

Senator Curtis S. Bramble proposes the following substitute bill:

REGULATION OF ELECTRONIC CIGARETTES

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill amends the Utah Code to modify and add provisions related to electronic cigarettes.

Highlighted Provisions:

This bill:

- ▶ prohibits a person from selling an electronic cigarette product without a license from the State Tax Commission;
- ▶ directs the State Tax Commission to issue licenses to sell an electronic cigarette product under certain conditions;
- ▶ provides that the State Tax Commission can revoke a person's license to sell an electronic cigarette product if the person sells an electronic cigarette to an individual who is less than 19 years of age;
- ▶ prohibits a business owner from allowing a minor to use an electronic cigarette in the business;
- ▶ prohibits 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:



26 None

27 **Other Special Clauses:**

28 This bill takes effect on July 1, 2014.

29 **Utah Code Sections Affected:**

30 AMENDS:

- 31 **10-8-41.6**, as enacted by Laws of Utah 2012, Chapter 154
- 32 **17-50-333**, as enacted by Laws of Utah 2012, Chapter 154
- 33 **26-42-102**, as enacted by Laws of Utah 1998, Chapter 319
- 34 **26-42-103**, as last amended by Laws of Utah 2011, Chapter 96
- 35 **26-42-106**, as enacted by Laws of Utah 1998, Chapter 319
- 36 **76-10-101**, as last amended by Laws of Utah 2010, Chapter 114
- 37 **76-10-103**, as enacted by Laws of Utah 1973, Chapter 196
- 38 **76-10-104**, as last amended by Laws of Utah 2010, Chapter 114
- 39 **76-10-105**, as last amended by Laws of Utah 2010, Chapter 114
- 40 **76-10-105.1**, as last amended by Laws of Utah 2010, Chapter 114
- 41 **76-10-111**, as last amended by Laws of Utah 2010, Chapter 114
- 42 **77-39-101**, as last amended by Laws of Utah 2010, Chapters 114 and 276

43 ENACTS:

- 44 **59-14a-101**, Utah Code Annotated 1953
- 45 **59-14a-102**, Utah Code Annotated 1953
- 46 **59-14a-103**, Utah Code Annotated 1953



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

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

50 **10-8-41.6. Regulation of retail tobacco specialty business.**

51 (1) As used in this section:

52 (a) "Community location" means:

- 53 (i) a public or private kindergarten, elementary, middle, junior high, or high school;
- 54 (ii) a licensed child-care facility or preschool;
- 55 (iii) a trade or technical school;
- 56 (iv) a church;

- 57 (v) a public library;
- 58 (vi) a public playground;
- 59 (vii) a public park;
- 60 (viii) a youth center or other space used primarily for youth oriented activities;
- 61 (ix) a public recreational facility; or
- 62 (x) a public arcade.
- 63 (b) "Electronic cigarette product" is as defined in Section [26-55-102](#).
- 64 ~~(b)~~ (c) "Retail tobacco specialty business" means a commercial establishment in
- 65 which:
- 66 (i) the sale of tobacco products and electronic cigarette products accounts for more
- 67 than 35% of the total annual gross receipts for the establishment;
- 68 (ii) food and beverage products, excluding gasoline sales, is less than 45% of the total
- 69 annual gross receipts for the establishment; and
- 70 (iii) the establishment is not licensed as a pharmacy under Title 58, Chapter 17b,
- 71 Pharmacy Practice Act.
- 72 ~~(c)~~ (d) "Tobacco product" means:
- 73 (i) any cigar~~;~~ or cigarette~~;~~ ~~or electronic cigarette~~ as defined in Section [76-10-101](#);
- 74 (ii) a tobacco product as defined in Section [59-14-102](#), including:
- 75 (A) chewing tobacco; or
- 76 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;
- 77 and
- 78 (iii) tobacco paraphernalia as defined in Section [76-10-104.1](#).
- 79 (2) The regulation of a retail tobacco specialty business is an exercise of the police
- 80 powers of the state, and through delegation, to other governmental entities.
- 81 (3) (a) Except as provided in Subsection (7), and beginning July 1, 2012, a
- 82 municipality shall require an entity to be licensed as a retail tobacco specialty business to
- 83 conduct business as a retail tobacco specialty business in a municipality.
- 84 (b) A municipality may issue a retail tobacco specialty business license to an entity if
- 85 the entity complies with the provisions of Subsection (5).
- 86 (4) Except as provided in Subsection (7), and beginning July 1, 2012, a business entity
- 87 that conducts a retail tobacco specialty business in a municipality shall be licensed by the

88 municipality as a retail tobacco specialty business.

