

Senator Stephen H. Urquhart proposes the following substitute bill:

**REGULATION OF ELECTRONIC CIGARETTES**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill enacts and amends provisions related to electronic cigarette products.

**Highlighted Provisions:**

This bill:

- ▶ requires a person to obtain a license in order to sell or distribute an electronic cigarette product;
- ▶ provides criminal penalties for a person that sells an electronic cigarette without a license; and
- ▶ gives the Department of Health the authority to determine product quality, manufacturing, and labeling standards for an electronic cigarette product.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

This bill provides a coordination clause.

**Utah Code Sections Affected:**

AMENDS:

**26-42-102**, as enacted by Laws of Utah 1998, Chapter 319



- 26 [26-42-103](#), as last amended by Laws of Utah 2011, Chapter 96
- 27 [26-42-107](#), as enacted by Laws of Utah 1998, Chapter 319
- 28 [76-10-101](#), as last amended by Laws of Utah 2010, Chapter 114
- 29 [76-10-105.1](#), as last amended by Laws of Utah 2010, Chapter 114

30 ENACTS:

- 31 [26-57-101](#), Utah Code Annotated 1953
- 32 [26-57-102](#), Utah Code Annotated 1953
- 33 [26-57-103](#), Utah Code Annotated 1953
- 34 [59-14-801](#), Utah Code Annotated 1953
- 35 [59-14-802](#), Utah Code Annotated 1953
- 36 [59-14-803](#), Utah Code Annotated 1953

37 **Utah Code Sections Affected by Coordination Clause:**

- 38 [76-10-101](#), as last amended by Laws of Utah 2010, Chapter 114



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

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

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

43 As used in this chapter:

- 44 (1) "Commission" means the Utah State Tax Commission.
- 45 (2) "Employee" means an employee of a licensee.
- 46 (3) "Enforcing agency" means the state Department of Health, or any local health
- 47 department enforcing the provisions of this chapter.
- 48 (4) "Licensee" means a person licensed:
  - 49 (a) under Section [59-14-201](#) to sell cigarettes at retail; [~~or~~]
  - 50 (b) under Section [59-14-301](#) to sell tobacco products at retail[~~;~~]; or
  - 51 (c) under Section [59-14-803](#) to sell an electronic cigarette product.
- 52 (5) "License to sell tobacco" or "license" means a license issued:
  - 53 (a) under Section [59-14-201](#) to sell cigarettes at retail; [~~or~~]
  - 54 (b) under Section [59-14-301](#) to sell tobacco products at retail[~~;~~]; or
  - 55 (c) under Section [59-14-803](#) to sell an electronic cigarette product.
- 56 (6) "Tobacco" means [~~cigarettes or tobacco products~~];

57 (a) a cigarette or a tobacco product, as defined in Section 59-14-102[-]; or

58 (b) an electronic cigarette product, as defined in Section 59-14-802.

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

60 **26-42-103. Violations and penalties -- Imposition by enforcing agency and tax**  
61 **commission.**

62 (1) If, following an investigation or issuance of a citation or information under Section  
63 77-39-101, an enforcing agency determines under Section 26-42-104 that a licensee or any  
64 employee has sold tobacco to a person younger than 19 years of age, as prohibited by Section  
65 76-10-104, the enforcing agency may impose upon the licensee the following administrative  
66 penalties:

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

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

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

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

74 (3) The commission, upon receipt of the written notification under Subsection (2), shall  
75 take action under Section 59-14-203.5 or 59-14-301.5 against the license to sell tobacco:

76 (a) by suspending the licensee's license to sell tobacco at that location for not more  
77 than 30 days, upon receipt of notification of a third violation under Subsection (1)(c); and

78 (b) by revoking the license to sell tobacco at that location held by the licensee,  
79 including any license under suspension, upon receipt of notification of a fourth violation under  
80 Subsection (1)(c).

