

HB0112S02 compared with HB0112S01

~~text~~ shows text that was in HB0112S01 but was deleted in HB0112S02.

text shows text that was not in HB0112S01 but was inserted into HB0112S02.

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

Highlighted Provisions:

This bill:

- ▶ prohibits a person from selling an electronic cigarette product without a license from the State Tax Commission;
- ▶ prohibits a person from selling an electronic cigarette product that contains nicotine that is not pharmaceutical-grade nicotine;
- ▶ prohibits a person from advertising an electronic cigarette product as a cigarette or tobacco product cessation device;
- ▶ directs the State Tax Commission to issue licenses to sell an electronic cigarette

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product under certain conditions;

- ▶ provides that the State Tax Commission can revoke a person's license to sell an electronic cigarette product if the person sells an electronic cigarette to an individual who is less than 19 years of age;
- ▶ directs the Department of Health to establish quality control and manufacturing standards for electronic cigarette products;
- ▶ 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 }~~ [This bill takes effect on July 1, 2014.](#)

Utah Code Sections Affected:

AMENDS:

[10-8-41.6, as enacted by Laws of Utah 2012, Chapter 154](#)

[17-50-333, as enacted by Laws of Utah 2012, Chapter 154](#)

26-42-102, 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

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

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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

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 10-8-41.6 is amended to read:

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

(1) As used in this section:

(a) "Community location" means:

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

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

(iii) a trade or technical school;

(iv) a church;

(v) a public library;

(vi) a public playground;

(vii) a public park;

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

(ix) a public recreational facility; or

(x) a public arcade.

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

(c) "Retail tobacco specialty business" means a commercial establishment in which:

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

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

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

~~(e)~~ (d) "Tobacco product" means:

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

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

(A) chewing tobacco; or

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

and

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

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

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

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

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

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

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

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

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

(A) agriculture use; or

(B) residential use.

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

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to intervening structures or zoning districts.

(6) (a) Nothing in this section:

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

(ii) prohibits a municipality from adopting more restrictive requirements ~~[on]~~ for a retail tobacco specialty business than provided for in this section.

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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(a) "Community location" means:

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

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

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

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

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

- (i) any cigar ~~;~~ or cigarette ~~;~~ or electronic cigarette as defined in Section 76-10-101;
- (ii) a tobacco product as defined in Section 59-14-102, including:
 - (A) chewing tobacco; or
 - (B) any substitute for a tobacco product, including flavoring or additives to tobacco;

and

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

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

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

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retail tobacco specialty business in a county.

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

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

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

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

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

(6) (a) Nothing in this section:

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

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

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

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

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

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

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

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

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

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

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

Section ~~11~~3. 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) "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 59-14a-103 to sell an electronic cigarette 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 59-14a-103 to sell an electronic cigarette product.

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

Section ~~2~~4. Section **26-42-103** is amended to read:

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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 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, upon receipt of the written notification under Subsection (2), shall take action under Section 59-14-203.5 [~~or~~], 59-14-301.5, or 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 violation under Subsection (1)(c).

(4) When the commission revokes a license under Subsection (3)(b), the commission 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 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

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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}~~5. 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.

Section ~~{4}~~6. 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 ~~{5}~~7. 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:

(i) any device, other than a cigar, cigarette, pipe, hookah, or other heated or lighted

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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) "Manufacture" includes:

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

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

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

Section ~~{6}~~8. Section **26-55-103** is enacted to read:

26-55-103. Electronic cigarettes -- ~~{Prohibition on sale without a license--}~~
{Manufacturing and quality control standards -- Low-grade nicotine -- Advertising.

(1) A person may not sell, offer to sell, or distribute an electronic cigarette product in Utah 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).

(2) A person may not advertise an electronic cigarette product 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}~~9. Section **59-14-509** is amended to read:

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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.

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

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

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

~~(c)~~ (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;

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- (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 ~~{8}~~10. 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}~~11. Section **59-14a-102** is enacted to read:

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}~~12. Section **59-14a-103** is enacted to read:

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

(1) Except as provided in Subsection (2), a person may not sell, offer to sell, or distribute an electronic cigarette 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 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 commission, that includes:

(i) the person's name;

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

and

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

(b) pays a fee:

(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 (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 described in Subsection (3).

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

(a) violates a provision of this chapter;

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

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

(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

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

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

Section ~~{11}~~ 13. 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 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 26-55-102.

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

(a) a shop;

(b) a store;

(c) a factory;

(d) a public garage;

(e) an office;

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- (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
- (t) any other place of business.

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

Section ~~(12)~~ 14. 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 ~~(13)~~ 15. 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.

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(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 ~~{14}~~16. 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 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 ~~{15}~~17. 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.

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(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:

- (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, 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

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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 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 ~~4-16~~18. 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

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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 ~~{17}~~19. 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 ~~[76-10-101]~~ 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;

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- (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 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.

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(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 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.

Section 20. Effective date.

This bill takes effect on July 1, 2014.