

Representative Paul Ray proposes the following substitute bill:

REGULATION OF ELECTRONIC CIGARETTES

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Utah Health Code, Utah Criminal Code, and the Utah Tax Code to modify and add provisions related to electronic cigarettes.

Highlighted Provisions:

This bill:

- ▶ prohibits a person from selling an electronic cigarette product without a license from the State Tax Commission;
- ▶ prohibits a person from selling an electronic cigarette product that contains nicotine that is not pharmaceutical-grade nicotine;
- ▶ prohibits a person from advertising an electronic cigarette product as a cigarette or tobacco product cessation device;
- ▶ directs the State Tax Commission to issue licenses to sell an electronic cigarette product under certain conditions;
- ▶ provides that the State Tax Commission can revoke a person's license to sell an electronic cigarette product if the person sells an electronic cigarette to an individual who is less than 19 years of age;
- ▶ directs the Department of Health to establish quality control and manufacturing standards for electronic cigarette products;



- 26 ▶ prohibits a person from selling an electronic cigarette product that is not
- 27 manufactured in accordance with Department of Health standards;
- 28 ▶ prohibits a business owner from allowing a minor to use an electronic cigarette in
- 29 the business;
- 30 ▶ prohibits a person from ordering electronic cigarette products by mail, phone, or
- 31 Internet without a license;
- 32 ▶ prohibits an individual who is less than 19 years of age from buying, attempting to
- 33 buy, or possessing an electronic cigarette product; and
- 34 ▶ makes technical and conforming amendments.

35 **Money Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

- 41 26-42-102, as enacted by Laws of Utah 1998, Chapter 319
- 42 26-42-103, as last amended by Laws of Utah 2011, Chapter 96
- 43 26-42-106, as enacted by Laws of Utah 1998, Chapter 319
- 44 59-14-509, as enacted by Laws of Utah 2009, Chapter 341
- 45 76-10-101, as last amended by Laws of Utah 2010, Chapter 114
- 46 76-10-103, as enacted by Laws of Utah 1973, Chapter 196
- 47 76-10-104, as last amended by Laws of Utah 2010, Chapter 114
- 48 76-10-105, as last amended by Laws of Utah 2010, Chapter 114
- 49 76-10-105.1, as last amended by Laws of Utah 2010, Chapter 114
- 50 76-10-111, as last amended by Laws of Utah 2010, Chapter 114
- 51 77-39-101, as last amended by Laws of Utah 2010, Chapters 114 and 276

52 ENACTS:

- 53 26-55-101, Utah Code Annotated 1953
- 54 26-55-102, Utah Code Annotated 1953
- 55 26-55-103, Utah Code Annotated 1953
- 56 59-14a-101, Utah Code Annotated 1953

57 [59-14a-102](#), Utah Code Annotated 1953

58 [59-14a-103](#), Utah Code Annotated 1953

59

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

61 Section 1. Section **26-42-102** is amended to read:

62 **26-42-102. Definitions.**

63 As used in this chapter:

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

65 (2) "Electronic cigarette product" is as defined in Section [26-55-102](#).

66 ~~(2)~~ (3) "Employee" means an employee of a licensee.

67 ~~(3)~~ (4) "Enforcing agency" means the state Department of Health, or any local health
68 department enforcing the provisions of this chapter.

69 (5) "License" ~~[to sell tobacco" or "license"]~~ means a license issued under:

70 (a) ~~[under]~~ Section ~~[59-14-201]~~ [59-14-202](#) to sell cigarettes at retail; ~~[or]~~

71 (b) ~~[under]~~ Section [59-14-301](#) to sell tobacco products at retail~~[-];~~ or

72 (c) Section [59-14a-103](#) to sell an electronic cigarette product.

73 ~~(4)~~ (6) "Licensee" means a person licensed under:

74 (a) ~~[under]~~ Section ~~[59-14-201]~~ [59-14-202](#) to sell cigarettes at retail; ~~[or]~~

75 (b) ~~[under]~~ Section [59-14-301](#) to sell tobacco products at retail~~[-];~~ or

76 (c) Section [59-14a-103](#) to sell an electronic cigarette product.

77 ~~(6)~~ (7) "Tobacco" means cigarettes or tobacco products as defined in Section
78 [59-14-102](#).

