

**Representative Paul Ray** proposes the following substitute bill:

**REGULATION OF ELECTRONIC CIGARETTES**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill enacts and amends provisions related to electronic cigarette products.

**Highlighted Provisions:**

This bill:

- ▶ requires a person to obtain a license in order to sell or distribute an electronic cigarette product;
- ▶ provides criminal penalties for a person that sells an electronic cigarette without a license; and
- ▶ provides product quality and labeling standards for an electronic cigarette product.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

This bill coordinates with H.B. 131, Tobacco Shop Amendments, by providing substantive amendments.

**Utah Code Sections Affected:**

AMENDS:

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



- 26            **26-42-103**, as last amended by Laws of Utah 2011, Chapter 96
- 27            **26-42-107**, as enacted by Laws of Utah 1998, Chapter 319
- 28            **76-10-101**, as last amended by Laws of Utah 2010, Chapter 114
- 29            **76-10-105.1**, as last amended by Laws of Utah 2010, Chapter 114

30 ENACTS:

- 31            **26-57-101**, Utah Code Annotated 1953
- 32            **26-57-102**, Utah Code Annotated 1953
- 33            **26-57-103**, Utah Code Annotated 1953
- 34            **59-14-801**, Utah Code Annotated 1953
- 35            **59-14-802**, Utah Code Annotated 1953
- 36            **59-14-803**, Utah Code Annotated 1953

37 **Utah Code Sections Affected by Coordination Clause:**

- 38            **76-10-101**, as last amended by Laws of Utah 2010, Chapter 114



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

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

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

43            As used in this chapter:

- 44            (1) "Commission" means the Utah State Tax Commission.
- 45            (2) "Employee" means an employee of a licensee.
- 46            (3) "Enforcing agency" means the state Department of Health, or any local health
- 47            department enforcing the provisions of this chapter.
- 48            (4) "Licensee" means a person licensed:
  - 49            (a) under Section **59-14-201** to sell cigarettes at retail; ~~[or]~~
  - 50            (b) under Section **59-14-301** to sell tobacco products at retail~~[-];~~ or
  - 51            (c) under Section **59-14-803** to sell an electronic cigarette product.
- 52            (5) "License to sell tobacco" or "license" means a license issued:
  - 53            (a) under Section **59-14-201** to sell cigarettes at retail; ~~[or]~~
  - 54            (b) under Section **59-14-301** to sell tobacco products at retail~~[-];~~ or
  - 55            (c) under Section **59-14-803** to sell an electronic cigarette product.
- 56            (6) "Tobacco" means ~~[cigarettes or tobacco products];~~

57 (a) a cigarette or a tobacco product, as defined in Section 59-14-102[-]; or

58 (b) an electronic cigarette product, as defined in Section 59-14-802.

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

60 **26-42-103. Violations and penalties -- Imposition by enforcing agency and tax**

61 **commission.**

62 (1) If, following an investigation or issuance of a citation or information under Section  
63 77-39-101, an enforcing agency determines under Section 26-42-104 that a licensee or any  
64 employee has sold tobacco to a person younger than 19 years of age, as prohibited by Section  
65 76-10-104, the enforcing agency may impose upon the licensee the following administrative  
66 penalties:

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

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

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

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

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

76 (a) by suspending the licensee's license to sell tobacco at that location for not more  
77 than 30 days, upon receipt of notification of a third violation under Subsection (1)(c); and

78 (b) by revoking the license to sell tobacco at that location held by the licensee,  
79 including any license under suspension, upon receipt of notification of a fourth violation under  
80 Subsection (1)(c).

81 (4) When the commission revokes a license under Subsection (3)(b), the commission  
82 may not issue to the licensee, or to the business entity using the license that is revoked, a  
83 license under Section 59-14-202 [or], 59-14-301, or 59-14-803 to sell tobacco at the location  
84 for which the license was issued for one year after:

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

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

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

92 Section 3. Section 26-42-107 is amended to read:

93 **26-42-107. Allocation of civil penalties.**

94 Civil monetary penalties collected under this chapter shall be allocated as follows:

95 (1) if a local health department conducts an adjudicative proceeding under Section  
96 26-42-104, the penalty shall be paid to the treasurer of the county in which the violation was  
97 committed, and transferred to:

98 (a) the local health department if it conducts a civil hearing under Section 26-42-104  
99 alone; or

100 (b) in equal portions to the local health department and the other agencies that  
101 participated in the hearing process;

102 (2) if the state Department of Health conducts a civil hearing under Section 26-42-104,  
103 the penalty shall be deposited in the state's General Fund, and may be appropriated by the  
104 Legislature to the state Department of Health for use in enforcement of this chapter; and

105 (3) if the civil penalty involves suspension or revocation of a license to sell tobacco  
106 under Section 59-14-203.5 [or], 59-14-301.5, or 59-14-803, half of the penalty shall be paid to  
107 the commission, and the other half shall be allocated under Subsection (1) or (2), as  
108 appropriate.

