

AGE LIMIT FOR TOBACCO AND RELATED PRODUCTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stuart C. Reid

House Sponsor: Kraig Powell

LONG TITLE

Committee Note:

The Health and Human Services Interim Committee recommended this bill.

10 General Description:

This bill amends provisions of the Utah Code regarding the age limit corresponding with tobacco and related products.

13 Highlighted Provisions:

14 This bill:

- 15 ▶ prohibits the possession of tobacco, e-cigarettes, or paraphernalia by an individual
 - 16 less than 21 years of age;
 - 17 ▶ prohibits the distribution or sale of tobacco, e-cigarettes, or paraphernalia to an
 - 18 individual less than 21 years of age;
 - 19 ▶ prohibits a person less than 21 years of age from being present at certain
 - 20 establishments where tobacco, e-cigarettes, or paraphernalia are sold or used;
 - 21 ▶ prohibits a proprietor of a business from allowing an individual less than 21 years of
 - 22 age to frequent the business while the individual is using tobacco;
 - 23 ▶ addresses the investigation and enforcement of the provisions of this bill; and
 - 24 ▶ makes technical and conforming amendments.

25 Money Appropriated in this Bill:

26 None

27 Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **10-8-47**, as last amended by Laws of Utah 2012, Chapter 140

32 **26-38-2.6**, as enacted by Laws of Utah 2012, Chapter 171

33 **26-42-103**, as last amended by Laws of Utah 2011, Chapter 96

34 **51-9-203**, as last amended by Laws of Utah 2012, Chapter 242

35 **53-3-207**, as last amended by Laws of Utah 2013, Chapter 278

36 **53-3-806**, as last amended by Laws of Utah 2010, Chapter 276

37 **59-14-203.5**, as last amended by Laws of Utah 2011, Chapter 96

38 **59-14-301.5**, as last amended by Laws of Utah 2011, Chapter 96

39 **76-10-103**, as enacted by Laws of Utah 1973, Chapter 196

40 **76-10-104**, as last amended by Laws of Utah 2010, Chapter 114

41 **76-10-104.1**, as last amended by Laws of Utah 2013, Chapter 278

42 **76-10-105**, as last amended by Laws of Utah 2010, Chapter 114

43 **76-10-105.1**, as last amended by Laws of Utah 2010, Chapter 114

44 **76-10-112**, as enacted by Laws of Utah 1989, Chapter 193

45 **77-39-101**, as last amended by Laws of Utah 2010, Chapters 114 and 276

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

48 Section 1. Section **10-8-47** is amended to read:

49 **10-8-47. Intoxication -- Fights -- Disorderly conduct -- Assault and battery -- Petit
50 larceny -- Riots and disorderly assemblies -- Firearms and fireworks -- False pretenses
51 and embezzlement -- Sale of liquor, narcotics, or tobacco to minors -- Possession of
52 controlled substances -- Treatment of alcoholics and narcotics or drug addicts.**

53 A [municipal legislative body] municipality may:

54 (1) prevent intoxication, fighting, quarreling, dog fights, cockfights, prize fights,
55 bullfights, and all disorderly conduct [and];

56 (2) provide against and punish the offenses of assault and battery and petit larceny; [the
57 municipal legislative body may]

58 (3) restrain riots, routs, noises, disturbances, or disorderly assemblies in any street,

59 house, or place in the city; [the municipal legislative body may]

60 (4) regulate and prevent the discharge of firearms, rockets, powder, fireworks, or any
61 other dangerous or combustible material; [the municipal legislative body may]

62 (5) provide against and prevent the offense of obtaining money or property under false
63 pretenses and the offense of embezzling money or property in all cases where the money or
64 property embezzled or obtained under false pretenses does not exceed in value the sum of \$500
65 [and may];

66 (6) prohibit the sale, giving away, or furnishing of narcotics, alcoholic beverages to a
67 person younger than 21 years of age, or tobacco to any person younger than [+] 21 years of
68 age; [cities may, by ordinance;]

69 (7) prohibit the possession of controlled substances as defined in [the] Title 58,
70 Chapter 37, Utah Controlled Substances Act, or any other endangering or impairing substance,
71 provided the conduct is not a class A misdemeanor or felony[;]; and

72 (8) provide for treatment of alcoholics, narcotic addicts and other persons who are
73 addicted to the use of drugs or intoxicants such that a person substantially lacks the capacity to
74 control the person's use of the drugs or intoxicants, and judicial supervision may be imposed as
75 a means of effecting their rehabilitation.

