

Representative Francis D. Gibson proposes the following substitute bill:

REGULATION OF ELECTRONIC CIGARETTES

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill amends the Utah 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;
- ▶ 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;
- ▶ prohibits a business owner from allowing a minor to use an electronic cigarette in the business;
- ▶ prohibits a person from ordering electronic cigarette products by mail, phone, or Internet without a license unless the seller verifies the purchaser is at least 19 years of age;
- ▶ prohibits an individual who is less than 19 years of age from buying, attempting to



26 buy, or possessing an electronic cigarette product; and
27 ▶ makes technical and conforming amendments.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill takes effect on July 1, 2014.

32 **Utah Code Sections Affected:**

33 AMENDS:

- 34 **10-8-41.6**, as enacted by Laws of Utah 2012, Chapter 154
- 35 **17-50-333**, as enacted by Laws of Utah 2012, Chapter 154
- 36 **26-42-102**, as enacted by Laws of Utah 1998, Chapter 319
- 37 **26-42-103**, as last amended by Laws of Utah 2011, Chapter 96
- 38 **26-42-106**, as enacted by Laws of Utah 1998, Chapter 319
- 39 **76-10-101**, as last amended by Laws of Utah 2010, Chapter 114
- 40 **76-10-103**, as enacted by Laws of Utah 1973, Chapter 196
- 41 **76-10-104**, as last amended by Laws of Utah 2010, Chapter 114
- 42 **76-10-105**, as last amended by Laws of Utah 2010, Chapter 114
- 43 **76-10-105.1**, as last amended by Laws of Utah 2010, Chapter 114
- 44 **76-10-111**, as last amended by Laws of Utah 2010, Chapter 114
- 45 **77-39-101**, as last amended by Laws of Utah 2010, Chapters 114 and 276

46 ENACTS:

- 47 **59-14a-101**, Utah Code Annotated 1953
- 48 **59-14a-102**, Utah Code Annotated 1953
- 49 **59-14a-103**, Utah Code Annotated 1953
- 50 **59-14a-104**, Utah Code Annotated 1953

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

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

54 **10-8-41.6. Regulation of retail tobacco specialty business.**

55 (1) As used in this section:

56 (a) "Community location" means:

- 57 (i) a public or private kindergarten, elementary, middle, junior high, or high school;
- 58 (ii) a licensed child-care facility or preschool;
- 59 (iii) a trade or technical school;
- 60 (iv) a church;
- 61 (v) a public library;
- 62 (vi) a public playground;
- 63 (vii) a public park;
- 64 (viii) a youth center or other space used primarily for youth oriented activities;
- 65 (ix) a public recreational facility; or
- 66 (x) a public arcade.

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

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

- 70 (i) the sale of tobacco products and electronic cigarette products accounts for more
71 than 35% of the total annual gross receipts for the establishment;
- 72 (ii) food and beverage products, excluding gasoline sales, is less than 45% of the total
73 annual gross receipts for the establishment; and
- 74 (iii) the establishment is not licensed as a pharmacy under Title 58, Chapter 17b,
75 Pharmacy Practice Act.

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

- 77 (i) any cigar[;] or cigarette~~[; or electronic cigarette]~~ as defined in Section [76-10-101](#);
- 78 (ii) a tobacco product as defined in Section [59-14-102](#), including:
 - 79 (A) chewing tobacco; or
 - 80 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;
- 81 and
- 82 (iii) tobacco paraphernalia as defined in Section [76-10-104.1](#).

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

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

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

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

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

- 95 (i) 1,000 feet of a community location;
- 96 (ii) 600 feet of another retail tobacco specialty business; or
- 97 (iii) 600 feet from property used or zoned for:
 - 98 (A) agriculture use; or
 - 99 (B) residential use.

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

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

- 105 (i) requires a municipality to issue a business license to a retail tobacco specialty
106 business; or
- 107 (ii) prohibits a municipality from adopting more restrictive requirements ~~[on]~~ for a
108 retail tobacco specialty business than provided for in this section.

