

HB0112S01 compared with HB0112

~~text~~ shows text that was in HB0112 but was deleted in HB0112S01.

text shows text that was not in HB0112 but was inserted into HB0112S01.

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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 ~~Criminal~~ Tax Code to modify and add provisions related to electronic cigarettes.

Highlighted Provisions:

This bill:

- ▶ prohibits a person from selling ~~or manufacturing electronic cigarettes or~~ an electronic cigarette ~~substances~~ product without a license from the ~~Department of Health~~ State Tax Commission;
- ▶ prohibits a person from selling ~~or manufacturing electronic cigarettes or~~ an electronic cigarette ~~substances~~ product that ~~contain~~ contains nicotine that is not pharmaceutical-grade nicotine;
- ▶ prohibits a person from advertising ~~that electronic cigarettes or~~ an electronic

HB0112S01 compared with HB0112

cigarette ~~{substances help an individual stop using tobacco or a product containing tobacco}~~ product as a cigarette or tobacco product cessation device;

- ▶ directs the ~~{Department of Health}~~ State Tax Commission to issue licenses to ~~{manufacture or }~~ sell an electronic ~~{cigarettes}~~ cigarette product under certain conditions;
- ▶ provides that the ~~{Department of Health}~~ State Tax Commission can revoke a person's license to sell an electronic ~~{cigarettes}~~ cigarette product if the person sells an electronic cigarette ~~{or an electronic cigarette substance }~~ 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;
- ▶ prohibits a person from selling an electronic cigarette product that is not manufactured in accordance with Department of Health standards;
- ▶ 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;
- ▶ prohibits an individual who is less than 19 years of age from buying, attempting to buy, or possessing an electronic cigarette product; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

26-42-103, as last amended by Laws of Utah 2011, Chapter 96

26-42-106, as enacted by Laws of Utah 1998, Chapter 319

59-14-509, as enacted by Laws of Utah 2009, Chapter 341

76-10-101, as last amended by Laws of Utah 2010, Chapter 114

HB0112S01 compared with HB0112

76-10-103, as enacted by Laws of Utah 1973, Chapter 196

76-10-104, as last amended by Laws of Utah 2010, Chapter 114

76-10-105, as last amended by Laws of Utah 2010, Chapter 114

76-10-105.1, as last amended by Laws of Utah 2010, Chapter 114

76-10-111, as last amended by Laws of Utah 2010, Chapter 114

77-39-101, as last amended by Laws of Utah 2010, Chapters 114 and 276

ENACTS:

26-55-101, Utah Code Annotated 1953

26-55-102, Utah Code Annotated 1953

26-55-103, Utah Code Annotated 1953

~~26-55-104~~ 59-14a-101, Utah Code Annotated 1953

59-14a-102, Utah Code Annotated 1953

59-14a-103, Utah Code Annotated 1953

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

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

26-42-102. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

(c) Section ~~26-55-103~~ 59-14a-103 to sell an electronic cigarette ~~{products}~~ product.

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

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

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

(c) Section ~~26-55-104~~ 59-14a-103 to sell an electronic cigarette ~~{products}~~ product.

HB0112S01 compared with HB0112

~~{ (7) "Licensing agency" means:~~

~~(a) for a license to sell cigarettes at retail under Section 59-14-201 or a license to sell tobacco products at retail under Section 59-14-301, the commission; or~~

~~(b) for a license to sell electronic cigarette products under Section 26-55-104, the department.~~

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

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

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

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

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

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

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

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

(3) The ~~{}~~commission ~~{}~~licensing agency, upon receipt of the written notification under Subsection (2), shall take action under Section 59-14-203.5 ~~[or]~~, 59-14-301.5, or 26-55-104; 59-14a-103 against the license ~~[to sell tobacco]~~:

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

(b) by revoking each of the ~~[license {} to sell tobacco]~~ licenses at that location held by the licensee, including any license under suspension, upon receipt of notification of a fourth

HB0112S01 compared with HB0112

violation under Subsection (1)(c).