76 Section 2. Section **26-38-2.6** is amended to read:

77 **26-38-2.6. Temporary exemption for certain restrictions on the use of**
78 **e-cigarettes.**

79 (1) The prohibition against the use of an e-cigarette in a place of public access does not
80 apply if:

81 (a) the use of the e-cigarette occurs in the place of public access that is a retail
82 establishment that sells e-cigarettes and the use is for the purpose of:

83 (i) the retailer of an e-cigarette demonstrating to the purchaser of the e-cigarette how to
84 use the e-cigarette; or

85 (ii) the customer sampling a product sold by the retailer for use in an e-cigarette; and

86 (b) the retailer of e-cigarettes:

87 (i) has all required licenses for the possession and sale of e-cigarettes in a place of
88 business;

89 (ii) does not permit a person under the age of [+] 21 to enter any part of the premises

90 of the retail establishment in which the e-cigarettes are sold; and
91 (iii) the sale of e-cigarettes and substances for use in e-cigarettes constitutes at least
92 75% of the establishment's gross sales.

93 (2) This section does not require a county or municipality to issue a license to a person
94 to sell e-cigarettes.

95 (3) This section sunsets in accordance with Section [63I-1-226](#).

96 Section 3. Section **26-42-103** is amended to read:

97 **26-42-103. Violations and penalties -- Imposition by enforcing agency and tax
98 commission.**

99 (1) If, following an investigation or issuance of a citation or information under Section
100 [77-39-101](#), an enforcing agency determines under Section [26-42-104](#) that a licensee or any
101 employee has sold tobacco to a person younger than [+] 21 years of age, as prohibited by
102 Section [76-10-104](#), the enforcing agency may impose upon the licensee the following
103 administrative penalties:

- 104 (a) upon the first violation, a penalty of not more than \$300;
105 (b) upon a second violation at the same retail location, and within 12 months of the
106 first violation, a penalty of not more than \$750; and
107 (c) upon a third or subsequent violation at the same retail location and within 12
108 months of the first violation, a penalty of not more than \$1,000.

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

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

- 113 (a) by suspending the licensee's license to sell tobacco at that location for not more
114 than 30 days, upon receipt of notification of a third violation under Subsection (1)(c); and
115 (b) by revoking the license to sell tobacco at that location held by the licensee,
116 including any license under suspension, upon receipt of notification of a fourth violation under
117 Subsection (1)(c).

118 (4) When the commission revokes a license under Subsection (3)(b), the commission
119 may not issue to the licensee, or to the business entity using the license that is revoked, a
120 license under Section [59-14-202](#) or [59-14-301](#) to sell tobacco at the location for which the

121 license was issued for one year after:

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

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

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

129 Section 4. Section **51-9-203** is amended to read:

130 **51-9-203. Requirements for tobacco programs.**

131 (1) To be eligible to receive funding under this part for a tobacco prevention, reduction,
132 cessation, or control program, an organization, whether private, governmental, or
133 quasi-governmental, shall:

134 (a) submit a request to the Department of Health containing the following information:

135 (i) for media campaigns to prevent or reduce smoking, the request shall demonstrate
136 sound management and periodic evaluation of the campaign's relevance to the intended
137 audience, particularly in campaigns directed toward youth, including audience awareness of the
138 campaign and recollection of the main message;

139 (ii) for school-based education programs to prevent and reduce youth smoking, the
140 request shall describe how the program will be effective in preventing and reducing youth
141 smoking;

142 (iii) for community-based programs to prevent and reduce smoking, the request shall
143 demonstrate that the proposed program:

144 (A) has a comprehensive strategy with a clear mission and goals;

145 (B) provides for committed, caring, and professional leadership; and

146 (C) if directed toward youth:

147 (I) offers youth-centered activities in youth accessible facilities;

148 (II) is culturally sensitive, inclusive, and diverse;

149 (III) involves youth in the planning, delivery, and evaluation of services that affect
150 them; and

151 (IV) offers a positive focus that is inclusive of all youth; and

152 (iv) for enforcement, control, and compliance program, the request shall demonstrate
153 that the proposed program can reasonably be expected to reduce the extent to which tobacco
154 products are available to individuals under the age of [+] 21;

155 (b) agree, by contract, to file an annual written report with the Department of Health.

