130 ~~(b)~~ (c) "Retail tobacco specialty business" means a commercial establishment in
 131 which:

132 (i) the sale of tobacco products accounts for more than 35% of the total annual gross
 133 receipts for the establishment;

134 (ii) food and beverage products, excluding gasoline sales, is less than 45% of the total
 135 annual gross receipts for the establishment; and

136 (iii) the establishment is not licensed as a pharmacy under Title 58, Chapter 17b,
 137 Pharmacy Practice Act.

138 ~~(c)~~ (d) "Tobacco product" means:

139 (i) any cigar, cigarette, or electronic cigarette as defined in Section 76-10-101;

140 (ii) a tobacco product as defined in Section 59-14-102, including:

141 (A) chewing tobacco; or

142 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;

143 ~~and~~

144 (iii) tobacco paraphernalia as defined in Section 76-10-104.1~~[-];~~ and

145 (iv) a nicotine product ~~is~~ derived from tobacco ~~is~~.

146 (2) The regulation of a retail tobacco specialty business is an exercise of the police
 147 powers of the state, and through delegation, to other governmental entities.

148 (3) (a) Except as provided in Subsection (7), and beginning July 1, 2012, a county shall
 149 require an entity to be licensed as a retail tobacco specialty business to conduct business as a

150 retail tobacco specialty business in a county.

151 (b) A county may issue a retail tobacco specialty business license to an entity if the
152 entity complies with the provisions of Subsection (5).

153 (4) Except as provided in Subsection (7), and beginning July 1, 2012, a business entity
154 that conducts a retail tobacco specialty business in a county shall be licensed by the county as a
155 retail tobacco specialty business.

156 (5) (a) A county may not issue a license to a retail tobacco specialty business if it is
157 located within:

- 158 (i) 1,000 feet of a community location;
- 159 (ii) 600 feet of another retail tobacco specialty business; or
- 160 (iii) 600 feet from property used or zoned for:
 - 161 (A) agriculture use; or
 - 162 (B) residential use.

163 (b) For purposes of Subsection (5)(a), the proximity requirements shall be measured in
164 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
165 property boundary of the community location, or agricultural or residential use, without regard
166 to intervening structures or zoning districts.

167 (6) (a) Nothing in this section:

- 168 (i) requires a county to issue a business license to a retail tobacco specialty business; or
- 169 (ii) prohibits a county from adopting more restrictive requirements on a tobacco
170 specialty business than provided for in this section.

171 (b) A county may revoke a business license issued under this section:

- 172 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,
173 Part 16, Pattern of Unlawful Activity Act;
- 174 (ii) if a licensee violates the regulations restricting the sale and distribution of
175 cigarettes and smokeless tobacco to protect children and adolescents issued by the United
176 States Food and Drug Administration, 21 C.F.R. Part 1140; or
- 177 (iii) under other provisions of state law or local ordinance.

178 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has
179 a business license and is operating lawfully in a county on or before May 8, 2012, is exempt
180 from Subsections (4) and (5).

181 (b) A retail tobacco specialty business may maintain an exemption under Subsection
182 (7)(a) if:

183 (i) the business license is renewed continuously without relapse or permanent
184 revocation;

185 (ii) the retail tobacco specialty business is not closed for business or otherwise
186 suspends the sale of tobacco products for more than 60 consecutive days;

187 (iii) the retail tobacco specialty business does not substantially change the business
188 premises or its business operation; and

189 (iv) the retail tobacco specialty business maintains the right to operate under the terms
190 of other applicable laws, including zoning ordinances, building codes, and the business license
191 issued prior to May 8, 2012.

192 Section 3. Section **26-42-102** is amended to read:

193 **26-42-102. Definitions.**

194 As used in this chapter:

195 (1) "Commission" means the Utah State Tax Commission.

196 (2) "Employee" means an employee of a licensee.

197 (3) "Enforcing agency" means the state Department of Health, or any local health
198 department enforcing the provisions of this chapter.

199 (4) "Licensee" means a person licensed:

200 (a) under Section 59-14-201 to sell cigarettes at retail; or

201 (b) under Section 59-14-301 to sell tobacco products at retail.

202 (5) "License to sell tobacco" or "license" means a license issued:

203 (a) under Section 59-14-201 to sell cigarettes at retail; or

204 (b) under Section 59-14-301 to sell tobacco products at retail.

205 (6) "Nicotine product" is as defined in Section 76-10-101.