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

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

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

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

121 (i) the business license is renewed continuously without relapse or permanent
122 revocation;

123 (ii) the retail tobacco specialty business is not closed for business or otherwise
124 suspends the sale of tobacco products or electronic cigarette products for more than 60
125 consecutive days;

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

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

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

132 **17-50-333. Regulation of retail tobacco specialty business.**

133 (1) As used in this section:

134 (a) "Community location" means:

135 (i) a public or private kindergarten, elementary, middle, junior high, or high school;

136 (ii) a licensed child-care facility or preschool;

137 (iii) a trade or technical school;

138 (iv) a church;

139 (v) a public library;

140 (vi) a public playground;

141 (vii) a public park;

142 (viii) a youth center or other space used primarily for youth oriented activities;

143 (ix) a public recreational facility; or

144 (x) a public arcade.

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

146 [~~(b)~~] (c) "Retail tobacco specialty business" means a commercial establishment in
147 which:

148 (i) the sale of tobacco products and electronic cigarette products accounts for more
149 than 35% of the total annual gross receipts for the establishment;

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

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

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

155 (i) any cigar[;] or cigarette~~[-or electronic cigarette]~~ as defined in Section 76-10-101;

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

157 (A) chewing tobacco; or

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

159 and

160 (iii) tobacco paraphernalia as defined in Section 76-10-104.1.

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

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

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

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

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

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

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

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

176 (A) agriculture use; or

177 (B) residential use.

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

181 to intervening structures or zoning districts.

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

183 (i) requires a county to issue a business license to a retail tobacco specialty business; or

184 (ii) prohibits a county from adopting more restrictive requirements ~~[or]~~ for a retail

185 tobacco specialty business than provided for in this section.

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

187 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,

188 Part 16, Pattern of Unlawful Activity Act;

189 (ii) if a licensee violates the regulations restricting the sale and distribution of

190 cigarettes and smokeless tobacco to protect children and adolescents issued by the United

191 States Food and Drug Administration, 21 C.F.R. Part 1140; or

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

193 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has

194 a business license and is operating lawfully in a county on or before May 8, 2012, is exempt

195 from Subsections (4) and (5).

196 (b) A retail tobacco specialty business may maintain an exemption under Subsection

197 (7)(a) if:

198 (i) the business license is renewed continuously without relapse or permanent

199 revocation;

200 (ii) the retail tobacco specialty business is not closed for business or otherwise

201 suspends the sale of tobacco products or electronic cigarette products for more than 60

202 consecutive days;

203 (iii) the retail tobacco specialty business does not substantially change the business

204 premises or its business operation; and

205 (iv) the retail tobacco specialty business maintains the right to operate under the terms

206 of other applicable laws, including zoning ordinances, building codes, and the business license

207 issued prior to May 8, 2012.

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

209 **26-42-102. Definitions.**

210 As used in this chapter:

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

- 212 (2) "Electronic cigarette product" is as defined in Section [59-14a-102](#).
- 213 [~~(2)~~] (3) "Employee" means an employee of a licensee.
- 214 [~~(3)~~] (4) "Enforcing agency" means the state Department of Health, or any local health
215 department enforcing the provisions of this chapter.
- 216 (5) "License" [~~to sell tobacco" or "license"~~] means a license issued under:
- 217 (a) [~~under~~] Section [~~59-14-201~~] [59-14-202](#) to sell cigarettes at retail; [~~or~~]
- 218 (b) [~~under~~] Section [59-14-301](#) to sell tobacco products at retail[-]; or
- 219 (c) Section [59-14a-103](#) to sell an electronic cigarette product.
- 220 [~~(4)~~] (6) "Licensee" means a person licensed under:
- 221 (a) [~~under~~] Section [~~59-14-201~~] [59-14-202](#) to sell cigarettes at retail; [~~or~~]
- 222 (b) [~~under~~] Section [59-14-301](#) to sell tobacco products at retail[-]; or
- 223 (c) Section [59-14a-103](#) to sell an electronic cigarette product.
- 224 [~~(6)~~] (7) "Tobacco" means cigarettes or tobacco products as defined in Section
225 [59-14-102](#).