156 The report shall contain the following:

157 (i) the amount funded;

158 (ii) the amount expended;

159 (iii) a description of the program or campaign and the number of adults and youth who
160 participated;

161 (iv) specific elements of the program or campaign meeting the applicable criteria set
162 forth in Subsection (1)(a); and

163 (v) a statement concerning the success and effectiveness of the program or campaign;

164 (c) agree, by contract, to not use any funds received under this part directly or
165 indirectly, to:

166 (i) engage in any lobbying or political activity, including the support of, or opposition
167 to, candidates, ballot questions, referenda, or similar activities; or

168 (ii) engage in litigation with any tobacco manufacturer, retailer, or distributor, except to
169 enforce:

170 (A) the provisions of the Master Settlement Agreement;

171 (B) Title 26, Chapter 38, Utah Indoor Clean Air Act;

172 (C) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to [Underaged] Underage
173 Persons; and

174 (D) Title 77, Chapter 39, Sale of Tobacco [and] or Alcohol to [Underaged] Under Age
175 Persons; and

176 (d) agree, by contract, to repay the funds provided under this part if the organization:

177 (i) fails to file a timely report as required by Subsection (1)(b); or

178 (ii) uses any portion of the funds in violation of Subsection (1)(c).

179 (2) The Department of Health shall review and evaluate the success and effectiveness
180 of any program or campaign that receives funding pursuant to a request submitted under
181 Subsection (1). The review and evaluation:

182 (a) shall include a comparison of annual smoking trends;

183 (b) may be conducted by an independent evaluator; and
184 (c) may be paid for by funds appropriated from the account for that purpose.
185 (3) The Department of Health shall annually report to the Social Services
186 Appropriations Subcommittee on the reviews conducted pursuant to Subsection (2).
187 (4) An organization that fails to comply with the contract requirements set forth in
188 Subsection (1) shall:
189 (a) repay the state as provided in Subsection (1)(d); and
190 (b) be disqualified from receiving funds under this part in any subsequent fiscal year.
191 (5) The attorney general shall be responsible for recovering funds that are required to
192 be repaid to the state under this section.
193 (6) Nothing in this section may be construed as applying to funds that are not
194 appropriated under this part.

195 Section 5. Section **53-3-207** is amended to read:

196 **53-3-207. License certificates or driving privilege cards issued to drivers by class**
197 **of motor vehicle -- Contents -- Release of anatomical gift information -- Temporary**
198 **licenses or driving privilege cards -- Minors' licenses, cards, and permits -- Violation.**

199 (1) As used in this section:

200 (a) "driving privilege" means the privilege granted under this chapter to drive a motor
201 vehicle;

202 (b) "governmental entity" means the state and its political subdivisions as defined in
203 this Subsection (1);

204 (c) "political subdivision" means any county, city, town, school district, public transit
205 district, community development and renewal agency, special improvement or taxing district,
206 local district, special service district, an entity created by an interlocal agreement adopted under
207 Title 11, Chapter 13, Interlocal Cooperation Act, or other governmental subdivision or public
208 corporation; and

209 (d) "state" means this state, and includes any office, department, agency, authority,
210 commission, board, institution, hospital, college, university, children's justice center, or other
211 instrumentality of the state.

212 (2) (a) The division shall issue to every person privileged to drive a motor vehicle, a
213 regular license certificate, a limited-term license certificate, or a driving privilege card

214 indicating the type or class of motor vehicle the person may drive.

215 (b) A person may not drive a class of motor vehicle unless granted the privilege in that
216 class.

217 (3) (a) Every regular license certificate, limited-term license certificate, or driving
218 privilege card shall bear:

219 (i) the distinguishing number assigned to the person by the division;

220 (ii) the name, birth date, and Utah residence address of the person;

221 (iii) a brief description of the person for the purpose of identification;

222 (iv) any restrictions imposed on the license under Section 53-3-208;

223 (v) a photograph of the person;

224 (vi) a photograph or other facsimile of the person's signature;

225 (vii) an indication whether the person intends to make an anatomical gift under Title

226 26, Chapter 28, Revised Uniform Anatomical Gift Act, unless the driving privilege is extended
227 under Subsection 53-3-214(3); and

228 (viii) except as provided in Subsection (3)(b), if the person states that the person is a
229 veteran of the United States military on the application for a driver license in accordance with
230 Section 53-3-205 and provides verification that the person was honorably discharged from the
231 United States military, an indication that the person is a United States military veteran for a
232 regular license certificate or limited-term license certificate issued on or after July 1, 2011.