(4) When the ~~{}~~commission~~{}~~ licensing agency revokes a license under Subsection (3)(b), the ~~{}~~commission~~{}~~ licensing agency may not issue to the licensee, or to the business entity using the license that is revoked, a license under Section 59-14-202 ~~[or]~~, 59-14-301 ~~[to sell tobacco]~~, or ~~{26-55-105}~~ 59-14a-103 at the location for which the license was issued for one year after:

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

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

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

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

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

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

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

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

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

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

HB0112S01 compared with HB0112

Section ~~{3}~~4. Section 26-55-101 is enacted to read:

CHAPTER 55. ELECTRONIC CIGARETTE REGULATION ACT

26-55-101. Title.

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

Section ~~{4}~~5. Section 26-55-102 is enacted to read:

26-55-102. Definitions.

As used in this chapter:

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

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

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

(~~{b}~~ii) any component of or accessory intended for use with the device described in Subsection (2)(a)~~{i}~~;

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

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

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

~~{~~ (5) "Licensee" means a person licensed under Subsection 26-55-104(1) or (2):

~~_____~~ (6) "License to manufacture electronic cigarette products" means a license issued by the department under Subsection 26-55-104(1):

~~_____~~ (7) "License to sell electronic cigarette products" means a license issued by the department under Subsection 26-55-104(2):

~~‡~~ (~~{8}~~5) "Manufacture" includes:

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

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

(~~{9}~~6) "Pharmaceutical-grade nicotine" means nicotine that meets the specifications of the United States Pharmacopeia for food-grade or pharmaceutical-grade nicotine.

Section ~~{5}~~6. Section 26-55-103 is enacted to read:

26-55-103. Electronic cigarettes -- Prohibition on sale ~~{or manufacturing}~~ without

HB0112S01 compared with HB0112

a license -- Manufacturing and quality control standards -- Low-grade nicotine -- Advertising.

(1) A person may not ~~fr~~:

~~— (a) manufacture an electronic cigarette product in Utah without first obtaining a license to manufacture electronic cigarette products from the Department of Health under Section 26-55-104; or~~

~~— (b) fr sell, offer to sell, or distribute an electronic cigarette product in Utah fr without first obtaining a license to sell electronic cigarette products from the Department of Health as under Section 26-52-104.~~

~~— (2) A person may not sell, offer to sell, distribute, or manufacture an electronic cigarette product in Utah that fr that:~~

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

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

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

~~(fr)2) A person may not advertise fr that fr an electronic cigarette product fr helps an individual stop using tobacco or a product containing tobacco.~~

~~Section 6. Section 26-55-104 as a cigarette or tobacco cessation device.~~

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

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

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

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

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

~~(1) For purposes of this section:~~

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

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

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

~~(b) "Electronic cigarette product" is as defined in Section 59-14a-102.~~

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

HB0112S01 compared with HB0112

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

(ii) a person licensed under Section 59-14a-103.

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

(i) by mail or delivery service;

(ii) through the Internet or computer network;

(iii) by telephone; or

(iv) through some other electronic method.

[~~(d)~~] (e) "Retailer" means any person who sells [~~tobacco products to consumers~~] or offers to sell a cigarette, tobacco product, or electronic cigarette product to a consumer for personal consumption.

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

(a) cause [~~tobacco products or cigarettes as defined in Section 59-22-202~~] a cigarette, tobacco product, or electronic cigarette product to be ordered or purchased by anyone other than a licensed person; or

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

(3) (a) Each order or purchase of a [~~tobacco product or cigarettes as defined in Section 59-22-202~~] cigarette, tobacco product, or electronic cigarette product in violation of Subsection (2) shall constitute a separate violation under this section.

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

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

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

(iii) recovery by the state for:

(A) the costs of investigation;

(B) the cost of expert witness fees;

(C) the cost of the action; and

(D) reasonable attorney's fees.

(4) A person who knowingly violates this section has engaged in an unfair and deceptive trade practice in violation of Title 13, Chapter 5, Unfair Practices Act, and the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the state treasurer for deposit in the General Fund.

HB0112S01 compared with HB0112

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

CHAPTER 14a. ELECTRONIC CIGARETTE LICENSING ACT

59-14a-101. Title.