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

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

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

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

94 (A) agriculture use; or

95 (B) residential use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

128 **17-50-333. Regulation of retail tobacco specialty business.**

129 (1) As used in this section:

130 (a) "Community location" means:

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

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

133 (iii) a trade or technical school;

134 (iv) a church;

135 (v) a public library;

136 (vi) a public playground;

137 (vii) a public park;

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

139 (ix) a public recreational facility; or

140 (x) a public arcade.

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

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

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

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

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

150 [(e)] (d) "Tobacco product" means:

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

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

153 (A) chewing tobacco; or

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

155 and

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

157 (2) The regulation of a retail tobacco specialty business is an exercise of the police

158 powers of the state, and through delegation, to other governmental entities.

159 (3) (a) Except as provided in Subsection (7), and beginning July 1, 2012, a county shall

160 require an entity to be licensed as a retail tobacco specialty business to conduct business as a

161 retail tobacco specialty business in a county.

162 (b) A county may issue a retail tobacco specialty business license to an entity if the

163 entity complies with the provisions of Subsection (5).

164 (4) Except as provided in Subsection (7), and beginning July 1, 2012, a business entity

165 that conducts a retail tobacco specialty business in a county shall be licensed by the county as a

166 retail tobacco specialty business.

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

168 located within:

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

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

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

172 (A) agriculture use; or

173 (B) residential use.

174 (b) For purposes of Subsection (5)(a), the proximity requirements shall be measured in

175 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest

176 property boundary of the community location, or agricultural or residential use, without regard

177 to intervening structures or zoning districts.

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

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

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

181 tobacco specialty business than provided for in this section.

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

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

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

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

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

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

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

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

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

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

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

205 **26-42-102. Definitions.**

206 As used in this chapter:

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

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

209 [~~2~~] (3) "Employee" means an employee of a licensee.

210 [~~3~~] (4) "Enforcing agency" means the state Department of Health, or any local health
211 department enforcing the provisions of this chapter.

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

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

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

215 (c) Section 59-14a-103 to sell an electronic cigarette product.

216 [~~(4)~~] (6) "Licensee" means a person licensed under:

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

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

219 (c) Section 59-14a-103 to sell an electronic cigarette product.

220 [~~(6)~~] (7) "Tobacco" means cigarettes or tobacco products as defined in Section

221 59-14-102.

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

223 **26-42-103. Violations and penalties -- Imposition by enforcing agency and tax**
224 **commission.**

225 (1) If, following an investigation or issuance of a citation or information under Section
226 77-39-101, an enforcing agency determines under Section 26-42-104 that a licensee or any
227 employee has sold tobacco or an electronic cigarette product to a person younger than 19 years
228 of age, as prohibited by Section 76-10-104, the enforcing agency may impose upon the licensee
229 the following administrative penalties:

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

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

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

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

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

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

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

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

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

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

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

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

258 **26-42-106. Recognition of licensee's training program.**

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

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

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

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

271 (b) If the hearing officer determines at a subsequent hearing that the licensee has not
272 implemented the training program within the time period required under Subsection (2)(a), the
273 suspended monetary penalty shall be promptly imposed, unless the licensee demonstrates good

274 cause for granting an extension of time for implementation of the training program.

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

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

277 **59-14a-101. Title.**

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

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

280 **59-14a-102. Definitions.**

281 As used in this chapter:

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

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

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

285 tobacco product, used to deliver or intended to deliver vapor containing nicotine to an

286 individual's respiratory system; or

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

288 Subsection (2)(a)(i);

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

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

291 cigarette substance.

292 (4) "Electronic cigarette substance" means any substance, including liquid containing

293 nicotine, used or intended for use in an electronic cigarette.

294 (5) "Enforcing agency" means the Department of Health, a county health department,

295 or a local health department, when enforcing Title 26, Chapter 42, Civil Penalties for Tobacco

296 Sales to Underage Persons.

297 (6) "License to sell an electronic cigarette product" means a license issued by the

298 commission under Subsection [59-14a-103](#)(3).

299 (7) "Licensee" means a person that holds a valid license to sell electronic cigarette

300 products.

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

302 **59-14a-103. Electronic cigarette licenses -- Sale.**

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

304 distribute an electronic cigarette product in Utah without first obtaining a license to sell an

305 electronic cigarette product from the commission under this section.

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

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

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

312 (i) the person's name;

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

314 and

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

316 (b) pays a fee:

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

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

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

320 (a) valid only at one business address;

321 (b) valid for three years; and

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

323 (5) The commission shall, after notifying a licensee, revoke a license described in
324 Subsection (3) if an enforcing agency determines the licensee has violated a provision of Title
325 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons.