79 Section 2. Section **26-42-103** is amended to read:

80 **26-42-103. Violations and penalties -- Imposition by enforcing agency and tax**
81 **commission.**

82 (1) If, following an investigation or issuance of a citation or information under Section
83 [77-39-101](#), an enforcing agency determines under Section [26-42-104](#) that a licensee or any
84 employee has sold tobacco or an electronic cigarette product to a person younger than 19 years
85 of age, as prohibited by Section [76-10-104](#), the enforcing agency may impose upon the licensee
86 the following administrative penalties:

87 (a) upon the first violation, a penalty of not more than \$300;

88 (b) upon a second violation at the same retail location, and within 12 months of the
89 first violation, a penalty of not more than \$750; and

90 (c) upon a third or subsequent violation at the same retail location and within 12
91 months of the first violation, a penalty of not more than \$1,000.

92 (2) The enforcing agency shall notify the commission in writing of any order or order
93 of default finding a violation of Subsection (1) which is a third or fourth violation.

94 (3) The commission, upon receipt of the written notification under Subsection (2), shall
95 take action under Section [59-14-203.5](#) [~~or~~], [59-14-301.5](#), or [59-14a-103](#) against the license [~~to~~
96 ~~sell tobacco~~]:

97 (a) by suspending each of the licensee's [~~license to sell tobacco~~] licenses at that
98 location for not more than 30 days, upon receipt of notification of a third violation under
99 Subsection (1)(c); and

100 (b) by revoking each of the [~~license to sell tobacco~~] licenses at that location held by the
101 licensee, including any license under suspension, upon receipt of notification of a fourth
102 violation under Subsection (1)(c).

103 (4) When the commission revokes a license under Subsection (3)(b), the commission
104 may not issue to the licensee, or to the business entity using the license that is revoked, a
105 license under Section [59-14-202](#) [~~or~~], [59-14-301](#) [~~to sell tobacco~~], or [59-14a-103](#) at the location
106 for which the license was issued for one year after:

107 (a) the day on which the time for filing an appeal of the revocation ends; or

108 (b) if the revocation is appealed, the day on which the decision to uphold the
109 revocation becomes final.

110 (5) This section does not prevent any bona fide purchaser of the business, who is not a
111 sole proprietor, director, corporate officer, or partner or other holder of significant interest in
112 the entity selling the business, from immediately applying for and obtaining a license [~~to sell~~
113 ~~tobacco~~].

114 Section 3. Section **26-42-106** is amended to read:

115 **26-42-106. Recognition of licensee's training program.**

116 (1) In determining the amount of the monetary penalty to be imposed for an employee's
117 violation of Section [26-42-103](#), the hearing officer shall reduce the penalty by at least 50% if
118 [~~he~~] the hearing officer determines:

- 119 (a) the licensee has implemented a documented employee training program; and
- 120 (b) the employee has completed that training program within 30 days of commencing
- 121 duties of selling tobacco products or electronic cigarette products.

122 (2) (a) If the hearing officer determines under Subsection (1), regarding a first offense
 123 at a location, that the licensee has not implemented a documented training program with a
 124 written curriculum for employees at that location regarding compliance with this chapter, the
 125 hearing officer may suspend all or a portion of the monetary penalty, contingent upon the
 126 licensee's initiating a training program for employees at that location within 30 days after the
 127 hearing date.

128 (b) If the hearing officer determines at a subsequent hearing that the licensee has not
 129 implemented the training program within the time period required under Subsection (2)(a), the
 130 suspended monetary penalty shall be promptly imposed, unless the licensee demonstrates good
 131 cause for granting an extension of time for implementation of the training program.

132 Section 4. Section **26-55-101** is enacted to read:

133 **CHAPTER 55. ELECTRONIC CIGARETTE REGULATION ACT**

134 **26-55-101. Title.**

135 This chapter is known as the "Electronic Cigarette Regulation Act."

136 Section 5. Section **26-55-102** is enacted to read:

137 **26-55-102. Definitions.**

138 As used in this chapter:

139 (1) "Cigarette" is as defined in Section [59-14-102](#).

