

Senator Allen M. Christensen 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 Code to modify and add provisions related to electronic cigarettes.

Highlighted Provisions:

This bill:

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



26 ▶ prohibits a business owner from allowing a minor to use an electronic cigarette in
27 the business;

28 ▶ prohibits an individual who is less than 19 years of age from buying, attempting to
29 buy, or possessing an electronic cigarette product; and

30 ▶ makes technical and conforming amendments.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 This bill takes effect on July 1, 2014.

35 **Utah Code Sections Affected:**

36 AMENDS:

37 10-8-41.6, as enacted by Laws of Utah 2012, Chapter 154

38 17-50-333, as enacted by Laws of Utah 2012, Chapter 154

39 26-42-102, as enacted by Laws of Utah 1998, Chapter 319

40 26-42-103, as last amended by Laws of Utah 2011, Chapter 96

41 26-42-106, as enacted by Laws of Utah 1998, Chapter 319

42 76-10-101, as last amended by Laws of Utah 2010, Chapter 114

43 76-10-103, as enacted by Laws of Utah 1973, Chapter 196

44 76-10-104, as last amended by Laws of Utah 2010, Chapter 114

45 76-10-105, as last amended by Laws of Utah 2010, Chapter 114

46 76-10-105.1, as last amended by Laws of Utah 2010, Chapter 114

47 76-10-111, as last amended by Laws of Utah 2010, Chapter 114

48 77-39-101, as last amended by Laws of Utah 2010, Chapters 114 and 276

49 ENACTS:

50 26-55-101, Utah Code Annotated 1953

51 26-55-102, Utah Code Annotated 1953

52 26-55-103, Utah Code Annotated 1953

53 59-14a-101, Utah Code Annotated 1953

54 59-14a-102, Utah Code Annotated 1953

55 59-14a-103, Utah Code Annotated 1953

56

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

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

59 **10-8-41.6. Regulation of retail tobacco specialty business.**

60 (1) As used in this section:

61 (a) "Community location" means:

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

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

64 (iii) a trade or technical school;

65 (iv) a church;

66 (v) a public library;

67 (vi) a public playground;

68 (vii) a public park;

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

70 (ix) a public recreational facility; or

71 (x) a public arcade.

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

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

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

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

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

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

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

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

84 (A) chewing tobacco; or

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

86 and

87 (iii) tobacco paraphernalia as defined in Section [76-10-104.1](#).

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

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

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

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

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

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

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

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

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

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

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

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

117 (ii) if a licensee violates the regulations restricting the sale and distribution of
118 cigarettes and smokeless tobacco to protect children and adolescents issued by the United

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

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

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

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

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

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

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

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

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

137 **17-50-333. Regulation of retail tobacco specialty business.**

138 (1) As used in this section:

139 (a) "Community location" means:

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

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

142 (iii) a trade or technical school;

143 (iv) a church;

144 (v) a public library;

145 (vi) a public playground;

146 (vii) a public park;

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

148 (ix) a public recreational facility; or

149 (x) a public arcade.

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

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

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

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

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

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

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

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

162 (A) chewing tobacco; or

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

164 and

165 (iii) tobacco paraphernalia as defined in Section [76-10-104.1](#).

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

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

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

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

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

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

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

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

181 (A) agriculture use; or

182 (B) residential use.

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

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

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

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

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

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

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

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

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

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

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

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

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

210 (iv) the retail tobacco specialty business maintains the right to operate under the terms
211 of other applicable laws, including zoning ordinances, building codes, and the business license

212 issued prior to May 8, 2012.

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

214 **26-42-102. Definitions.**

215 As used in this chapter:

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

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

218 ~~(2)~~ (3) "Employee" means an employee of a licensee.

219 ~~(3)~~ (4) "Enforcing agency" means the state Department of Health, or any local health

220 department enforcing the provisions of this chapter.

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

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

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

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

225 ~~(4)~~ (6) "Licensee" means a person licensed under:

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

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

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

229 ~~(6)~~ (7) "Tobacco" means cigarettes or tobacco products as defined in Section

230 [59-14-102](#).

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

232 **26-42-103. Violations and penalties -- Imposition by enforcing agency and tax**
233 **commission.**

234 (1) If, following an investigation or issuance of a citation or information under Section

235 [77-39-101](#), an enforcing agency determines under Section [26-42-104](#) that a licensee or any

236 employee has sold tobacco or an electronic cigarette product to a person younger than 19 years

237 of age, as prohibited by Section [76-10-104](#), the enforcing agency may impose upon the licensee

238 the following administrative penalties:

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

240 (b) upon a second violation at the same retail location, and within 12 months of the

241 first violation, a penalty of not more than \$750; and

242 (c) upon a third or subsequent violation at the same retail location and within 12

243 months of the first violation, a penalty of not more than \$1,000.