233 (b) A regular license certificate or limited-term license certificate issued to any person
234 younger than 21 years on a portrait-style format as required in Subsection (5)(b)(i) is not
235 required to include an indication that the person is a United States military veteran under
236 Subsection (3)(a)(viii).

237 (c) A new license certificate issued by the division may not bear the person's Social
238 Security number.

239 (d) (i) The regular license certificate, limited-term license certificate, or driving
240 privilege card shall be of an impervious material, resistant to wear, damage, and alteration.

241 (ii) Except as provided under Subsection (4)(b), the size, form, and color of the regular
242 license certificate, limited-term license certificate, or driving privilege card shall be as
243 prescribed by the commissioner.

244 (iii) The commissioner may also prescribe the issuance of a special type of limited

245 regular license certificate, limited-term license certificate, or driving privilege card under
246 Subsection 53-3-220(4).

247 (4) (a) (i) The division, upon determining after an examination that an applicant is
248 mentally and physically qualified to be granted a driving privilege, may issue to an applicant a
249 receipt for the fee if the applicant is eligible for a regular license certificate or limited-term
250 license certificate.

251 (ii) (A) The division shall issue a temporary regular license certificate or temporary
252 limited-term license certificate allowing the person to drive a motor vehicle while the division
253 is completing its investigation to determine whether the person is entitled to be granted a
254 driving privilege.

255 (B) A temporary regular license certificate or a temporary limited-term license
256 certificate issued under this Subsection (4) shall be recognized and have the same rights and
257 privileges as a regular license certificate or a limited-term license certificate.

258 (b) The temporary regular license certificate or temporary limited-term license
259 certificate shall be in the person's immediate possession while driving a motor vehicle, and it is
260 invalid when the person's regular license certificate or limited-term license certificate has been
261 issued or when, for good cause, the privilege has been refused.

262 (c) The division shall indicate on the temporary regular license certificate or temporary
263 limited-term license certificate a date after which it is not valid as a temporary license.

264 (d) (i) Except as provided in Subsection (4)(d)(ii), the division may not issue a
265 temporary driving privilege card or other temporary permit to an applicant for a driving
266 privilege card.

267 (ii) The division may issue a learner permit issued in accordance with Section
268 53-3-210.5 to an applicant for a driving privilege card.

269 (5) (a) The division shall distinguish learner permits, temporary permits, regular
270 license certificates, limited-term license certificates, and driving privilege cards issued to any
271 person younger than 21 years of age by use of plainly printed information or the use of a color
272 or other means not used for other regular license certificates, limited-term license certificates,
273 or driving privilege cards.

274 (b) The division shall distinguish a regular license certificate, limited-term license
275 certificate, or driving privilege card issued to any person[:(†)] younger than 21 years of age by

276 use of a portrait-style format not used for other regular license certificates, limited-term license
277 certificates, or driving privilege cards and by plainly printing the date the regular license
278 certificate, limited-term license certificate, or driving privilege card holder is 21 years of age,
279 which is the legal age for purchasing an alcoholic beverage or alcoholic product under Section
280 32B-4-403[;] and the legal age for purchasing tobacco products under Section 76-10-104.

281 ~~[(ii) younger than 19 years of age, by plainly printing the date the regular license
certificate, limited-term license certificate, or driving privilege card holder is 19 years of age,
which is the legal age for purchasing tobacco products under Section 76-10-104.]~~

284 (6) The division shall distinguish a limited-term license certificate by clearly indicating
285 on the document:

- 286 (a) that it is temporary; and
287 (b) its expiration date.

288 (7) (a) The division shall only issue a driving privilege card to a person whose privilege
289 was obtained without providing evidence of lawful presence in the United States as required
290 under Subsection 53-3-205(8).

291 (b) The division shall distinguish a driving privilege card from a license certificate by:
292 (i) use of a format, color, font, or other means; and
293 (ii) clearly displaying on the front of the driving privilege card a phrase substantially
294 similar to "FOR DRIVING PRIVILEGES ONLY -- NOT VALID FOR IDENTIFICATION".

295 (8) The provisions of Subsection (5)(b) do not apply to a learner permit, temporary
296 permit, temporary regular license certificate, temporary limited-term license certificate, or any
297 other temporary permit.