81 (4) When the commission revokes a license under Subsection (3)(b), the commission  
82 may not issue to the licensee, or to the business entity using the license that is revoked, a  
83 license under Section 59-14-202 [or], 59-14-301, or 59-14-803 to sell tobacco at the location  
84 for which the license was issued for one year after:

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

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

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

92 Section 3. Section 26-42-107 is amended to read:

93 **26-42-107. Allocation of civil penalties.**

94 Civil monetary penalties collected under this chapter shall be allocated as follows:

95 (1) if a local health department conducts an adjudicative proceeding under Section  
96 26-42-104, the penalty shall be paid to the treasurer of the county in which the violation was  
97 committed, and transferred to:

98 (a) the local health department if it conducts a civil hearing under Section 26-42-104  
99 alone; or

100 (b) in equal portions to the local health department and the other agencies that  
101 participated in the hearing process;

102 (2) if the state Department of Health conducts a civil hearing under Section 26-42-104,  
103 the penalty shall be deposited in the state's General Fund, and may be appropriated by the  
104 Legislature to the state Department of Health for use in enforcement of this chapter; and

105 (3) if the civil penalty involves suspension or revocation of a license to sell tobacco  
106 under Section 59-14-203.5 [or], 59-14-301.5, or 59-14-803, half of the penalty shall be paid to  
107 the commission, and the other half shall be allocated under Subsection (1) or (2), as  
108 appropriate.

109 Section 4. Section 26-57-101 is enacted to read:

110 **CHAPTER 57. ELECTRONIC CIGARETTE REGULATION ACT**

111 **26-57-101. Title.**

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

113 Section 5. Section 26-57-102 is enacted to read:

114 **26-57-102. Definitions.**

115 As used in this chapter:

116 (1) "Cigarette" means the same as that term is defined in Section 59-14-102.

117 (2) "Electronic cigarette" means the same as that term is defined in Section 59-14-802.

118 (3) "Electronic cigarette product" means an electronic cigarette or an electronic

119 cigarette substance.

120 (4) "Electronic cigarette substance" means the same as that term is defined in Section  
121 59-14-802.

122 (5) "Manufacture" includes:

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

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

125 (6) "Manufacturer sealed electronic cigarette substance" means an electronic cigarette  
126 substance that is sold in a container that:

127 (a) is pre-filled by the electronic cigarette substance manufacturer; and

128 (b) the electronic cigarette manufacturer does not intend for a consumer to open.

129 Section 6. Section **26-57-103** is enacted to read:

130 **26-57-103. Electronic cigarette products -- Labeling -- Manufacturing and quality**  
131 **control standards -- Low-grade nicotine -- Advertising.**

132 (1) The department shall, in consultation with a local health department, as defined in  
133 Section 26A-1-102, and with input from members of the public, establish, no later than January  
134 1, 2016, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
135 Rulemaking Act, standards for electronic cigarette product:

136 (a) manufacturing;

137 (b) product quality;

138 (c) nicotine content; and

139 (d) labeling.

140 (2) The standards established by the department under Subsection (1):

141 (a) do not apply to a manufacturer sealed electronic cigarette substance; and

142 (b) beginning on July 1, 2016, supercede any municipal, county, or local government  
143 regulation regarding an electronic cigarette product.

144 (3) Beginning on July 1, 2016, a person may not sell an electronic cigarette product  
145 unless the electronic cigarette product complies with the standards established by the  
146 department under Subsection (1).

147 (4) Beginning on July 1, 2016, a person may not advertise an electronic cigarette  
148 product:

149 (a) as a tobacco cessation device;

150 (b) if the person is not licensed to sell an electronic cigarette product under Section  
151 59-14-803; or

152 (c) during a period of time when the person's license to sell an electronic cigarette  
153 product under Section 59-14-803 has been suspended or revoked.

154 Section 7. Section 59-14-801 is enacted to read:

155 **Part 8. Electronic Cigarette Licensing Act**

156 **59-14-801. Title.**

157 This part is known as the "Electronic Cigarette Licensing Act."

158 Section 8. Section 59-14-802 is enacted to read:

159 **59-14-802. Definitions.**

160 As used in this part:

161 (1) "Cigarette" means the same as that term is defined in Section 59-14-102.