206 [~~6~~] (7) "Tobacco" means:

207 (a) cigarettes or tobacco products as defined in Section 59-14-102[~~7~~]; or

208 (b) a nicotine product ~~H~~→ derived from tobacco ←~~H~~ .

209 Section 4. Section **59-14-102** is amended to read:

210 **59-14-102. Definitions.**

211 As used in this chapter:

- 212 (1) "Cigarette" means a roll for smoking made wholly or in part of tobacco:
213 (a) regardless of:
214 (i) the size of the roll;
215 (ii) the shape of the roll; or
216 (iii) whether the tobacco is:
217 (A) flavored;
218 (B) adulterated; or
219 (C) mixed with any other ingredient; and
220 (b) if the wrapper or cover of the roll is made of paper or any other substance or
221 material except tobacco.
- 222 (2) "Consumer" means a person that is not required:
223 (a) under Section 59-14-201 to obtain a license under Section 59-14-202; or
224 (b) under Section 59-14-301 to obtain a license under Section 59-14-202.
- 225 (3) "Counterfeit cigarette" means:
226 (a) a cigarette that has a false manufacturing label; or
227 (b) a package of cigarettes bearing a counterfeit tax stamp.
- 228 (4) "Importer" means a person who imports into the United States, either directly or
229 indirectly, a finished cigarette for sale or distribution.
- 230 (5) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity, or any
231 other person doing business as a distributor or retailer of cigarettes on tribal lands located in the
232 state.
- 233 (6) "Little cigar" means a roll for smoking:
234 (a) made wholly or in part of tobacco;
235 (b) that uses an integrated cellulose acetate filter or other similar filter; and
236 (c) that is wrapped in a substance:
237 (i) containing tobacco; and
238 (ii) that is not exclusively natural leaf tobacco.
- 239 (7) "Manufacturer" means a person who manufactures, fabricates, assembles,
240 processes, or labels a finished cigarette.
- 241 (8) "Moist snuff" means tobacco that:
242 (a) is finely:

- 243 (i) cut;
- 244 (ii) ground; or
- 245 (iii) powdered;
- 246 (b) has at least 45% moisture content, as determined by the commission by rule made
- 247 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 248 (c) is not intended to be:
 - 249 (i) smoked; or
 - 250 (ii) placed in the nasal cavity; and
- 251 (d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or
- 252 distributed in single-use units, including:
 - 253 (i) tablets;
 - 254 (ii) lozenges;
 - 255 (iii) strips;
 - 256 (iv) sticks; or
 - 257 (v) packages containing multiple single-use units.
- 258 (9) "Nicotine ~~Ĥ~~→ [candy] dissolvables ←Ĥ " means an item that:
- 259 (a) contains:
 - 260 (i) nicotine; and
 - 261 (ii) a natural or artificial sweetener;
 - 262 (b) is ingested orally; and
 - 263 (c) is not approved by the United States Food and Drug Administration as an aid in
 - 264 quitting the use of tobacco or a nicotine product.
- 265 (10) "Nicotine product" means:
 - 266 (a) nicotine ~~Ĥ~~→ [candy] dissolvables ←Ĥ ; or
 - 267 (b) any other ~~Ĥ~~→ [a] ←Ĥ product:
 - 268 (i) intended for human consumption; and
 - 269 (ii) that:
 - 270 (A) contains nicotine;
 - 271 (B) is not an e-cigarette or nicotine in liquid form; and
 - 272 (C) is not approved by the United States Food and Drug Administration as an aid in
 - 273 quitting the use of tobacco or nicotine.

274 ~~[(9)]~~ (11) "Retailer" means a person that:

275 (a) sells or distributes a cigarette to a consumer in the state; or

276 (b) intends to sell or distribute a cigarette to a consumer in the state.

277 ~~[(10)]~~ (12) "Stamp" means the indicia required to be placed on a cigarette package that

278 evidences payment of the tax on cigarettes required by Section 59-14-205.

279 ~~[(11)]~~ (13) (a) "Tobacco product" means:

280 (i) a product made of, or containing, tobacco[-]; or

281 (ii) a nicotine product.

282 (b) "Tobacco product" includes:

283 (i) a little cigar; or

284 (ii) moist snuff.

285 (c) "Tobacco product" does not include a cigarette.

286 ~~[(12)]~~ (14) "Tribal lands" means land held by the United States in trust for a federally

287 recognized Indian tribe.

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

289 **76-10-101. Definitions.**

290 As used in this part:

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

295 (2) "Cigarette" ~~[means a product that contains nicotine, is intended to be burned under~~
296 ~~ordinary conditions of use, and consists of:]~~ is as defined in Section 59-14-102.