109 Section 4. Section 26-57-101 is enacted to read:

110 **CHAPTER 57. ELECTRONIC CIGARETTE REGULATION ACT**

111 **26-57-101. Title.**

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

113 Section 5. Section 26-57-102 is enacted to read:

114 **26-57-102. Definitions.**

115 As used in this chapter:

116 (1) "Cigarette" means the same as that term is defined in Section 59-14-102.

117 (2) "Electronic cigarette" means the same as that term is defined in Section 59-14-802.

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

119 cigarette substance.

120 (4) "Electronic cigarette substance" means the same as that term is defined in Section  
121 59-14-802.

122 (5) "Manufacture" includes:

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

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

125 Section 6. Section **26-57-103** is enacted to read:

126 **26-57-103. Electronic cigarette products -- Labeling -- Manufacturing and quality**  
127 **control standards -- Low-grade nicotine -- Advertising.**

128 (1) Except as described in Subsection (2), a person may not sell an electronic cigarette  
129 product unless the electronic cigarette product:

130 (a) has a label that includes the electronic cigarette product's:

131 (i) manufacturer name;

132 (ii) ingredients; and

133 (iii) nicotine content; and

134 (b) is sold in a container with child-resistant packaging.

135 (2) Subsection (1) does not apply to an electronic cigarette product that is prepackaged  
136 and sealed by the electronic cigarette product manufacturer.

137 (3) An individual who is less than 19 years old may not:

138 (a) sell, offer to sell, or distribute an electronic cigarette product; or

139 (b) as a person's agent, sell, offer to sell, or distribute an electronic cigarette product.

140 (4) A person may not advertise an electronic cigarette:

141 (a) as a tobacco cessation device;

142 (b) if the person is not licensed to sell an electronic cigarette product under Section

143 59-14-803; or

144 (c) during a period of time when the person's license to sell an electronic cigarette  
145 product under Section 59-14-803 has been suspended or revoked.

146 Section 7. Section **59-14-801** is enacted to read:

147 **Part 8. Electronic Cigarette Licensing Act**

148 **59-14-801. Title.**

149 This part is known as the "Electronic Cigarette Licensing Act."

150 Section 8. Section **59-14-802** is enacted to read:

151 **59-14-802. Definitions.**

152 As used in this part:

153 (1) "Cigarette" means the same as that term is defined in Section [59-14-102](#).

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

155 (i) an electronic device used to deliver or capable of delivering vapor containing  
156 nicotine to an individual's respiratory system;

157 (ii) a component of the device described in Subsection (2)(a)(i); or

158 (iii) an accessory sold in the same package as the device described in Subsection  
159 (2)(a)(i).

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

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

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

165 (5) "Enforcing agency" means the Department of Health, a county health department,  
166 or a local health department, when enforcing:

167 (i) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; or

168 (ii) Title 26, Chapter 57, Electronic Cigarette Regulation Act.

169 (6) "License to sell an electronic cigarette product" means a license issued by the  
170 commission under Subsection [59-14-803\(3\)](#).

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

173 Section 9. Section **59-14-803** is enacted to read:

174 **59-14-803. Electronic cigarette licenses -- Sale.**

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

178 (2) A person that holds a valid license to sell cigarettes under Section [59-14-202](#), or a  
179 person that holds a valid license to sell tobacco products under Section [59-14-301](#), may,  
180 without obtaining a separate license to sell an electronic cigarette product under this part, sell,

181 offer to sell, or distribute an electronic cigarette product in Utah in accordance with this part.

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

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

185 (i) the person's name;

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

187 and

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

189 (b) pays a fee:

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

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

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

193 (a) valid only at one fixed business address;

194 (b) valid for three years;

195 (c) valid only for a physical location; and

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

197 (5) The commission shall, after notifying a licensee, revoke a license described in

198 Subsection (3) if an enforcing agency determines the licensee has violated a provision of:

199 (a) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; or

200 (b) Title 26, Chapter 57, Electronic Cigarette Regulation Act.