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

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

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

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

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

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

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

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

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

267 **26-42-106. Recognition of licensee's training program.**

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

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

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

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

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

284 Section 6. Section **26-55-101** is enacted to read:

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

286 **26-55-101. Title.**

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

288 Section 7. Section **26-55-102** is enacted to read:

289 **26-55-102. Definitions.**

290 As used in this chapter:

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

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

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

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

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

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

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

303 (5) "Manufacture" includes:

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

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

306 (6) "Pharmaceutical-grade nicotine" means nicotine that meets the specifications of the

307 United States Pharmacopeia for food-grade or pharmaceutical-grade nicotine.

308 Section 8. Section **26-55-103** is enacted to read:

309 **26-55-103. Electronic cigarette products -- Labeling -- Manufacturing and quality**
310 **control standards -- Low-grade nicotine -- Advertising.**

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

312 unless the electronic cigarette product has a label that includes the electronic cigarette

313 product's:

314 (a) manufacturer name;

315 (b) ingredients; and

316 (c) nicotine content.

317 (2) A person may not sell, offer to sell, or distribute an electronic cigarette substance

318 unless the electronic cigarette substance is sold in a container with a child proof cap.

319 (3) A person may not sell, offer to sell, or distribute an electronic cigarette product that

320 contains nicotine that is not pharmaceutical-grade nicotine.

321 (4) A person may not manufacture an electronic cigarette substance in Utah unless the

322 person registers with a local or county health department as an electronic cigarette substance

323 manufacturer.

324 (5) A person may not advertise an electronic cigarette product as a cigarette or tobacco

325 cessation device.

326 Section 9. Section **59-14a-101** is enacted to read:

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

328 **59-14a-101. Title.**

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

330 Section 10. Section **59-14a-102** is enacted to read:

331 **59-14a-102. Definitions.**

332 As used in this chapter:

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

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

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

336 tobacco product, used to deliver or intended to deliver vapor containing nicotine to an
337 individual's respiratory system; or

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

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

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

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

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

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

349 Section 11. Section **59-14a-103** is enacted to read:

350 **59-14a-103. Electronic cigarette licenses -- Sale.**

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

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

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

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

360 (i) the person's name;

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

362 and

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

364 (b) pays a fee:

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

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

- 367 (4) A license described in Subsection (3) is:
368 (a) valid only at one business address;
369 (b) valid for three years; and
370 (c) renewable if a licensee meets the criteria for licensing described in Subsection (3).
371 (5) The commission may, after notifying a licensee and holding a hearing, revoke a
372 license described in Subsection (3) if the licensee violates a provision of:
373 (a) this chapter;
374 (b) Chapter 14, Cigarette and Tobacco Tax Licensing Act; or
375 (c) Section [26-42-103](#).
376 (6) If the commission revokes a person's license to sell an electronic cigarette product
377 under Subsection (5), the commission may not issue a license to sell an electronic cigarette
378 product, a license to sell cigarettes under Section [59-14-202](#), or a license to sell tobacco under
379 Section [59-14-301](#) to the person until one year after:
380 (a) the day on which the time for filing an appeal of the revocation ends, as determined
381 by the commission; or
382 (b) if the person appeals the commission's decision to revoke the license to sell an
383 electronic cigarette product, the day on which the commission's decision to uphold the
384 revocation is final.
385 (7) The commission may make rules in accordance with Title 63G, Chapter 3, Utah
386 Administrative Rulemaking Act, to establish the additional information described in
387 Subsection (3)(a)(iii) that a person must provide in the application described in Subsection
388 (3)(a).
389 (8) The commission shall maintain a list of all licensees.
390 Section 12. Section **76-10-101** is amended to read:
391 **76-10-101. Definitions.**
392 As used in this part:
393 (1) "Cigar" means a product that contains nicotine, is intended to be burned under
394 ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in
395 any substance containing tobacco, other than any roll of tobacco that is a cigarette as described
396 in Subsection (2).
397 (2) "Cigarette" means a product that contains nicotine, is intended to be burned under

398 ordinary conditions of use, and consists of:

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

400 (b) any roll of tobacco wrapped in any substance containing tobacco which, because of

401 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to

402 be offered to, or purchased by, consumers as a cigarette described in Subsection (2)(a).