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

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

~~26-55-104~~ 59-14a-102. Definitions.

As used in this chapter:

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

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

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

(ii) any component of or accessory intended for use with the device described in

Subsection (2)(a);

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

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

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

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

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

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

59-14a-103. Electronic cigarette licenses -- ~~{Manufacture and sale}~~ Sale.

(1) ~~{The department shall issue a license to manufacture}~~ Except as provided in Subsection (2), a person may not sell, offer to sell, or distribute an electronic cigarette ~~{products to a person who:~~

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

(2) A person who holds a valid license to sell cigarettes under section 59-14-202, or a

HB0112S01 compared with HB0112

person who holds a valid license to sell tobacco products under 59-14-301, may sell, offer to sell, or distribute an electronic cigarette product in Utah under the terms of this chapter.

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

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

(i) the person's name;

(ii) the address of the facility where the person will ~~manufacture~~ sell an electronic cigarette ~~products~~ product; and

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

(b) pays a fee ~~in an amount established by the department under Subsection (6):~~

~~(2) The department shall issue a license to sell electronic cigarette products to a person who:~~

~~(a) submits an application, on a form created by the department, that includes:~~

~~(i) the person's name;~~

~~(ii) the address of the facility where the person will sell electronic cigarette products;~~

~~and~~

~~(iii) any other information the department requires to implement this chapter; and~~

~~(b) pays a fee in an amount established by the department under Subsection (6) or submits proof that the person is licensed under Section 59-14-202.~~

~~(3):~~

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

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

(4) A license described in Subsection ~~(1) or (2)3~~ is:

(a) valid only at one business address;

(b) valid for three years; and

(c) renewable if a licensee meets the criteria for licensing ~~under~~ described in

Subsection ~~(1) or (2)3~~.

~~(4)5~~ The ~~department~~ commission may, after notifying a licensee and holding a hearing, revoke a license described in Subsection ~~(1) or (2)3~~ if the licensee:

HB0112S01 compared with HB0112

(a) violates ~~the provisions~~ a provision of this chapter; ~~or~~

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

(c) violates a provision of Section 26-42-103.

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

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

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

(7) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish ~~the~~

~~the form of~~ the ~~applications~~ additional information described in ~~Subsections~~ Subsection ~~(1)(a) and (2)(iii)~~ ~~(a)~~:

~~the information~~ a person must provide in the ~~applications~~ application described in ~~Subsections (1)(a) and (2)(a); and~~

~~operating standards for a person licensed under Subsection (1) and for a person licensed under Subsection (2):~~

~~The department shall, in accordance with Section 63J-1-504, establish the amount of the fees described in Subsections (1)(b) and (2)(b):~~

~~(7) Subsection (3)(a).~~

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

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

~~(1) For purposes of this section:~~

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

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

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

~~(b) "Licensed person" is as defined in Subsection 59-14-409(1).~~

~~(c) "Order or purchase" includes:~~

HB0112S01 compared with HB0112

- ~~—— (i) by mail or delivery service;~~
- ~~—— (ii) through the Internet or computer network;~~
- ~~—— (iii) by telephone; or~~
- ~~—— (iv) through some other electronic method.~~
- ~~—— (d) "Retailer" means any person who sells tobacco products to consumers for personal consumption.~~
- ~~—— (2) A person, distributor, manufacturer, or retailer shall not:~~
 - ~~—— (a) cause tobacco products or cigarettes as defined in Section 59-22-202 to be ordered or purchased by anyone other than a licensed person; or~~
 - ~~—— (b) knowingly provide substantial assistance to a person who violates this section.~~
- ~~—— (3) (a) Each order or purchase of a tobacco product or cigarettes as defined in Section 59-22-202 in violation of Subsection (2) shall constitute a separate violation under this section.~~
 - ~~—— (b) In addition to the penalties in Subsection (4), a person who violates this section is subject to:~~
 - ~~—— (i) a civil penalty in an amount not to exceed \$5,000 for each violation of this section;~~
 - ~~—— (ii) an injunction to restrain a threatened or actual violation of this section; and~~
 - ~~—— (iii) recovery by the state for:~~
 - ~~—— (A) the costs of investigation;~~
 - ~~—— (B) the cost of expert witness fees;~~
 - ~~—— (C) the cost of the action; and~~
 - ~~—— (D) reasonable attorney's fees.~~
- ~~—— (4) A person who knowingly violates this section has engaged in an unfair and deceptive trade practice in violation of Title 13, Chapter 5, Unfair Practices Act, and the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the state treasurer for deposit in the General Fund.~~

‡ Section ~~{7}~~11. Section **76-10-101** is amended to read:

76-10-101. Definitions.