140 (2) (a) "Electronic cigarette" means:

141 (i) any device, other than a cigar, cigarette, pipe, hookah, or other heated or lighted
 142 tobacco product, used to or intended to deliver vapor containing nicotine to an individual's
 143 respiratory system; or

144 (ii) any component of or accessory intended for use with the device described in
 145 Subsection (2)(a);

146 (b) "Electronic cigarette" includes an e-cigarette, as defined in Section [26-38-2](#).

147 (3) "Electronic cigarette product" means an electronic cigarette or an electronic
 148 cigarette substance.

149 (4) "Electronic cigarette substance" means any substance, including liquid containing

150 nicotine, used or intended for use in an electronic cigarette.

151 (5) "Manufacture" includes:

152 (a) to cast, construct, or make electronic cigarettes; or

153 (b) to blend, make, process, or prepare an electronic cigarette substance.

154 (6) "Pharmaceutical-grade nicotine" means nicotine that meets the specifications of the
155 United States Pharmacopeia for food-grade or pharmaceutical-grade nicotine.

156 Section 6. Section **26-55-103** is enacted to read:

157 **26-55-103. Electronic cigarettes -- Prohibition on sale without a license --**

158 **Manufacturing and quality control standards -- Low-grade nicotine -- Advertising.**

159 (1) A person may not sell, offer to sell, or distribute an electronic cigarette product in
160 Utah that:

161 (a) contains nicotine that is not pharmaceutical-grade nicotine;

162 (b) does not comply with the product quality standards established by the department
163 under Subsection (3)(a); or

164 (c) was not manufactured in accordance with the manufacturing standards established
165 by the department under Subsection (3)(b).

166 (2) A person may not advertise an electronic cigarette product as a cigarette or tobacco
167 cessation device.

168 (3) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah
169 Administrative Rulemaking Act, that:

170 (a) set product quality standards for electronic cigarette products; and

171 (b) set manufacturing standards for electronic cigarette products.

172 Section 7. Section **59-14-509** is amended to read:

173 **59-14-509. Restrictions on mail order or Internet sales.**

174 (1) For purposes of this section:

175 (a) "Distributor" means a person, wherever residing or located, who:

176 (i) is licensed in this state to purchase non-taxed tobacco products; and

177 (ii) stores, sells, or otherwise disposes of tobacco products.

178 (b) "Electronic cigarette product" is as defined in Section [59-14a-102](#).

179 ~~(b)~~ (c) "Licensed person" [is] means:

180 (i) a licensed person as defined in Subsection [59-14-409\(1\)](#)[~~-~~]; or

181 (ii) a person licensed under Section [59-14a-103](#).

182 [~~(c)~~] (d) "Order or purchase" includes:

183 (i) by mail or delivery service;

184 (ii) through the Internet or computer network;

185 (iii) by telephone; or

186 (iv) through some other electronic method.

187 [~~(d)~~] (e) "Retailer" means any person who sells [~~tobacco products to consumers~~] or

188 offers to sell a cigarette, tobacco product, or electronic cigarette product to a consumer for

189 personal consumption.

190 (2) A person, distributor, manufacturer, or retailer shall not:

191 (a) cause [~~tobacco products or cigarettes as defined in Section 59-22-202~~] a cigarette,

192 tobacco product, or electronic cigarette product to be ordered or purchased by anyone other

193 than a licensed person; or

194 (b) knowingly provide substantial assistance to a person who violates this section.

195 (3) (a) Each order or purchase of a [~~tobacco product or cigarettes as defined in Section~~

196 [59-22-202](#)] cigarette, tobacco product, or electronic cigarette product in violation of Subsection

197 (2) shall constitute a separate violation under this section.

198 (b) In addition to the penalties in Subsection (4), a person who violates this section is

199 subject to:

200 (i) a civil penalty in an amount not to exceed \$5,000 for each violation of this section;

201 (ii) an injunction to restrain a threatened or actual violation of this section; and

202 (iii) recovery by the state for:

203 (A) the costs of investigation;

204 (B) the cost of expert witness fees;

205 (C) the cost of the action; and

206 (D) reasonable attorney's fees.

207 (4) A person who knowingly violates this section has engaged in an unfair and

208 deceptive trade practice in violation of Title 13, Chapter 5, Unfair Practices Act, and the court

209 shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged

210 and paid to the state treasurer for deposit in the General Fund.

