

HB0415S05 compared with HB0415S04

~~text~~ shows text that was in HB0415S04 but was deleted in HB0415S05.

text shows text that was not in HB0415S04 but was inserted into HB0415S05.

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Senator Stephen H. Urquhart proposes the following substitute bill:

REGULATION OF ELECTRONIC CIGARETTES

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Curtis S. Bramble

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
- ▶ gives the Department of Health the authority to determine product quality, ~~manufacturing~~nicotine content, packaging, and labeling standards for an electronic cigarette ~~product~~substance.

Money Appropriated in this Bill:

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None

Other Special Clauses:

This bill provides a special effective date.

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

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

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

26-42-107, as enacted by Laws of Utah 1998, Chapter 319

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

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

ENACTS:

26-57-101, Utah Code Annotated 1953

26-57-102, Utah Code Annotated 1953

26-57-103, Utah Code Annotated 1953

59-14-801, Utah Code Annotated 1953

59-14-802, Utah Code Annotated 1953

59-14-803, Utah Code Annotated 1953

Utah Code Sections Affected by Coordination Clause:

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

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

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

26-42-102. Definitions.

As used in this chapter:

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

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

(3) "Enforcing agency" means the state Department of Health, or any local health department enforcing the provisions of this chapter.

(4) "Licensee" means a person licensed:

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

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- (b) under Section 59-14-301 to sell tobacco products at retail[-]; or
- (c) under Section 59-14-803 to sell an electronic cigarette product.
- (5) "License to sell tobacco" or "license" means a license issued:
 - (a) under Section 59-14-201 to sell cigarettes at retail; [~~or~~]
 - (b) under Section 59-14-301 to sell tobacco products at retail[-]; or
 - (c) under Section 59-14-803 to sell an electronic cigarette product.
- (6) "Tobacco" means [~~cigarettes or tobacco products~~]:
 - (a) a cigarette or a tobacco product, as defined in Section 59-14-102[-]; or
 - (b) an electronic cigarette product, as defined in Section 59-14-802.

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

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

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

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

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

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

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

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

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

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

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

26-42-107. Allocation of civil penalties.

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

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

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

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

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

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

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

CHAPTER 57. ELECTRONIC CIGARETTE REGULATION ACT

26-57-101. Title.

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

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

26-57-102. Definitions.

As used in this chapter:

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

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

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

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

(5) "Manufacture" includes:

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

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

(6) "Manufacturer sealed electronic cigarette substance" means an electronic cigarette substance that is sold in a container that:

(a) is pre-filled by the electronic cigarette substance manufacturer; and

(b) the electronic cigarette manufacturer does not intend for a consumer to open.

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

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

(1) The department shall, in consultation with a local health department, as defined in Section 26A-1-102, and with input from members of the public, establish, no later than January 1, 2016, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, standards for electronic cigarette ~~product~~ substance:

(a) ~~manufacturing~~ labeling;

(b) ~~product quality~~;

~~(c)~~ nicotine content;

(c) packaging; and

(d) ~~labeling~~ product quality.

(2) The standards established by the department under Subsection (1) ~~do~~:

~~(a)~~ do not apply to a manufacturer sealed electronic cigarette substance ~~and~~

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~~(b) beginning on July 1, 2016, supercede any municipal, county, or local government regulation regarding an electronic cigarette product.~~

(3) Beginning on July 1, 2016, a person may not sell an electronic cigarette ~~product~~ substance unless the electronic cigarette ~~product~~ substance complies with the standards established by the department under Subsection (1).

(4) (a) Beginning on July 1, 2016, a local health department may not enact a rule or regulation regarding electronic cigarette substance labeling, nicotine content, packaging, or product quality that is not identical to the standards established by the department under Subsection (1).

(b) Except as provided in Subsection (4)(c), a local health department may enact a rule or regulation regarding electronic cigarette substance manufacturing.

(c) A local health department may not enact a rule or regulation regarding a manufacturer sealed electronic cigarette substance.

~~(4)5~~ Beginning on July 1, 2016, a person may not advertise an electronic cigarette product:

(a) as a tobacco cessation device;

(b) if the person is not licensed to sell an electronic cigarette product under Section 59-14-803; or

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

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

Part 8. Electronic Cigarette Licensing Act

59-14-801. Title.

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

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

59-14-802. Definitions.

As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A person that holds a valid license to sell cigarettes under Section 59-14-202, or a person that holds a valid license to sell tobacco products under Section 59-14-301, may, without obtaining a separate license to sell an electronic cigarette product under this part, sell, offer to sell, or distribute an electronic cigarette product in Utah in accordance with this part.