201 (6) If the commission revokes a person's license to sell an electronic cigarette product

202 under Subsection (5), the commission may not issue a license to sell an electronic cigarette

203 product, a license to sell cigarettes under Section [59-14-201](#), or a license to sell tobacco under

204 Section [59-14-301](#) to the person until one year after:

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

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

210 (7) If the commission revokes a person's license under Subsection (6), the commission

211 shall also revoke the person's license to sell cigarettes under Section [59-14-201](#), if any, and the

212 person's license to sell tobacco under Section 59-14-301, if any.

213 (8) The commission may make rules in accordance with Title 63G, Chapter 3, Utah  
214 Administrative Rulemaking Act, to establish the additional information described in  
215 Subsection (3)(a)(iii) that a person must provide in the application described in Subsection  
216 (3)(a).

217 (9) It is a class B misdemeanor for a person to violate Subsection (1).

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

219 **76-10-101. Definitions.**

220 As used in this part:

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

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

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

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

231 (3) "Electronic cigarette" means [~~any device, other than a cigarette or cigar, intended to~~  
232 ~~deliver vapor containing nicotine into a person's respiratory system]~~ an electronic cigarette  
233 product, as defined in Section 59-14-802.

234 (4) "Place of business" includes:

235 (a) a shop;

236 (b) a store;

237 (c) a factory;

238 (d) a public garage;

239 (e) an office;

240 (f) a theater;

241 (g) a recreation hall;

242 (h) a dance hall;



- 243 (i) a poolroom;
  - 244 (j) a café;
  - 245 (k) a cafeteria;
  - 246 (l) a cabaret;
  - 247 (m) a restaurant;
  - 248 (n) a hotel;
  - 249 (o) a lodging house;
  - 250 (p) a streetcar;
  - 251 (q) a bus;
  - 252 (r) an interurban or railway passenger coach;
  - 253 (s) a waiting room; and
  - 254 (t) any other place of business.
- 255 (5) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other  
256 lighted smoking equipment.

257 Section 11. Section **76-10-105.1** is amended to read:

258 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products and**  
259 **electronic cigarettes -- Supremacy clause -- Penalties.**

260 (1) As used in this section:

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

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

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

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

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

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

277 (i) an employee of the retailer; and

278 (ii) the purchaser.

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

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

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

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

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

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

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

301 (b) Except as provided in Subsection (4)(c), any ordinance, regulation, or rule adopted  
302 by the governing body of a political subdivision of the state or by a state agency that affects the  
303 sale, placement, or display of an electronic cigarette is not superseded.

304 (c) An ordinance, regulation, or rule adopted by the governing body of a political

305 subdivision of the state or by a state agency that affects the sale, placement, or display of an  
 306 electronic cigarette that is prepackaged and sealed by the electronic cigarette manufacturer is  
 307 superseded.

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

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

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

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

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

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

320 Section 12. **Effective date.**

321 This bill takes effect on July 1, 2015.

322 Section 13. **Coordinating H.B. 415 with H.B. 131 -- Substantive amendments.**

323 If this H.B. 415 and H.B. 131, Tobacco Shop Amendments, both pass and become law,  
 324 it is the intent of the Legislature that, when the Office of Legislative Research and General  
 325 Counsel prepares the Utah Code database for publication:

326 (1) the amendments to Section 76-10-101 in this bill supersede the amendments to  
 327 Section 76-10-101 in H.B. 131; and

328 (2) Section 76-10-105.1 shall be amended to read:

329 **"76-10-105.1 Requirement of direct, face-to-face sale of cigarettes, tobacco, and**  
 330 **electronic cigarettes -- Minors not allowed in tobacco specialty shop -- Penalties.**

331 (1) As used in this section:

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

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

336 (a) "Cigarette" means the same as that term is defined in Section 59-14-102.  
337 (b) (i) "Face-to-face exchange" means a transaction made in person between an  
338 individual and a retailer or retailer's employee.  
339 (ii) "Face-to-face exchange" does not include a sale through a:  
340 (A) vending machine; or  
341 (B) self-service display.  
342 (c) "Retailer" means a person who [sells cigarettes, electronic cigarettes, cigars,  
343 cigarette tobacco, pipe tobacco, or smokeless tobacco to individuals for personal consumption  
344 or who]:  
345 (i) sells a cigarette, tobacco, or an electronic cigarette to an individual for personal  
346 consumption; or  
347 (ii) operates a facility [where a vending machine or a self-service display is permitted  
348 under Subsection (3)(b)] with a vending machine that sells a cigarette, tobacco, or an electronic  
349 cigarette.  
350 (d) "Self-service display" means a display of [cigarettes, electronic cigarettes, cigars,  
351 cigarette tobacco, pipe tobacco, or smokeless tobacco products] a cigarette, tobacco, or an  
352 electronic cigarette to which the public has access without the intervention of a [retail] retailer  
353 or retailer's employee.  
354 ~~[(e) "Smokeless tobacco" means a product that consists of cut, ground, powdered, or~~  
355 ~~leaf tobacco that contains nicotine and that is intended to be placed in the oral cavity.]~~  
356 (e) "Tobacco" means any product, except a cigarette, made of or containing tobacco.  
357 (f) "Tobacco specialty shop" means a retailer with a physical location that derives at  
358 least 80% of its total sales from the sale of cigarettes, tobacco, or electronic cigarettes.  
359 (2) ~~[(a)]~~ Except as provided in Subsection (3), a retailer may sell ~~[cigarettes, electronic~~  
360 ~~cigarettes, cigars, cigarette tobacco, pipe tobacco, and smokeless tobacco only in a direct,~~  
361 ~~face-to-face exchange between:]~~ a cigarette, tobacco, or an electronic cigarette only in a  
362 face-to-face exchange.  
363 ~~[(i) an employee of the retailer; and]~~  
364 ~~[(ii) the purchaser:]~~  
365 ~~[(b) Examples of methods that are not permitted include vending machines and~~  
366 ~~self-service displays.]~~

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

370 ~~[(3) The following sales are permitted as exceptions to Subsection (2):]~~

371 ~~[(a) mail-order sales, if the provisions of Section 59-14-509 are met;]~~

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

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

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

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

391 ~~[(b) Nothing in this section may be construed as permitting a person to provide tobacco~~  
392 ~~to a minor in violation of Section 76-10-104.]~~

393 (3) The face-to-face sale requirement in Subsection (2) does not apply to:

394 (a) a mail-order, telephone, or Internet sale made in compliance with Section  
395 59-14-509;

396 (b) a sale from a vending machine or self-service display that is located in an area of a  
397 retailer's facility:

398 (i) that is distinct and separate from the rest of the facility; and  
399 (ii) where the retailer only allows an individual who complies with Subsection (4) to be  
400 present; or  
401 (c) a sale at a tobacco specialty shop.  
402 (4) An individual who is less than 19 years old may not enter or be present at a tobacco  
403 specialty shop unless the individual is:  
404 (a) accompanied by a parent or legal guardian;  
405 (b) present at the tobacco shop for a bona fide commercial purpose other than to  
406 purchase a cigarette, tobacco, or an electronic cigarette; or  
407 (c) 18 years old or older and an active duty member of the United States Armed Forces,  
408 as demonstrated by a valid, government-issued military identification card.  
409 (5) A parent or legal guardian who accompanies, under Subsection (4)(a), an individual  
410 into an area described in Subsection (3)(b), or into a tobacco specialty shop, may not allow the  
411 individual to purchase a cigarette, tobacco, or an electronic cigarette.  
412 (6) [~~Violation~~] A violation of Subsection (2) or [~~(3)~~] (4) is a:  
413 (a) class C misdemeanor on the first offense;  
414 (b) class B misdemeanor on the second offense; and  
415 (c) class A misdemeanor on the third and all subsequent offenses.  
416 (7) An individual who violates Subsection (5) is guilty of providing tobacco to a minor  
417 under Section [76-10-104](#).  
418 (8) (a) Any ordinance, regulation, or rule adopted by the governing body of a political  
419 subdivision of the state or by a state agency that affects the sale, placement, or display of  
420 cigarettes or tobacco that is not essentially identical to the provisions of this section and  
421 Section [76-10-102](#) is superseded.  
422 (b) Except as provided in Subsection (8)(c), any ordinance, regulation, or rule adopted  
423 by the governing body of a political subdivision of the state or by a state agency that affects the  
424 sale, placement, or display of an electronic cigarette is not superseded.  
425 (c) An ordinance, regulation, or rule adopted by the governing body of a political  
426 subdivision of the state or by a state agency that affects the sale, placement, or display of an  
427 electronic cigarette that is prepackaged and sealed by the electronic cigarette manufacturer is  
428 superseded.

429            (d) Subsection (8)(a) does not apply to the adoption or enforcement of a land use  
430 ordinance by a municipal or county government."