211 Section 8. Section **59-14a-101** is enacted to read:

212 CHAPTER 14a. ELECTRONIC CIGARETTE LICENSING ACT

213 **59-14a-101. Title.**

214 This chapter is known as the "Electronic Cigarette Licensing Act."

215 Section 9. Section **59-14a-102** is enacted to read:

216 **59-14a-102. Definitions.**

217 As used in this chapter:

218 (1) "Cigarette" is as defined in Section [59-14-102](#).

219 (2) (a) "Electronic cigarette" means:

220 (i) any device, other than a cigar, cigarette, pipe, hookah, or other heated or lighted
221 tobacco product, used to or intended to deliver vapor containing nicotine to an individual's
222 respiratory system; or

223 (ii) any component of or accessory intended for use with the device described in
224 Subsection (2)(a);

225 (b) "Electronic cigarette" includes an e-cigarette as defined in Section [26-38-2](#).

226 (3) "Electronic cigarette product" means an electronic cigarette or an electronic
227 cigarette substance.

228 (4) "Electronic cigarette substance" means any substance, including liquid containing
229 nicotine, used or intended for use in an electronic cigarette.

230 (5) "License to sell an electronic cigarette product" means a license issued by the
231 commission under Subsection [59-14a-103](#)(3).

232 (6) "Licensee" means a person that holds a valid license to sell electronic cigarette
233 products.

234 Section 10. Section **59-14a-103** is enacted to read:

235 **59-14a-103. Electronic cigarette licenses -- Sale.**

236 (1) Except as provided in Subsection (2), a person may not sell, offer to sell, or
237 distribute an electronic cigarette product in Utah without first obtaining a license to sell an
238 electronic cigarette product from the commission under this section.

239 (2) A person who holds a valid license to sell cigarettes under section [59-14-202](#), or a
240 person who holds a valid license to sell tobacco products under [59-14-301](#), may sell, offer to
241 sell, or distribute an electronic cigarette product in Utah under the terms of this chapter.

242 (3) Except as provided in Subsection (6), the commission shall issue a license to sell an

243 electronic cigarette product to a person who:

244 (a) submits an application, on a form created by the commission, that includes:

245 (i) the person's name;

246 (ii) the address of the facility where the person will sell an electronic cigarette product;

247 and

248 (iii) any other information the commission requires to implement this chapter; and

249 (b) pays a fee:

250 (i) in the amount of \$30; or

251 (ii) if renewing the person's license, in the amount of \$20.

252 (4) A license described in Subsection (3) is:

253 (a) valid only at one business address;

254 (b) valid for three years; and

255 (c) renewable if a licensee meets the criteria for licensing described in Subsection (3).

256 (5) The commission may, after notifying a licensee and holding a hearing, revoke a

257 license described in Subsection (3) if the licensee:

258 (a) violates a provision of this chapter;

259 (b) violates a provision of Chapter 14, Cigarette and Tobacco Tax Licensing Act, or

260 (c) violates a provision of Section [26-42-103](#).

261 (6) If the commission revokes a person's license to sell an electronic cigarette product

262 under Subsection (5), the commission may not issue a license to sell an electronic cigarette

263 product, a license to sell cigarettes under Section [59-14-202](#), or a license to sell tobacco under

264 Section [59-14-301](#) to the person until one year after:

265 (a) the day on which the time for filing an appeal of the revocation ends, as determined

266 by the commission; or

267 (b) if the person appeals the commission's decision to revoke the license to sell an

268 electronic cigarette product, the day on which the commission's decision to uphold the

269 revocation is final.

270 (7) The commission may make rules in accordance with Title 63G, Chapter 3, Utah

271 Administrative Rulemaking Act, to establish the additional information described in

272 Subsection (3)(a)(iii) a person must provide in the application described in Subsection (3)(a).

273 (8) The department shall maintain a list of all licensees.

274 Section 11. Section **76-10-101** is amended to read:

275 **76-10-101. Definitions.**

276 As used in this part:

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

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

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

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

287 (3) "Electronic cigarette" is as defined in Section [26-55-102](#).