226 Section 4. Section **26-42-103** is amended to read:

227 **26-42-103. Violations and penalties -- Imposition by enforcing agency and tax**
228 **commission.**

229 (1) If, following an investigation or issuance of a citation or information under Section
230 [77-39-101](#), an enforcing agency determines under Section [26-42-104](#) that a licensee or any
231 employee has sold tobacco or an electronic cigarette product to a person younger than 19 years
232 of age, as prohibited by Section [76-10-104](#), the enforcing agency may impose upon the licensee
233 the following administrative penalties:

- 234 (a) upon the first violation, a penalty of not more than \$300;
- 235 (b) upon a second violation at the same retail location, and within 12 months of the
236 first violation, a penalty of not more than \$750; and
- 237 (c) upon a third or subsequent violation at the same retail location and within 12
238 months of the first violation, a penalty of not more than \$1,000.

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

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

243 ~~sell tobacco~~]:

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

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

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

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

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

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

261 Section 5. Section **26-42-106** is amended to read:

262 **26-42-106. Recognition of licensee's training program.**

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

266 (a) the licensee has implemented a documented employee training program; and

267 (b) the employee has completed that training program within 30 days of commencing
268 duties of selling tobacco products or electronic cigarette products.

269 (2) (a) If the hearing officer determines under Subsection (1), regarding a first offense
270 at a location, that the licensee has not implemented a documented training program with a
271 written curriculum for employees at that location regarding compliance with this chapter, the
272 hearing officer may suspend all or a portion of the monetary penalty, contingent upon the
273 licensee's initiating a training program for employees at that location within 30 days after the

274 hearing date.

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

279 Section 6. Section **59-14a-101** is enacted to read:

280 **CHAPTER 14a. ELECTRONIC CIGARETTE LICENSING ACT**

281 **59-14a-101. Title.**

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

283 Section 7. Section **59-14a-102** is enacted to read:

284 **59-14a-102. Definitions.**

285 As used in this chapter:

286 (1) "Cigarette" is as defined in Section 59-14-102.

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

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

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

293 (b) "Electronic cigarette" includes an e-cigarette as defined in Section 26-38-2.

294 (3) "Electronic cigarette product" means an electronic cigarette or an electronic
295 cigarette substance.

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

298 (5) "License to sell an electronic cigarette product" means a license issued by the
299 commission under Subsection 59-14a-103(3).

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

302 Section 8. Section **59-14a-103** is enacted to read:

303 **59-14a-103. Electronic cigarette licenses -- Sale.**

304 (1) Except as provided in Subsection (2), a person may not sell, offer to sell, or

305 distribute an electronic cigarette product in Utah without first obtaining a license to sell an
306 electronic cigarette product from the commission under this section.

307 (2) A person that holds a valid license to sell cigarettes under section 59-14-202, or a
308 person that holds a valid license to sell tobacco products under Section 59-14-301, may sell,
309 offer to sell, or distribute an electronic cigarette product in Utah under the terms of this chapter.

310 (3) Except as provided in Subsection (6), the commission shall issue a license to sell an
311 electronic cigarette product to a person that:

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

313 (i) the person's name;

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

315 and

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

317 (b) pays a fee:

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

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

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

321 (a) valid only at one business address;

322 (b) valid for three years; and

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

324 (5) The commission may, after notifying a licensee and holding a hearing, revoke a
325 license described in Subsection (3) if the licensee violates a provision of:

326 (a) this chapter;

327 (b) Chapter 14, Cigarette and Tobacco Tax Licensing Act; or

328 (c) Section 26-42-103.

329 (6) If the commission revokes a person's license to sell an electronic cigarette product
330 under Subsection (5), the commission may not issue a license to sell an electronic cigarette
331 product, a license to sell cigarettes under Section 59-14-202, or a license to sell tobacco under
332 Section 59-14-301 to the person until one year after:

333 (a) the day on which the time for filing an appeal of the revocation ends, as determined
334 by the commission; or

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

336 electronic cigarette product, the day on which the commission's decision to uphold the
337 revocation is final.