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

163 (i) an electronic device used to deliver or capable of delivering vapor containing  
164 nicotine to an individual's respiratory system;

165 (ii) a component of the device described in Subsection (2)(a)(i); or

166 (iii) an accessory sold in the same package as the device described in Subsection  
167 (2)(a)(i).

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

169 (3) "Electronic cigarette product" means an electronic cigarette or an electronic  
170 cigarette substance.

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

173 (5) "Enforcing agency" means the Department of Health, a county health department,  
174 or a local health department, when enforcing:

175 (i) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; or

176 (ii) Title 26, Chapter 57, Electronic Cigarette Regulation Act.

177 (6) "License to sell an electronic cigarette product" means a license issued by the  
178 commission under Subsection 59-14-803(3).

179 (7) "Licensee" means a person that holds a valid license to sell electronic cigarette  
180 products.

181 Section 9. Section **59-14-803** is enacted to read:

182 **59-14-803. Electronic cigarette licenses -- Sale.**

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

186 (2) A person that holds a valid license to sell cigarettes under Section [59-14-202](#), or a  
187 person that holds a valid license to sell tobacco products under Section [59-14-301](#), may,  
188 without obtaining a separate license to sell an electronic cigarette product under this part, sell,  
189 offer to sell, or distribute an electronic cigarette product in Utah in accordance with this part.

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

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

193 (i) the person's name;

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

195 and

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

197 (b) pays a fee:

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

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

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

201 (a) valid only at one fixed business address;

202 (b) valid for three years;

203 (c) except as provided in Subsection (5), valid only for a physical location; and

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

205 (5) A person that holds a valid license to sell electronic cigarettes under this chapter,  
206 cigarettes under Section [59-14-202](#), or tobacco products under Section [59-14-301](#) may sell an  
207 electronic cigarette product at an industry trade show where no individual that is less than 19  
208 years of age may enter.

209 (6) The commission shall, after notifying a licensee, revoke a license described in  
210 Subsection (3) if an enforcing agency determines the licensee has violated a provision of:

211 (a) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; or

212 (b) Title 26, Chapter 57, Electronic Cigarette Regulation Act.

213 (7) If the commission revokes a person's license to sell an electronic cigarette product  
214 under Subsection (6), the commission may not issue a license to sell an electronic cigarette  
215 product, a license to sell cigarettes under Section 59-14-201, or a license to sell tobacco under  
216 Section 59-14-301 to the person until one year after:

217 (a) the day on which the time for filing an appeal of the revocation ends, as determined  
218 by the enforcing agency; or

219 (b) if the person appeals the enforcing agency's decision to revoke the license to sell an  
220 electronic cigarette product, the day on which the enforcing agency's decision to uphold the  
221 revocation is final.

222 (8) If the commission revokes a person's license under Subsection (6), the commission  
223 shall also revoke the person's license to sell cigarettes under Section 59-14-201, if any, and the  
224 person's license to sell tobacco under Section 59-14-301, if any.

225 (9) The commission may make rules in accordance with Title 63G, Chapter 3, Utah  
226 Administrative Rulemaking Act, to establish the additional information described in  
227 Subsection (3)(a)(iii) that a person must provide in the application described in Subsection  
228 (3)(a).

229 (10) It is a class B misdemeanor for a person to violate Subsection (1).

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

231 **76-10-101. Definitions.**

232 As used in this part:

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

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

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

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



243 (3) "Electronic cigarette" means [~~any device, other than a cigarette or cigar, intended to~~  
244 ~~deliver vapor containing nicotine into a person's respiratory system]~~ an electronic cigarette  
245 product, as defined in Section [59-14-802](#).