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

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

(i) the person's name;

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

and

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

(b) pays a fee:

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

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

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

(a) valid only at one fixed business address;

(b) valid for three years;

(c) ~~except as provided in Subsection (5),~~ valid only for a physical location; and

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

~~{~~ (5) A person that holds a valid license to sell electronic cigarettes under this chapter, cigarettes under Section 59-14-202, or tobacco products under Section 59-14-301 may sell an electronic cigarette product at an industry trade show where no individual that is less than 19 years of age may enter.

~~†~~ (~~6~~⁵) The commission shall, after notifying a licensee, revoke a license described in Subsection (3) if an enforcing agency determines the licensee has violated a provision of:

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

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

(~~7~~⁶) If the commission revokes a person's license to sell an electronic cigarette product under Subsection (~~6~~⁵), the commission may not issue a license to sell an electronic cigarette product, a license to sell cigarettes under Section 59-14-201, or a license to sell tobacco under Section 59-14-301 to the person until one year after:

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

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

(8) If the commission revokes a person's license under Subsection (~~6~~⁵), the commission shall also revoke the person's license to sell cigarettes under Section 59-14-201, if any, and the person's license to sell tobacco under Section 59-14-301, if any.

(9) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish the additional information described in

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

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

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

76-10-101. Definitions.

As used in this part:

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

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

- (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or
- (b) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in Subsection (2)(a).

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

(4) "Place of business" includes:

- (a) a shop;
- (b) a store;
- (c) a factory;
- (d) a public garage;
- (e) an office;
- (f) a theater;
- (g) a recreation hall;
- (h) a dance hall;
- (i) a poolroom;
- (j) a café;
- (k) a cafeteria;

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- (l) a cabaret;
- (m) a restaurant;
- (n) a hotel;
- (o) a lodging house;
- (p) a streetcar;
- (q) a bus;
- (r) an interurban or railway passenger coach;
- (s) a waiting room; and
- (t) any other place of business.

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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(i) an employee of the retailer; and

(ii) the purchaser.

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

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

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

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

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

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

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

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

(b) Nothing in this section may be construed as permitting a person to provide tobacco

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to a minor in violation of Section 76-10-104.

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

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

Section 12. **Effective date.**

This bill takes effect on July 1, 2015.

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

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

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

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

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

(1) As used in this section:

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

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

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

(b) (i) "Face-to-face exchange" means a transaction made in person between an individual and a retailer or retailer's employee.

(ii) "Face-to-face exchange" does not include a sale through a:

(A) vending machine; or

(B) self-service display.

(c) "Retailer" means a person who [sells cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco to individuals for personal consumption or who]:

(i) sells a cigarette, tobacco, or an electronic cigarette to an individual for personal

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consumption; or

~~(ii) operates a facility [where a vending machine or a self-service display is permitted under Subsection (3)(b)] with a vending machine that sells a cigarette, tobacco, or an electronic cigarette.~~

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

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

~~(e) "Tobacco" means any product, except a cigarette, made of or containing tobacco.~~

~~(f) "Tobacco specialty shop" means a retailer with a physical location that derives at least 80% of its total sales from the sale of cigarettes, tobacco, or electronic cigarettes.~~

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

~~[(i) an employee of the retailer; and]~~

~~[(ii) the purchaser.]~~

~~[(b) Examples of methods that are not permitted include vending machines and self-service displays:]~~

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

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

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

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

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

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

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

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

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

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

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

(i) that is distinct and separate from the rest of the facility; and

(ii) where the retailer only allows an individual who complies with Subsection (4) to be present; or

(c) a sale at a tobacco specialty shop.

(4) An individual who is less than 19 years old may not enter or be present at a tobacco specialty shop unless the individual is:

(a) accompanied by a parent or legal guardian;

(b) present at the tobacco shop for a bona fide commercial purpose other than to purchase a cigarette, tobacco, or an electronic cigarette; or

(c) 18 years old or older and an active duty member of the United States Armed Forces.

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as demonstrated by a valid, government-issued military identification card.

(5) A parent or legal guardian who accompanies, under Subsection (4)(a), an individual into an area described in Subsection (3)(b), or into a tobacco specialty shop, may not allow the individual to purchase a cigarette, tobacco, or an electronic cigarette.

(6) [~~Violation~~] A violation of Subsection (2) or [~~(3)~~] (4) is a:

(a) class C misdemeanor on the first offense;

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

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

(7) An individual who violates Subsection (5) is guilty of providing tobacco to a minor under Section 76-10-104.

(8) (a) Any ordinance, regulation, or rule adopted by the governing body of a political subdivision of the state or by a state agency that affects the sale, placement, or display of cigarettes, tobacco, or electronic cigarettes that is not essentially identical to the provisions of this section and Section 76-10-102 is superseded.

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