338 (7) The commission may make rules in accordance with Title 63G, Chapter 3, Utah
339 Administrative Rulemaking Act, to establish the additional information described in
340 Subsection (3)(a)(iii) that a person must provide in the application described in Subsection
341 (3)(a).

342 (8) The commission shall maintain a list of all licensees.

343 Section 9. Section **59-14a-104** is enacted to read:

344 **59-14a-104. Electronic cigarette products -- Internet and mail-order sales.**

345 (1) As used in this section:

346 (a) "Purchaser" means a person that purchases an electronic cigarette product via a
347 remote transaction.

348 (b) "Remote transaction" includes a person's purchase or delivery of an electronic
349 cigarette product via:

350 (i) mail or delivery service;

351 (ii) telephone; or

352 (iii) Internet or other electronic communication.

353 (c) "Seller" means a person that sells or facilitates the sale of an electronic cigarette
354 product via a remote transaction.

355 (2) A person may not sell or facilitate the sale of an electronic cigarette product in a
356 remote transaction unless:

357 (a) the purchaser is licensed to sell electronic cigarette products under Section
358 59-14a-103; or

359 (b) (i) the purchaser is at least 19 years of age;

360 (ii) the seller verifies, using an accurate and reliable verification method, that the
361 purchaser is at least 19 years of age; and

362 (iii) the seller uses a delivery method that requires a signature from the purchaser.

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

364 **76-10-101. Definitions.**

365 As used in this part:

366 (1) "Cigar" means a product that contains nicotine, is intended to be burned under

367 ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in
368 any substance containing tobacco, other than any roll of tobacco that is a cigarette as described
369 in Subsection (2).

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

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

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

376 (3) "Electronic cigarette" is as defined in Section [59-14a-102](#).

377 ~~[(3)]~~ (4) "Electronic cigarette product" ~~[means any device, other than a cigarette or~~
378 ~~cigar, intended to deliver vapor containing nicotine into a person's respiratory system]~~ is as
379 defined in Section [59-14a-102](#).

380 ~~[(4)]~~ (5) "Place of business" includes:

381 (a) a shop;

382 (b) a store;

383 (c) a factory;

384 (d) a public garage;

385 (e) an office;

386 (f) a theater;

387 (g) a recreation hall;

388 (h) a dance hall;

389 (i) a poolroom;

390 (j) a café;

391 (k) a cafeteria;

392 (l) a cabaret;

393 (m) a restaurant;

394 (n) a hotel;

395 (o) a lodging house;

396 (p) a streetcar;

397 (q) a bus;

- 398 (r) an interurban or railway passenger coach;
- 399 (s) a waiting room; and
- 400 (t) any other place of business.

401 ~~[(5)]~~ (6) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other
402 lighted smoking equipment.

403 Section 11. Section 76-10-103 is amended to read:

404 **76-10-103. Permitting minors to use tobacco or an electronic cigarette product in**
405 **place of business.**

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

410 Section 12. Section 76-10-104 is amended to read:

411 **76-10-104. Providing a cigar, cigarette, electronic cigarette, or tobacco to a minor**
412 **-- Penalties.**

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

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

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

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

423 Section 13. Section 76-10-105 is amended to read:

424 **76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco**
425 **by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.**

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

- 429 (a) a minimum fine or penalty of \$60; and
- 430 (b) participation in a court-approved tobacco education program, which may include a
- 431 participation fee.

432 (2) Any [~~person under the age of 18~~] individual who is less than 18 years of age who

433 buys or attempts to buy, accepts, or has in the [~~person's~~] individual's possession any cigar,

434 cigarette, electronic cigarette product, or tobacco in any form is subject to the jurisdiction of

435 the Juvenile Court and:

- 436 (a) a minimum fine or penalty of \$60; and
- 437 (b) participation in a court-approved tobacco education program, which may include a
- 438 participation fee.