288 [~~(3)~~] (4) "Electronic cigarette product" [~~means any device, other than a cigarette or~~
289 ~~cigar, intended to deliver vapor containing nicotine into a person's respiratory system~~] is as
290 defined in Section [26-55-102](#).

291 [~~(4)~~] (5) "Place of business" includes:

292 (a) a shop;

293 (b) a store;

294 (c) a factory;

295 (d) a public garage;

296 (e) an office;

297 (f) a theater;

298 (g) a recreation hall;

299 (h) a dance hall;

300 (i) a poolroom;

301 (j) a café;

302 (k) a cafeteria;

303 (l) a cabaret;

304 (m) a restaurant;

- 305 (n) a hotel;
- 306 (o) a lodging house;
- 307 (p) a streetcar;
- 308 (q) a bus;
- 309 (r) an interurban or railway passenger coach;
- 310 (s) a waiting room; and
- 311 (t) any other place of business.

312 ~~[(5)]~~ (6) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other
313 lighted smoking equipment.

314 Section 12. Section **76-10-103** is amended to read:

315 **76-10-103. Permitting minors to use tobacco or an electronic cigarette product in**
316 **place of business.**

317 It is a class C misdemeanor for the proprietor of any place of business to knowingly
318 permit ~~[persons under age 19 to frequent a place of business while they are using tobacco]~~ an
319 individual who is less than 19 years of age to smoke or to use an electronic cigarette in the
320 place of business.

321 Section 13. Section **76-10-104** is amended to read:

322 **76-10-104. Providing a cigar, cigarette, electronic cigarette, or tobacco to a minor**
323 **-- Penalties.**

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

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

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

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

334 Section 14. Section **76-10-105** is amended to read:

335 **76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco**

336 **by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.**

337 (1) Any [~~18 year old person~~] individual who is 18 years of age who buys or attempts to
338 buy, accepts, or has in the [~~person's~~] individual's possession any cigar, cigarette, electronic
339 cigarette product, or tobacco in any form is guilty of a class C misdemeanor and subject to:

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

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

343 (2) Any [~~person under the age of 18~~] individual who is less than 18 years of age who
344 buys or attempts to buy, accepts, or has in the [~~person's~~] individual's possession any cigar,
345 cigarette, electronic cigarette product, or tobacco in any form is subject to the jurisdiction of
346 the Juvenile Court and:

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

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

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

353 Section 15. Section **76-10-105.1** is amended to read:

354 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products and**
355 **electronic cigarettes -- Supremacy clause -- Penalties.**

356 (1) As used in this section:

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

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

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

365 (d) "Self-service display" means a display of cigarettes, electronic cigarettes, cigars,
366 cigarette tobacco, pipe tobacco, or smokeless tobacco products to which the public has access

367 without the intervention of a retail employee.

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

370 (2) (a) Except as provided in Subsection (3), a retailer may sell cigarettes, electronic
371 ~~[cigarettes]~~ cigarette products, cigars, cigarette tobacco, pipe tobacco, and smokeless tobacco
372 only in a direct, face-to-face exchange between:

373 (i) an employee of the retailer; and

374 (ii) the purchaser.

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

377 (c) Subsections (2)(a) and (b) do not prohibit the use or display of locked cabinets
378 containing cigarettes, electronic ~~[cigarettes]~~ cigarette products, cigars, cigarette tobacco, pipe
379 tobacco, or smokeless tobacco if the locked cabinets are accessible only to the retailer or the
380 retailer's employees.

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

382 (a) mail-order sales, if the provisions of Section [59-14-509](#) are met;

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

388 (c) sales by a retailer from a retail store ~~[which]~~ that derives at least 80% of its revenue
389 from tobacco, ~~[and]~~ tobacco related products, and electronic cigarette products, and where the
390 retailer ensures that no person younger than 19 years of age is present, or permitted to enter at
391 any time, unless accompanied by a parent or legal guardian.

392 (4) Any ordinance, regulation, or rule adopted by the governing body of a political
393 subdivision of the state or by a state agency that affects the sale, placement, or display of
394 cigarettes, ~~[electronic cigarettes,]~~ cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco
395 that is not essentially identical to the provisions of this section and Section [76-10-102](#) is
396 superseded.