298 (9) The division shall issue temporary license certificates of the same nature, except as
299 to duration, as the license certificates that they temporarily replace, as are necessary to
300 implement applicable provisions of this section and Section 53-3-223.

301 (10) (a) A governmental entity may not accept a driving privilege card as proof of
302 personal identification.

303 (b) A driving privilege card may not be used as a document providing proof of a
304 person's age for any government required purpose.

305 (11) A person who violates Subsection (2)(b) is guilty of a class C misdemeanor.

306 (12) Unless otherwise provided, the provisions, requirements, classes, endorsements,

307 fees, restrictions, and sanctions under this code apply to a:

308 (a) driving privilege in the same way as a license or limited-term license issued under
309 this chapter; and

310 (b) limited-term license certificate or driving privilege card in the same way as a
311 regular license certificate issued under this chapter.

312 Section 6. Section **53-3-806** is amended to read:

313 **53-3-806. Portrait-style format -- Minor's card distinguishable.**

314 (1) The division shall use a portrait-style format for all identification cards, similar to
315 the format used for license certificates issued to a person younger than 21 years of age under
316 Section **53-3-207**.

317 (2) The identification card issued to a person younger than 21 years of age shall be
318 distinguished by use of plainly printed information or by the use of a color or other means not
319 used for the identification card issued to a person 21 years of age or older.

320 (3) The division shall distinguish an identification card issued to any person~~[:-(a)]~~
321 younger than 21 years of age by plainly printing the date the identification card holder is 21
322 years of age, which is the legal age for purchasing an alcoholic beverage or alcoholic product
323 under Section **32B-4-403**~~[;]~~ and the legal age for purchasing tobacco products under Section
324 **76-10-104**.

325 ~~[(b)] younger than 19 years of age by plainly printing the date the identification card~~
326 ~~holder is 19 years of age, which is the legal age for purchasing tobacco products under Section~~
327 ~~**76-10-104**]~~

328 (4) The division shall distinguish a limited-term identification card by clearly
329 indicating on the card:

- 330 (a) that it is temporary; and
331 (b) its expiration date.

332 Section 7. Section **59-14-203.5** is amended to read:

333 **59-14-203.5. Commission action to suspend or revoke license.**

334 (1) (a) The commission shall suspend or revoke licenses to sell tobacco, as required
335 under Section **26-42-103** regarding suspension or revocation of a license due to the sale of
336 cigarettes to ~~a person~~ an individual younger than ~~[19]~~ 21 years of age, upon receipt of notice
337 of an enforcing agency's finding of a violation of Section **26-42-103**.

338 (b) The commission shall provide written notice of the suspension or revocation to the
339 licensee.

340 (2) It is the duty of the enforcing agency to advise the commission of any finding of a
341 violation of Section 26-42-103 for which suspension or revocation of the license is a penalty.

342 (3) When the commission revokes a licensee's license under this section the
343 commission may not issue to the licensee, or to the business entity using the license that is
344 revoked, a license under Section 59-14-202 or 59-14-301 to sell tobacco at the location for
345 which the license was issued for one year after:

346 (a) the day on which the time for filing an appeal of the revocation ends; or
347 (b) if the revocation is appealed, the day on which the decision to uphold the
348 revocation becomes final.

349 Section 8. Section 59-14-301.5 is amended to read:

350 **59-14-301.5. Commission action to suspend or revoke license.**

351 (1) (a) The commission shall suspend or revoke licenses to sell tobacco, as required
352 under Section 26-42-103 regarding suspension or revocation of a license due to the sale of
353 tobacco products to [a person] an individual younger than [+9] 21 years of age, upon receipt of
354 notice of an enforcing agency's order or order of default, finding a violation of Section
355 26-42-103.

356 (b) The commission shall provide written notice of the suspension or revocation to the
357 licensee.

358 (2) It is the duty of the enforcing agency to advise the commission of any order or order
359 of default finding a violation of Section 26-42-103, for which suspension or revocation of the
360 license is a penalty.

361 (3) When the commission revokes a licensee's license under this section the
362 commission may not issue to the licensee, or to the business entity using the license that is
363 revoked, a license under Section 59-14-202 or 59-14-301 to sell tobacco at the location for
364 which the license was issued for one year after:

365 (a) the day on which the time for filing an appeal of the revocation ends; or
366 (b) if the revocation is appealed, the day on which the decision to uphold the
367 revocation becomes final.