246 (4) "Place of business" includes:

- 247 (a) a shop;
- 248 (b) a store;
- 249 (c) a factory;
- 250 (d) a public garage;
- 251 (e) an office;
- 252 (f) a theater;
- 253 (g) a recreation hall;
- 254 (h) a dance hall;
- 255 (i) a poolroom;
- 256 (j) a café;
- 257 (k) a cafeteria;
- 258 (l) a cabaret;
- 259 (m) a restaurant;
- 260 (n) a hotel;
- 261 (o) a lodging house;
- 262 (p) a streetcar;
- 263 (q) a bus;
- 264 (r) an interurban or railway passenger coach;
- 265 (s) a waiting room; and
- 266 (t) any other place of business.

267 (5) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other  
268 lighted smoking equipment.

269 Section 11. Section **76-10-105.1** is amended to read:

270 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products and**  
271 **electronic cigarettes -- Supremacy clause -- Penalties.**

272 (1) As used in this section:

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

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

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

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

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

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

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

289 (i) an employee of the retailer; and

290 (ii) the purchaser.

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

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

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

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

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

304 (c) sales by a retailer from a retail store which derives at least 80% of its revenue from

305 tobacco and tobacco related products and where the retailer ensures that no person younger  
306 than 19 years of age is present, or permitted to enter at any time, unless accompanied by a  
307 parent or legal guardian.

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

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

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

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

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

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

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

325 Section 12. **Effective date.**

326 This bill takes effect on July 1, 2015.

327 Section 13. **Coordinating H.B. 415 with H.B. 131 -- Substantive amendments.**

328 If this H.B. 415 and H.B. 131, Tobacco Shop Amendments, both pass and become law,  
329 it is the intent of the Legislature that, when the Office of Legislative Research and General  
330 Counsel prepares the Utah Code database for publication:

331 (1) the amendments to Section 76-10-101 in this bill supersede the amendments to  
332 Section 76-10-101 in H.B. 131; and

333 (2) Section 76-10-105.1 shall be amended to read:

334 **"76-10-105.1 Requirement of direct, face-to-face sale of cigarettes, tobacco, and**  
335 **electronic cigarettes -- Minors not allowed in tobacco specialty shop -- Penalties.**

336 (1) As used in this section:

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

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

341 (a) "Cigarette" means the same as that term is defined in Section [59-14-102](#).

342 (b) (i) "Face-to-face exchange" means a transaction made in person between an  
343 individual and a retailer or retailer's employee.

344 (ii) "Face-to-face exchange" does not include a sale through a:

345 (A) vending machine; or

346 (B) self-service display.

347 (c) "Retailer" means a person who ~~[sells cigarettes, electronic cigarettes, cigars,~~  
348 ~~cigarette tobacco, pipe tobacco, or smokeless tobacco to individuals for personal consumption~~  
349 ~~or who];~~

350 (i) sells a cigarette, tobacco, or an electronic cigarette to an individual for personal  
351 consumption; or

352 (ii) operates a facility [where a vending machine or a self-service display is permitted  
353 under Subsection (3)(b)] with a vending machine that sells a cigarette, tobacco, or an electronic  
354 cigarette.

355 (d) "Self-service display" means a display of ~~[cigarettes, electronic cigarettes, cigars,~~  
356 ~~cigarette tobacco, pipe tobacco, or smokeless tobacco products]~~ a cigarette, tobacco, or an  
357 electronic cigarette to which the public has access without the intervention of a [retail] retailer  
358 or retailer's employee.

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

361 (e) "Tobacco" means any product, except a cigarette, made of or containing tobacco.

362 (f) "Tobacco specialty shop" means a retailer with a physical location that derives at  
363 least 80% of its total sales from the sale of cigarettes, tobacco, or electronic cigarettes.

364 (2) ~~[(a)]~~ Except as provided in Subsection (3), a retailer may sell ~~[cigarettes, electronic~~  
365 ~~cigarettes, cigars, cigarette tobacco, pipe tobacco, and smokeless tobacco only in a direct,~~  
366 ~~face-to-face exchange between:]~~ a cigarette, tobacco, or an electronic cigarette only in a

367 face-to-face exchange.