297 ~~[(a) any roll of tobacco wrapped in paper or in any substance not containing tobacco;~~
298 ~~or]~~

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

302 (3) "Electronic cigarette" ~~[means any device, other than a cigarette or cigar, intended to~~
303 ~~deliver vapor containing nicotine into a person's respiratory system]~~ has the same meaning as
304 e-cigarette, as defined in Section 26-38-2.

305 (4) "Place of business" includes:

306 (a) a shop;

307 (b) a store;

308 (c) a factory;

309 (d) a public garage;

310 (e) an office;

311 (f) a theater;

312 (g) a recreation hall;

313 (h) a dance hall;

314 (i) a poolroom;

315 (j) a café;

316 (k) a cafeteria;

317 (l) a cabaret;

318 (m) a restaurant;

319 (n) a hotel;

320 (o) a lodging house;

321 (p) a streetcar;

322 (q) a bus;

323 (r) an interurban or railway passenger coach;

324 (s) a waiting room; and

325 (t) any other place of business.

326 (5) "Nicotine product" means a product that:

327 (a) contains nicotine ~~H~~→ **derived from tobacco** ←~~H~~ ;

328 (b) is intended for human consumption; and

329 (c) is not approved by the United States Food and Drug Administration as an aid in
330 quitting the use of tobacco.

331 (6) "Retail tobacco specialty business" is as defined in Section 10-8-41.6.

332 [~~(5)~~] (7) "Smoking" [~~means the possession of any lighted cigar, cigarette, pipe, or other~~
333 lighted smoking equipment] is as defined in Section 26-38-2.

334 (8) (a) "Tobacco product" means:

335 (i) a product made of, or containing, tobacco; or

- 336 (ii) a nicotine product.
- 337 (b) "Tobacco product" includes:
- 338 (i) a little cigar; or
- 339 (ii) moist snuff.
- 340 (c) "Tobacco product" does not include cigarette.

341 Section 6. Section **76-10-102** is amended to read:

342 **76-10-102. Cigarettes and tobacco -- Advertising restrictions -- Warnings in**
343 **smokeless tobacco advertisements.**

344 (1) It is a class B misdemeanor for any person to display on any billboard, streetcar
345 sign, streetcar, bus, placard, or on any other object or place of display, any advertisement of
346 cigarettes, cigarette papers, cigars, chewing tobacco, ~~[or]~~ smoking tobacco, or other tobacco
347 product, or any disguise or substitute of either, except that a dealer in cigarettes, cigarette
348 papers, a tobacco product, or cigars, or their substitutes, may have a sign on the front of ~~[his]~~
349 the dealer's place of business stating that ~~[he]~~ the dealer is a dealer in the articles~~;~~, provided
350 that nothing herein shall be construed to prohibit the advertising of cigarettes, cigarette papers,
351 chewing tobacco ~~[or]~~, smoking tobacco, or other tobacco product, or any substitute of either, in
352 any newspaper, magazine or periodical printed or circulating in this state.

353 (2) Any advertisement for smokeless tobacco placed in a newspaper, magazine, or
354 periodical published in this state must bear a warning which states: "Use of smokeless tobacco
355 may cause oral cancer and other mouth disorders and is addictive." This warning must be in a
356 conspicuous location and in conspicuous and legible type, in contrast with the typography,
357 layout, and color of all other printed material in the advertisement. For purposes of this
358 subsection, "smokeless tobacco" means any finely cut, ground, powdered, or leaf tobacco that
359 is intended to be placed in the oral cavity or nasal passage. In the event the United States
360 Congress passes legislation which requires warnings in advertisements of smokeless tobacco,
361 the specific language required to be placed in advertisements by that legislation shall take
362 precedence over this subsection.

363 Section 7. Section **76-10-103** is amended to read:

364 **76-10-103. Permitting minors to use tobacco in place of business -- Permitting**
365 **minors to enter a retail tobacco specialty business.**

366 (1) It is a class C misdemeanor for the proprietor of any place of business to knowingly

367 permit persons under age 19 to frequent a place of business while they are using a cigarette or a
368 tobacco product.

369 (2) It is a class C misdemeanor for the proprietor of a retail tobacco specialty business
370 to knowingly permit a person under age 19 to enter the retail tobacco specialty business.