368 Section 9. Section 76-10-103 is amended to read:

369 **76-10-103. Permitting minors to use tobacco in place of business.**

370 It is a class C misdemeanor for the proprietor of any place of business to knowingly
371 permit [persons] an individual under age [19] 21 to frequent a place of business while [they
372 are] the individual is using tobacco.

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

374 **76-10-104. Providing a cigar, cigarette, electronic cigarette, or tobacco to a minor**

375 **-- Penalties.**

376 (1) Any person who knowingly, intentionally, recklessly, or with criminal negligence
377 provides any cigar, cigarette, electronic cigarette, or tobacco in any form, to [any person] an
378 individual under [19] 21 years of age, is guilty of a class C misdemeanor on the first offense, a
379 class B misdemeanor on the second offense, and a class A misdemeanor on subsequent
380 offenses.

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

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

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

387 Section 11. Section **76-10-104.1** is amended to read:

388 **76-10-104.1. Providing tobacco paraphernalia to minors -- Penalties.**

389 (1) For purposes of this section:

390 (a) "Provides":

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

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

396 (b) "Tobacco paraphernalia":

397 (i) means any equipment, product, or material of any kind which is used, intended for
398 use, or designed for use to package, repackage, store, contain, conceal, ingest, inhale, or
399 otherwise introduce a cigar, cigarette, or tobacco in any form into the human body, including:

400 (A) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
401 screens, permanent screens, hashish heads, or punctured metal bowls;
402 (B) water pipes;
403 (C) carburetion tubes and devices;
404 (D) smoking and carburetion masks;
405 (E) roach clips: meaning objects used to hold burning material, such as a cigarette, that
406 has become too small or too short to be held in the hand;
407 (F) chamber pipes;
408 (G) carburetor pipes;
409 (H) electric pipes;
410 (I) air-driven pipes;
411 (J) chillums;
412 (K) bongs; and
413 (L) ice pipes or chillers; and
414 (ii) does not include matches or lighters.

415 (2) (a) It is unlawful for a person to knowingly, intentionally, recklessly, or with
416 criminal negligence provide any tobacco paraphernalia to ~~any person under 19~~ an individual
417 under 21 years of age.

418 (b) A person who violates this section is guilty of a class C misdemeanor on the first
419 offense and a class B misdemeanor on subsequent offenses.

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

421 **76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco**
422 **by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.**

423 (1) ~~[Any 18 year old person]~~ An individual who is at least 18 years of age, but less than
424 21 years of age, who buys or attempts to buy, accepts, or has in the ~~[person's]~~ individual's
425 possession any cigar, cigarette, electronic cigarette, or tobacco in any form is guilty of a class C
426 misdemeanor and subject to:

427 (a) a minimum fine or penalty of \$60; and
428 (b) participation in a court-approved tobacco education program, which may include a
429 participation fee.

430 (2) ~~[Any person under the age of 18]~~ An individual less than 18 years of age who buys

431 or attempts to buy, accepts, or has in the person's possession any cigar, cigarette, electronic
432 cigarette, or tobacco in any form is subject to the jurisdiction of the Juvenile Court and:

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

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

436 (3) A compliance officer appointed by a board of education under Section [53A-3-402](#)

437 may issue citations for violations of this section committed on school property. Cited
438 violations shall be reported to the appropriate juvenile court.

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

440 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products and
441 electronic cigarettes -- Supremacy clause -- Penalties.**

442 (1) As used in this section:

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

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

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

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

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

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

459 (i) an employee of the retailer; and

460 (ii) the purchaser.

461 (b) Examples of methods that are not permitted include vending machines and

462 self-service displays.

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

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

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

468 (b) sales from vending machines, including vending machines that sell packaged,
469 single cigarettes or cigars, and self-service displays that are located in a separate and defined
470 area within a facility where the retailer ensures that no [person younger than 19] individual less
471 than 21 years of age is present, or permitted to enter, at any time, unless accompanied by a
472 parent or legal guardian; and

473 (c) sales by a retailer from a retail store which derives at least 80% of its revenue from
474 tobacco and tobacco related products and where the retailer ensures that no [person younger
475 than 19] individual less than 21 years of age is present, or permitted to enter at any time, unless
476 accompanied by a parent or legal guardian.