368 ~~[(i) an employee of the retailer; and]~~

369 ~~[(ii) the purchaser.]~~

370 ~~[(b) Examples of methods that are not permitted include vending machines and~~

371 ~~self-service displays.]~~

372 ~~[(c) Subsections (2)(a) and (b) do not prohibit the use or display of locked cabinets~~

373 ~~containing cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, or smokeless~~

374 ~~tobacco if the locked cabinets are accessible only to the retailer or the retailer's employees.]~~

375 ~~[(3) The following sales are permitted as exceptions to Subsection (2):]~~

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

377 ~~[(b) sales from vending machines, including vending machines that sell packaged;~~

378 ~~single cigarettes or cigars, and self-service displays that are located in a separate and defined~~

379 ~~area within a facility where the retailer ensures that no person younger than 19 years of age is~~

380 ~~present, or permitted to enter, at any time, unless accompanied by a parent or legal guardian;~~

381 ~~and]~~

382 ~~[(c) sales by a retailer from a retail store which derives at least 80% of its revenue from~~

383 ~~tobacco and tobacco related products and where the retailer ensures that no person younger~~

384 ~~than 19 years of age is present, or permitted to enter at any time, unless accompanied by a~~

385 ~~parent or legal guardian.]~~

386 ~~[(4) Any ordinance, regulation, or rule adopted by the governing body of a political~~

387 ~~subdivision of the state or by a state agency that affects the sale, placement, or display of~~

388 ~~cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco~~

389 ~~that is not essentially identical to the provisions of this section and Section 76-10-102 is~~

390 ~~superseded.]~~

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

392 ~~age into an area described in Subsection (3)(b) or into a retail store as described in Subsection~~

393 ~~(3)(c) and permits the person younger than 19 years of age to purchase or otherwise take a~~

394 ~~cigar, cigarette, electronic cigarette, or tobacco in any form is guilty of providing tobacco as~~

395 ~~provided for in Section 76-10-104 and the penalties provided for in that section.]~~

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

397 ~~to a minor in violation of Section 76-10-104.]~~

398           (3) The face-to-face sale requirement in Subsection (2) does not apply to:  
399           (a) a mail-order, telephone, or Internet sale made in compliance with Section  
400 59-14-509;  
401           (b) a sale from a vending machine or self-service display that is located in an area of a  
402 retailer's facility:  
403           (i) that is distinct and separate from the rest of the facility; and  
404           (ii) where the retailer only allows an individual who complies with Subsection (4) to be  
405 present; or  
406           (c) a sale at a tobacco specialty shop.  
407           (4) An individual who is less than 19 years old may not enter or be present at a tobacco  
408 specialty shop unless the individual is:  
409           (a) accompanied by a parent or legal guardian;  
410           (b) present at the tobacco shop for a bona fide commercial purpose other than to  
411 purchase a cigarette, tobacco, or an electronic cigarette; or  
412           (c) 18 years old or older and an active duty member of the United States Armed Forces,  
413 as demonstrated by a valid, government-issued military identification card.  
414           (5) A parent or legal guardian who accompanies, under Subsection (4)(a), an individual  
415 into an area described in Subsection (3)(b), or into a tobacco specialty shop, may not allow the  
416 individual to purchase a cigarette, tobacco, or an electronic cigarette.  
417           (6) [~~Violation~~] A violation of Subsection (2) or [~~(3)~~] (4) is a:  
418           (a) class C misdemeanor on the first offense;  
419           (b) class B misdemeanor on the second offense; and  
420           (c) class A misdemeanor on the third and all subsequent offenses.  
421           (7) An individual who violates Subsection (5) is guilty of providing tobacco to a minor  
422 under Section 76-10-104.  
423           (8) (a) Any ordinance, regulation, or rule adopted by the governing body of a political  
424 subdivision of the state or by a state agency that affects the sale, placement, or display of  
425 cigarettes, tobacco, or electronic cigarettes that is not essentially identical to the provisions of  
426 this section and Section 76-10-102 is superseded.  
427           (b) Subsection (8)(a) does not apply to the adoption or enforcement of a land use  
428 ordinance by a municipal or county government."