

1 **AGE LIMIT FOR TOBACCO AND RELATED PRODUCTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kraig Powell**

5 Senate Sponsor: Brian E. Shiozawa

7 **LONG TITLE**

8 **General Description:**

9 This bill increases the age limit for the purchase, possession, and use of tobacco and
10 related products from 19 to 21 years and makes related changes.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ prohibits the distribution or sale of tobacco, e-cigarettes, or tobacco paraphernalia to
14 an individual less than 21 years of age;

15 ▶ makes corresponding changes to municipalities' authority to regulate tobacco;

16 ▶ makes corresponding changes to the Utah Indoor Clean Air Act, enforcement
17 provisions of the Utah Health Code, tobacco program requirements, the Driver
18 Licensing Act, the Cigarette and Tobacco Tax and Licensing Act, the Utah Criminal
19 Code, and provisions relating to the investigation of sales to underage individuals;
20 and

21 ▶ makes technical amendments.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 This bill provides a special effective date.

26 **Utah Code Sections Affected:**

27 AMENDS:



- 28 **10-8-47**, as last amended by Laws of Utah 2012, Chapter 140
- 29 **26-38-2.6**, as enacted by Laws of Utah 2012, Chapter 171
- 30 **26-42-103**, as last amended by Laws of Utah 2015, Chapter 132
- 31 **51-9-203**, as last amended by Laws of Utah 2012, Chapter 242
- 32 **53-3-207**, as last amended by Laws of Utah 2015, Chapter 412
- 33 **53-3-806**, as last amended by Laws of Utah 2010, Chapter 276
- 34 **59-14-203.5**, as last amended by Laws of Utah 2011, Chapter 96
- 35 **59-14-301.5**, as last amended by Laws of Utah 2011, Chapter 96
- 36 **59-14-703**, as enacted by Laws of Utah 2013, Chapter 148
- 37 **76-10-103**, as enacted by Laws of Utah 1973, Chapter 196
- 38 **76-10-104**, as last amended by Laws of Utah 2010, Chapter 114
- 39 **76-10-104.1**, as last amended by Laws of Utah 2013, Chapter 278
- 40 **76-10-105**, as last amended by Laws of Utah 2010, Chapter 114
- 41 **76-10-105.1**, as last amended by Laws of Utah 2015, Chapters 66 and 132
- 42 **76-10-111**, as last amended by Laws of Utah 2010, Chapter 114
- 43 **76-10-112**, as enacted by Laws of Utah 1989, Chapter 193
- 44 **77-39-101**, as last amended by Laws of Utah 2010, Chapters 114 and 276

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

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

48 **10-8-47. Municipal authority -- Intoxication -- Fights -- Disorderly conduct --**
 49 **Assault and battery -- Petit larceny -- Riots and disorderly assemblies -- Firearms and**
 50 **fireworks -- False pretenses and embezzlement -- Sale of liquor, narcotics, or tobacco to**
 51 **minors -- Possession of controlled substances -- Treatment of alcoholics and narcotics**
 52 **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~~] municipality;

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, or
67 tobacco to a person [~~younger~~] less than 21 years of age[~~; or tobacco to any person younger than~~
68 ~~19 years of 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 19~~] an individual less than 21 years of

90 age to enter any part of the premises of the retail establishment in which the e-cigarettes are
91 sold; and

92 (iii) the sale of e-cigarettes and substances for use in e-cigarettes constitutes at least
93 75% of the establishment's gross sales.

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

96 (3) This section sunsets in accordance with Section 63I-1-226.

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

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

100 (1) If, following an investigation or issuance of a citation or information under Section
101 77-39-101, an enforcing agency determines under Section 26-42-104 that a licensee or any
102 employee has sold tobacco to [~~a person younger than 19~~] an individual less than 21 years of
103 age, as prohibited by Section 76-10-104, the enforcing agency may impose upon the licensee
104 the following administrative penalties:

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

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

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

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

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

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

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

119 (4) When the commission revokes a license under Subsection (3)(b), the commission
120 may not issue to the licensee, or to the business entity using the license that is revoked, a

121 license under Section 59-14-202, 59-14-301, or 59-14-803 to sell tobacco at the location for
122 which the license was issued for one year after:

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

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

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

131 **51-9-203. Requirements for tobacco programs.**

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

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

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

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

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

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

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

147 (C) if directed toward youth:

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

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

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

152 (IV) offers a positive focus that is inclusive of all youth; and
153 (iv) for enforcement, control, and compliance program, the request shall demonstrate
154 that the proposed program can reasonably be expected to reduce the extent to which tobacco
155 products are available to individuals [~~under the age of 19~~] less than 21 years of age;

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

157 The report shall contain the following:

158 (i) the amount funded;

159 (ii) the amount expended;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

182 (b) may be conducted by an independent evaluator; and

183 (c) may be paid for by funds appropriated from the account for that purpose.