As used in this part:

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

HB0112S01 compared with HB0112

in Subsection (2).

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

- (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or
- (b) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in Subsection (2)(a).

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

~~[(3)]~~ (4) "Electronic cigarette product" [~~means any device, other than a cigarette or cigar, intended to deliver vapor containing nicotine into a person's respiratory system~~] is as defined in Section ~~{26-55-101}~~ 26-55-102.

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

- (a) a shop;
- (b) a store;
- (c) a factory;
- (d) a public garage;
- (e) an office;
- (f) a theater;
- (g) a recreation hall;
- (h) a dance hall;
- (i) a poolroom;
- (j) a café;
- (k) a cafeteria;
- (l) a cabaret;
- (m) a restaurant;
- (n) a hotel;
- (o) a lodging house;
- (p) a streetcar;
- (q) a bus;
- (r) an interurban or railway passenger coach;
- (s) a waiting room; and

HB0112S01 compared with HB0112

(t) any other place of business.

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

Section ~~{8}~~12. Section **76-10-103** is amended to read:

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

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

Section ~~{9}~~13. Section **76-10-104** is amended to read:

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

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

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

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

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

Section ~~{10}~~14. Section **76-10-105** is amended to read:

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

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

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

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

HB0112S01 compared with HB0112

participation fee.

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

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

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

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

Section ~~{11}~~15. Section **76-10-105.1** is amended to read:

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

(1) As used in this section:

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

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

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

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

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

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

HB0112S01 compared with HB0112

(i) an employee of the retailer; and

(ii) the purchaser.

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

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

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

(a) mail-order sales ~~{ of cigarettes, cigars, cigarette tobacco, pipe tobacco, and smokeless tobacco }~~, if the provisions of Section 59-14-509 are met;

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

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

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

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

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

HB0112S01 compared with HB0112

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

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

- (a) class C misdemeanor on the first offense;
- (b) class B misdemeanor on the second offense; and
- (c) class A misdemeanor on the third and all subsequent offenses.

Section ~~{12}~~16. Section **76-10-111** is amended to read:

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

(1) The Legislature finds that:

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

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

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

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

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

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

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

Section ~~{13}~~17. Section **77-39-101** is amended to read:

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

(1) As used in this section, "electronic cigarette product" is as defined in Section

HB0112S01 compared with HB0112

[~~76-10-104~~] 26-55-102.

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

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

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

(A) a cigar;

(B) a cigarette;

(C) tobacco in any form; or

(D) an electronic cigarette product.

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

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

(i) alcohol; or

(ii) (A) a cigar;

(B) a cigarette;

(C) tobacco in any form; or

(D) an electronic cigarette product.

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

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

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

(i) be a trained volunteer; or

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

(4) The individual requested by the peace officer to attempt a purchase and anyone

HB0112S01 compared with HB0112

accompanying the individual attempting a purchase may not during the attempted purchase misrepresent the age of the individual by false or misleading identification documentation in attempting the purchase.

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

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

(i) on a random basis; and

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

(A) four times for the attempted purchase of:

(I) a cigar;

(II) a cigarette;

(III) tobacco in any form; or

(IV) an electronic cigarette product; and

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

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

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

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

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

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

(i) the name of the supervising peace officer;

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

(iii) a photograph of the individual attempting the purchase showing how that

HB0112S01 compared with HB0112

individual appeared at the time of the attempted purchase;

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

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

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

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Legislative Review Note

~~as of 2-5-14 5:26 PM~~

~~Office of Legislative Research and General Counsel~~