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

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

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

335 (7) The commission may make rules in accordance with Title 63G, Chapter 3, Utah

336 Administrative Rulemaking Act, to establish the additional information described in
337 Subsection (3)(a)(iii) that a person must provide in the application described in Subsection
338 (3)(a).

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

340 Section 9. Section **76-10-101** is amended to read:

341 **76-10-101. Definitions.**

342 As used in this part:

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

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

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

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

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

354 ~~[(3)]~~ (4) "Electronic cigarette product" ~~[means any device, other than a cigarette or~~
355 ~~cigar, intended to deliver vapor containing nicotine into a person's respiratory system]~~ is as
356 defined in Section [26-55-102](#).

357 ~~[(4)]~~ (5) "Place of business" includes:

358 (a) a shop;

359 (b) a store;

360 (c) a factory;

361 (d) a public garage;

362 (e) an office;

363 (f) a theater;

364 (g) a recreation hall;

365 (h) a dance hall;

366 (i) a poolroom;

- 367 (j) a café;
- 368 (k) a cafeteria;
- 369 (l) a cabaret;
- 370 (m) a restaurant;
- 371 (n) a hotel;
- 372 (o) a lodging house;
- 373 (p) a streetcar;
- 374 (q) a bus;
- 375 (r) an interurban or railway passenger coach;
- 376 (s) a waiting room; and
- 377 (t) any other place of business.

378 ~~[(5)]~~ (6) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other
379 lighted smoking equipment.

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

381 **76-10-103. Permitting minors to use tobacco or an electronic cigarette product in**
382 **place of business.**

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

387 Section 11. Section **76-10-104** is amended to read:

388 **76-10-104. Providing a cigar, cigarette, electronic cigarette, or tobacco to a minor**
389 **-- Penalties.**

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

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

- 396 (a) includes selling, giving, furnishing, sending, or causing to be sent; and
- 397 (b) does not include the acts of the United States Postal Service or other common

398 carrier when engaged in the business of transporting and delivering packages for others or the
399 acts of a person, whether compensated or not, who transports or delivers a package for another
400 person without any reason to know of the package's content.

401 Section 12. Section **76-10-105** is amended to read:

402 **76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco**
403 **by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.**

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

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

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

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

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

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

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

420 Section 13. Section **76-10-105.1** is amended to read:

421 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products and**
422 **electronic cigarettes -- Supremacy clause -- Penalties.**

423 (1) As used in this section:

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

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

428 (c) "Retailer" means a person who sells cigarettes, electronic ~~[cigarettes]~~ cigarette

429 products, cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco to individuals for
430 personal consumption or who operates a facility where a vending machine or a self-service
431 display is permitted under Subsection (3)(b).

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

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

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

440 (i) an employee of the retailer; and

441 (ii) the purchaser.

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

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

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

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

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

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

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

460 subdivision of the state or by a state agency that affects the sale, placement, or display of
461 cigarettes, [~~electronic cigarettes~~], cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco
462 that is not essentially identical to the provisions of this section and Section 76-10-102 is
463 superseded.

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

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

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

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

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

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

475 Section 14. Section 76-10-111 is amended to read:

476 **76-10-111. Prohibition of gift or free distribution of smokeless tobacco or**
477 **electronic cigarette products -- Exceptions.**

478 (1) The Legislature finds that:

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

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

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

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

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

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

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

497 Section 15. Section ~~77-39-101~~ is amended to read:

498 **77-39-101. Investigation of sales of alcohol, tobacco, and electronic cigarettes to**
499 **underage persons.**

500 (1) As used in this section, "electronic cigarette product" is as defined in Section
501 ~~[76-10-101]~~ 26-55-102.

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

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

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

508 (A) a cigar;

509 (B) a cigarette;

510 (C) tobacco in any form; or

511 (D) an electronic cigarette product.

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

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

517 (i) alcohol; or

518 (ii) (A) a cigar;

519 (B) a cigarette;

520 (C) tobacco in any form; or

521 (D) an electronic cigarette product.

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

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

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

528 (i) be a trained volunteer; or

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

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

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

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

541 (i) on a random basis; and

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

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

545 (I) a cigar;

546 (II) a cigarette;

547 (III) tobacco in any form; or

548 (IV) an electronic cigarette product; and

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

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

551 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a
552 cigar, a cigarette, tobacco in any form, or an electronic cigarette product to an individual under

553 the age established by Section 32B-4-403 or 76-10-104; and

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

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

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

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

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

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

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

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

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

568 Section 16. **Effective date.**

569 This bill takes effect on July 1, 2014.