397 (5) (a) A parent or legal guardian who accompanies a person younger than 19 years of

398 age into an area described in Subsection (3)(b) or into a retail store as described in Subsection
399 (3)(c) and permits the person younger than 19 years of age to purchase or otherwise take a
400 cigar, cigarette, electronic cigarette product, or tobacco in any form is guilty of providing
401 tobacco as provided for in Section 76-10-104 and the penalties provided for in that section.

402 (b) Nothing in this section may be construed as permitting a person to provide tobacco
403 to a minor in violation of Section 76-10-104.

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

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

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

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

408 Section 16. Section 76-10-111 is amended to read:

409 **76-10-111. Prohibition of gift or free distribution of smokeless tobacco or**
410 **electronic cigarette products -- Exceptions.**

411 (1) The Legislature finds that:

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

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

415 (c) the use of electronic [~~cigarettes~~] cigarette products may lead to unhealthy behavior
416 such as the use of tobacco products; and

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

419 (2) Except as provided in Subsection (3), it is unlawful for a manufacturer, wholesaler,
420 and retailer to give or distribute without charge any smokeless tobacco, chewing tobacco, or
421 electronic cigarette product in this state. Any person who violates this section is guilty of a
422 class C misdemeanor for the first offense, and is guilty of a class B misdemeanor for any
423 subsequent offense.

424 (3) (a) Smokeless tobacco, chewing tobacco, or an electronic cigarette product may be
425 distributed to adults without charge at professional conventions where the general public is
426 excluded.

427 (b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who gives
428 smokeless tobacco, chewing tobacco, or an electronic cigarette product to a person of legal age

429 upon the person's purchase of another tobacco product or electronic cigarette product.

430 Section 17. Section ~~77-39-101~~ is amended to read:

431 **77-39-101. Investigation of sales of alcohol, tobacco, and electronic cigarettes to**
432 **underage persons.**

433 (1) As used in this section, "electronic cigarette product" is as defined in Section
434 ~~[76-10-101]~~ 26-55-102.

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

437 (i) Section ~~32B-4-403~~ by requesting an individual under the age of 21 years to enter
438 into and attempt to purchase or make a purchase of alcohol from a retail establishment; or

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

441 (A) a cigar;

442 (B) a cigarette;

443 (C) tobacco in any form; or

444 (D) an electronic cigarette product.

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

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

450 (i) alcohol; or

451 (ii) (A) a cigar;

452 (B) a cigarette;

453 (C) tobacco in any form; or

454 (D) an electronic cigarette product.

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

457 (3) (a) If an individual under the age of 18 years old is requested to attempt a purchase,
458 a written consent of that individual's parent or guardian shall be obtained prior to that
459 individual participating in any attempted purchase.

460 (b) An individual requested by the peace officer to attempt a purchase may:
461 (i) be a trained volunteer; or
462 (ii) receive payment, but may not be paid based on the number of successful purchases
463 of alcohol, tobacco, or an electronic cigarette product.

464 (4) The individual requested by the peace officer to attempt a purchase and anyone
465 accompanying the individual attempting a purchase may not during the attempted purchase
466 misrepresent the age of the individual by false or misleading identification documentation in
467 attempting the purchase.

468 (5) An individual requested to attempt to purchase or make a purchase pursuant to this
469 section is immune from prosecution, suit, or civil liability for the purchase of, attempted
470 purchase of, or possession of alcohol, a cigar, a cigarette, tobacco in any form, or an electronic
471 cigarette product if a peace officer directs, supervises, and monitors the individual.

472 (6) (a) Except as provided in Subsection (6)(b), a purchase attempted under this section
473 shall be conducted:

474 (i) on a random basis; and
475 (ii) within a 12-month period at any one retail establishment location not more often
476 than:

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

478 (I) a cigar;
479 (II) a cigarette;
480 (III) tobacco in any form; or
481 (IV) an electronic cigarette product; and

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

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

484 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a
485 cigar, a cigarette, tobacco in any form, or an electronic cigarette product to an individual under
486 the age established by Section [32B-4-403](#) or [76-10-104](#); and

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

489 (7) (a) The peace officer exercising direction, supervision, and monitoring of the
490 attempted purchase shall make a report of the attempted purchase, whether or not a purchase

491 was made.

492 (b) The report required by this Subsection (7) shall include:

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

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

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

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

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

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