439 (3) A compliance officer appointed by a board of education under Section [53A-3-402](#)

440 may issue citations for violations of this section committed on school property. Cited

441 violations shall be reported to the appropriate juvenile court.

442 Section 14. Section **76-10-105.1** is amended to read:

443 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products and**

444 **electronic cigarettes -- Supremacy clause -- Penalties.**

445 (1) As used in this section:

446 (a) "Cigarette tobacco" means a product that consists of loose tobacco that contains or

447 delivers nicotine and is intended for use by a consumer in a cigarette.

448 (b) "Pipe tobacco" means a product that consists of loose tobacco that contains or

449 delivers nicotine and is intended to be smoked by a consumer in a pipe.

450 (c) "Retailer" means a person who sells cigarettes, electronic cigarettes, cigars,

451 cigarette tobacco, pipe tobacco, or smokeless tobacco to individuals for personal consumption

452 or who operates a facility where a vending machine or a self-service display is permitted under

453 Subsection (3)(b).

454 (d) "Self-service display" means a display of cigarettes, electronic cigarettes, cigars,

455 cigarette tobacco, pipe tobacco, or smokeless tobacco products to which the public has access

456 without the intervention of a retail employee.

457 (e) "Smokeless tobacco" means a product that consists of cut, ground, powdered, or

458 leaf tobacco that contains nicotine and that is intended to be placed in the oral cavity.

459 (2) (a) Except as provided in Subsection (3), a retailer may sell cigarettes, electronic

460 [~~cigarettes~~] cigarette products, cigars, cigarette tobacco, pipe tobacco, and smokeless tobacco
461 only in a direct, face-to-face exchange between:

462 (i) an employee of the retailer; and

463 (ii) the purchaser.

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

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

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

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

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

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

481 (4) Any ordinance, regulation, or rule adopted by the governing body of a political
482 subdivision of the state or by a state agency that affects the sale, placement, or display of
483 cigarettes, electronic [~~cigarettes~~] cigarette products, cigars, cigarette tobacco, pipe tobacco, or
484 smokeless tobacco that is not essentially identical to the provisions of this section and Section
485 76-10-102 is superseded.

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

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

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

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

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

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

497 Section 15. Section 76-10-111 is amended to read:

498 **76-10-111. Prohibition of gift or free distribution of smokeless tobacco or**
499 **electronic cigarette products -- Exceptions.**

500 (1) The Legislature finds that:

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

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

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

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

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

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

516 (b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who gives
517 smokeless tobacco, chewing tobacco, or an electronic cigarette product to a person of legal age
518 upon the person's purchase of another tobacco product or electronic cigarette product.

519 Section 16. Section 77-39-101 is amended to read:

520 **77-39-101. Investigation of sales of alcohol, tobacco, and electronic cigarettes to**
521 **underage persons.**

522 (1) As used in this section, "electronic cigarette product" is as defined in Section
523 ~~[76-10-101]~~ 59-14a-102.

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

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

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

530 (A) a cigar;

531 (B) a cigarette;

532 (C) tobacco in any form; or

533 (D) an electronic cigarette product.

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

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

539 (i) alcohol; or

540 (ii) (A) a cigar;

541 (B) a cigarette;

542 (C) tobacco in any form; or

543 (D) an electronic cigarette product.

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

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

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

550 (i) be a trained volunteer; or

551 (ii) receive payment, but may not be paid based on the number of successful purchases
552 of alcohol, tobacco, or an electronic cigarette product.

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

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

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

563 (i) on a random basis; and

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

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

567 (I) a cigar;

568 (II) a cigarette;

569 (III) tobacco in any form; or

570 (IV) an electronic cigarette product; and

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

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

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

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

578 (7) (a) The peace officer exercising direction, supervision, and monitoring of the
579 attempted purchase shall make a report of the attempted purchase, whether or not a purchase
580 was made.

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

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

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

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

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

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

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

590 **Section 17. Effective date.**

591 This bill takes effect on July 1, 2014.