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

404 [~~(3)~~] (4) "Electronic cigarette product" [~~means any device, other than a cigarette or~~
405 ~~cigar, intended to deliver vapor containing nicotine into a person's respiratory system~~] is as

406 defined in Section [26-55-102](#).

407 [~~(4)~~] (5) "Place of business" includes:

408 (a) a shop;

409 (b) a store;

410 (c) a factory;

411 (d) a public garage;

412 (e) an office;

413 (f) a theater;

414 (g) a recreation hall;

415 (h) a dance hall;

416 (i) a poolroom;

417 (j) a café;

418 (k) a cafeteria;

419 (l) a cabaret;

420 (m) a restaurant;

421 (n) a hotel;

422 (o) a lodging house;

423 (p) a streetcar;

424 (q) a bus;

425 (r) an interurban or railway passenger coach;

426 (s) a waiting room; and

427 (t) any other place of business.

428 [~~(5)~~] (6) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other

429 lighted smoking equipment.

430 Section 13. Section **76-10-103** is amended to read:

431 **76-10-103. Permitting minors to use tobacco or an electronic cigarette product in**
432 **place of business.**

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

437 Section 14. Section **76-10-104** is amended to read:

438 **76-10-104. Providing a cigar, cigarette, electronic cigarette, or tobacco to a minor**
439 **-- Penalties.**

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

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

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

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

451 Section 15. Section **76-10-105** is amended to read:

452 **76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco**
453 **by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.**

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

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

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

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

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

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

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

470 Section 16. Section **76-10-105.1** is amended to read:

471 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products and**
472 **electronic cigarettes -- Supremacy clause -- Penalties.**

473 (1) As used in this section:

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

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

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

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

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

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

490 (i) an employee of the retailer; and

491 (ii) the purchaser.

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

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

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

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

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

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

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

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

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

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

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

525 Section 17. Section **76-10-111** is amended to read:

526 **76-10-111. Prohibition of gift or free distribution of smokeless tobacco or**
527 **electronic cigarette products -- Exceptions.**

528 (1) The Legislature finds that:

- 529 (a) smokeless tobacco, or chewing tobacco, is harmful to the health of individuals who
- 530 use those products because research indicates that they may cause mouth or oral cancers;
- 531 (b) the use of smokeless tobacco among juveniles in this state is increasing rapidly;
- 532 (c) the use of electronic [~~cigarettes~~] cigarette products may lead to unhealthy behavior
- 533 such as the use of tobacco products; and
- 534 (d) it is necessary to restrict the gift of the products described in this Subsection (1) in
- 535 the interest of the health of the citizens of this state.

536 (2) Except as provided in Subsection (3), it is unlawful for a manufacturer, wholesaler,

537 and retailer to give or distribute without charge any smokeless tobacco, chewing tobacco, or

538 electronic cigarette product in this state. Any person who violates this section is guilty of a

539 class C misdemeanor for the first offense, and is guilty of a class B misdemeanor for any

540 subsequent offense.

541 (3) (a) Smokeless tobacco, chewing tobacco, or an electronic cigarette product may be

542 distributed to adults without charge at professional conventions where the general public is

543 excluded.

544 (b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who gives

545 smokeless tobacco, chewing tobacco, or an electronic cigarette product to a person of legal age

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

547 Section 18. Section **77-39-101** is amended to read:

548 **77-39-101. Investigation of sales of alcohol, tobacco, and electronic cigarettes to**
549 **underage persons.**

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

551 [~~76-10-101~~] [26-55-102](#).

552 (2) (a) A peace officer, as defined by Title 53, Chapter 13, Peace Officer

553 Classifications, may investigate the possible violation of:

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

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

558 (A) a cigar;

559 (B) a cigarette;

560 (C) tobacco in any form; or

561 (D) an electronic cigarette product.

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

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

567 (i) alcohol; or

568 (ii) (A) a cigar;

569 (B) a cigarette;

570 (C) tobacco in any form; or

571 (D) an electronic cigarette product.

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

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

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

578 (i) be a trained volunteer; or

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

581 (4) The individual requested by the peace officer to attempt a purchase and anyone
582 accompanying the individual attempting a purchase may not during the attempted purchase
583 misrepresent the age of the individual by false or misleading identification documentation in

584 attempting the purchase.

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

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

591 (i) on a random basis; and

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

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

595 (I) a cigar;

596 (II) a cigarette;

597 (III) tobacco in any form; or

598 (IV) an electronic cigarette product; and

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

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

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

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

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

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

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

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

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

614 (iv) the name and description of the cashier or proprietor from whom the individual

615 attempted the purchase;

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

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

618 Section 19. **Effective date.**

619 This bill takes effect on July 1, 2014.