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

482 (5) (a) A parent or legal guardian who accompanies [a person younger than 19] an
483 individual less than 21 years of age into an area described in Subsection (3)(b) or into a retail
484 store as described in Subsection (3)(c) and permits the [person younger than 19 years of age]
485 individual to purchase or otherwise take a cigar, cigarette, electronic cigarette, or tobacco in
486 any form is guilty of providing tobacco as provided for in Section 76-10-104 and the penalties
487 provided for in that section.

488 (b) Nothing in this section may be construed as permitting a person to provide tobacco
489 to [a minor] an individual less than 21 years of age in violation of Section 76-10-104.

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

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

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

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

494 Section 14. Section **76-10-112** is amended to read:

495 **76-10-112. Prohibition of distribution of cigarettes or other tobacco products --**

496 **Exceptions.**

497 (1) Except as provided in Subsection (2), it is unlawful for a manufacturer, wholesaler,
498 or retailer to give or distribute cigarettes or other tobacco products in this state without charge.
499 Any person who violates this subsection is guilty of a class C misdemeanor for the first offense
500 and a class B misdemeanor for any subsequent offense.

501 [Cigarettes and other tobacco products may be distributed to adults without charge]
502 A manufacturer, wholesaler, or retailer may give or distribute, without charge, cigarettes or
503 other tobacco products to an individual who is at least 21 years of age at professional
504 conventions where the general public is excluded.

505 (3) The prohibition described in Subsection (1) does not apply to retailers,
506 manufacturers, or distributors who give cigarettes or other tobacco products to persons of legal
507 age upon their purchase of cigarettes or other tobacco products.

508 Section 15. Section **77-39-101** is amended to read:

509 **77-39-101. Investigation of sales of alcohol, tobacco, and electronic cigarettes to**
510 **underage individuals.**

511 (1) As used in this section, "electronic cigarette" is as defined in Section **76-10-101**.

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

514 (i) Section **32B-4-403** by requesting an individual [under the age of 21 years] less than
515 21 years of age to enter into and attempt to purchase or make a purchase of alcohol from a
516 retail establishment; or

517 (ii) Section **76-10-104** by requesting an individual [under the age of 19 years] less than
518 21 years of age to enter into and attempt to purchase or make a purchase from a retail
519 establishment of:

- 520 (A) a cigar;
521 (B) a cigarette;
522 (C) tobacco in any form; or
523 (D) an electronic cigarette.

- 524 (b) A peace officer who is present at the site of a proposed purchase shall direct,
525 supervise, and monitor the individual requested to make the purchase.
- 526 (c) Immediately following a purchase or attempted purchase or as soon as practical the
527 supervising peace officer shall inform the cashier and the proprietor or manager of the retail
528 establishment that the attempted purchaser was under the legal age to purchase:
- 529 (i) alcohol; or
530 (ii) (A) a cigar;
531 (B) a cigarette;
532 (C) tobacco in any form; or
533 (D) an electronic cigarette.
- 534 (d) If a citation or information is issued, it shall be issued within seven days of the
535 purchase.
- 536 (3) (a) If an individual [~~under the age of 18 years old~~] less than 18 years of age is
537 requested to attempt a purchase, a written consent of that individual's parent or guardian shall
538 be obtained prior to that individual participating in any attempted purchase.
- 539 (b) An individual requested by the peace officer to attempt a purchase may:
540 (i) be a trained volunteer; or
541 (ii) receive payment, but may not be paid based on the number of successful purchases
542 of alcohol, tobacco, or an electronic cigarette.
- 543 (4) The individual requested by the peace officer to attempt a purchase and anyone
544 accompanying the individual attempting a purchase may not during the attempted purchase
545 misrepresent the age of the individual by false or misleading identification documentation in
546 attempting the purchase.
- 547 (5) An individual requested to attempt to purchase or make a purchase pursuant to this
548 section is immune from prosecution, suit, or civil liability for the purchase of, attempted
549 purchase of, or possession of alcohol, a cigar, a cigarette, tobacco in any form, or an electronic
550 cigarette if a peace officer directs, supervises, and monitors the individual.
- 551 (6) (a) Except as provided in Subsection (6)(b), a purchase attempted under this section
552 shall be conducted:
553 (i) on a random basis; and
554 (ii) within a 12-month period at any one retail establishment location not more often

555 than:

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

557 (I) a cigar;

558 (II) a cigarette;

559 (III) tobacco in any form; or

560 (IV) an electronic cigarette; and

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

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

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

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

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

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

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

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

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

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

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

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

Legislative Review Note

as of 6-13-13 4:21 PM

Office of Legislative Research and General Counsel