371 Section 8. Section **76-10-104** is amended to read:

372 **76-10-104. Providing a cigar, cigarette, electronic cigarette, or tobacco to a minor**
373 **-- Penalties.**

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

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

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

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

384 Section 9. Section **76-10-105** is amended to read:

385 **76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco**
386 **by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.**

387 (1) Any 18 year old person who buys or attempts to buy, accepts, or has in the person's
388 possession any cigar, cigarette, electronic cigarette, or other tobacco product in any form is
389 guilty of a class C misdemeanor and subject to:

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

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

393 (2) Any person under the age of 18 who buys or attempts to buy, accepts, or has in the
394 person's possession any cigar, cigarette, electronic cigarette, or tobacco in any form is subject
395 to the jurisdiction of the Juvenile Court and:

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

397 (b) participation in a court-approved tobacco education program, which may include a

398 participation fee.

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

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

403 **76-10-105.1. Requirement of direct, face-to-face sale of cigarettes and tobacco**
404 **products -- Supremacy clause -- Penalties.**

405 (1) As used in this section:

406 (a) "Cigarette tobacco" means a product that consists of loose tobacco that contains or
407 delivers nicotine and is intended for use by a consumer in a cigarette.

408 (b) "Pipe tobacco" means a product that consists of loose tobacco that contains or
409 delivers nicotine and is intended to be smoked by a consumer in a pipe.

410 (c) "Retailer" means a person who sells cigarettes, electronic cigarettes, cigars,
411 cigarette tobacco, pipe tobacco, or smokeless tobacco to individuals for personal consumption
412 or who operates a facility where a vending machine or a self-service display is permitted under
413 Subsection (3)(b).

414 (d) "Self-service display" means a display of cigarettes, electronic cigarettes, cigars,
415 cigarette tobacco, pipe tobacco, or smokeless tobacco products to which the public has access
416 without the intervention of a retail employee.

417 (e) "Smokeless tobacco" means a product that consists of cut, ground, powdered, or
418 leaf tobacco that contains nicotine and that is intended to be placed in the oral cavity.

419 (2) (a) Except as provided in Subsection (3), a retailer may sell cigarettes, electronic
420 cigarettes, cigars, cigarette tobacco, pipe tobacco, ~~and~~ smokeless tobacco, and other tobacco
421 products only in a direct, face-to-face exchange between:

422 (i) an employee of the retailer; and

423 (ii) the purchaser.

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

426 (c) Subsections (2)(a) and (b) do not prohibit the use or display of locked cabinets
427 containing cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, ~~or~~
428 smokeless tobacco, or other tobacco products if the locked cabinets are accessible only to the

429 retailer or the retailer's employees.

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

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

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

437 (c) sales ~~[by a retailer from a retail store which derives at least 80% of its revenue from~~
438 ~~tobacco and tobacco related products and where the retailer ensures that no person younger~~
439 ~~than 19 years of age is present, or permitted to enter at any time, unless accompanied by a~~
440 ~~parent or legal guardian]~~ from a vending machine or a self-service display, including a vending
441 machine that sells packaged, single cigarettes or cigars, if the vending machine or self-service
442 display is located in a retail tobacco specialty business.

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

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

453 ~~[(b)]~~ (5) Nothing in this section may be construed as permitting a person to provide
454 tobacco to a minor in violation of Section 76-10-104.

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

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

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

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

459 Section 11. Section **76-10-111** is amended to read:

460 **76-10-111. Prohibition of gift or free distribution of smokeless tobacco or**
461 **electronic cigarettes -- Exceptions.**

462 (1) The Legislature finds that:

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

465 (b) the use of smokeless tobacco among juveniles in this state is increasing rapidly;

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

468 (d) it is necessary to restrict the gift of the products described in this Subsection (1) in
469 the interest of the health of the citizens of this state.

470 (2) Except as provided in Subsection (3), it is unlawful for a manufacturer, wholesaler,
471 and retailer to give or distribute without charge any smokeless tobacco, chewing tobacco, [or]
472 electronic cigarette, or other tobacco product in this state. Any person who violates this section
473 is guilty of a class C misdemeanor for the first offense, and is guilty of a class B misdemeanor
474 for any subsequent offense.

475 (3) (a) Smokeless tobacco, chewing tobacco, [or] an electronic cigarette, or other
476 tobacco product may be distributed to adults without charge at professional conventions where
477 the general public is excluded.

478 (b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who gives
479 smokeless tobacco, chewing tobacco, [or] an electronic cigarette, or other tobacco product to a
480 person of legal age upon the person's purchase of another tobacco product or electronic
481 cigarette.

482 Section 12. **Effective date.**

483 This bill takes effect on July 1, 2013.