184 (3) The Department of Health shall annually report to the Social Services
185 Appropriations Subcommittee on the reviews conducted pursuant to Subsection (2).

186 (4) An organization that fails to comply with the contract requirements set forth in
187 Subsection (1) shall:

188 (a) repay the state as provided in Subsection (1)(d); and

189 (b) be disqualified from receiving funds under this part in any subsequent fiscal year.

190 (5) The attorney general shall be responsible for recovering funds that are required to
191 be repaid to the state under this section.

192 (6) Nothing in this section may be construed as applying to funds that are not
193 appropriated under this part.

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

195 **53-3-207. License certificates or driving privilege cards issued to drivers by class**
196 **of motor vehicle -- Contents -- Release of anatomical gift information -- Temporary**
197 **licenses or driving privilege cards -- Minors' licenses, cards, and permits -- Violation.**

198 (1) As used in this section:

199 (a) "Driving privilege" means the privilege granted under this chapter to drive a motor
200 vehicle.

201 (b) "Governmental entity" means the state and its political subdivisions as defined in
202 this Subsection (1).

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

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

211 (2) (a) The division shall issue to every person privileged to drive a motor vehicle, a
212 regular license certificate, a limited-term license certificate, or a driving privilege card
213 indicating the type or class of motor vehicle the person may drive.

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

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

- 218 (i) the distinguishing number assigned to the person by the division;
- 219 (ii) the name, birth date, and Utah residence address of the person;
- 220 (iii) a brief description of the person for the purpose of identification;
- 221 (iv) any restrictions imposed on the license under Section 53-3-208;
- 222 (v) a photograph of the person;
- 223 (vi) a photograph or other facsimile of the person's signature;
- 224 (vii) an indication whether the person intends to make an anatomical gift under Title
225 26, Chapter 28, Revised Uniform Anatomical Gift Act, unless the driving privilege is extended
226 under Subsection 53-3-214(3); and
- 227 (viii) except as provided in Subsection (3)(b), if the person states that the person is a
228 veteran of the United States military on the application for a driver license in accordance with
229 Section 53-3-205 and provides verification that the person was granted an honorable or general
230 discharge from the United States Armed Forces, an indication that the person is a United States
231 military veteran for a regular license certificate or limited-term license certificate issued on or
232 after July 1, 2011.

233 (b) A regular license certificate or limited-term license certificate issued to any person
234 [~~younger~~] less than 21 years of age on a portrait-style format as required in Subsection (5)(b)(i)
235 is not 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~~] less than 21 years of age by use of plainly printed information or the use of a
272 color or other means not used for other regular license certificates, limited-term license
273 certificates, 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[~~-(i) younger~~] less than 21 years of age

276 by use of a portrait-style format not used for other regular license certificates, limited-term
277 license certificates, or driving privilege cards and by plainly printing the date the regular
278 license certificate, limited-term license certificate, or driving privilege card holder is 21 years
279 of age, which is the legal age for purchasing an alcoholic beverage or alcoholic product under
280 Section [32B-4-403](#)[;] and the legal age for purchasing tobacco products under Section
281 [76-10-104](#).

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

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

287 (a) that it is temporary; and

288 (b) its expiration date.

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

292 (b) The division shall distinguish a driving privilege card from a license certificate by:

293 (i) use of a format, color, font, or other means; and

294 (ii) clearly displaying on the front of the driving privilege card a phrase substantially
295 similar to "FOR DRIVING PRIVILEGES ONLY -- NOT VALID FOR IDENTIFICATION".

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

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

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

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

306 (11) A person who violates Subsection (2)(b) is guilty of an infraction.

307 (12) Unless otherwise provided, the provisions, requirements, classes, endorsements,
308 fees, restrictions, and sanctions under this code apply to a:

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

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

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

314 **53-3-806. Portrait-style format -- Minor's card distinguishable.**

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

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

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

326 [~~(b) younger than 19 years of age by plainly printing the date the identification card~~
327 ~~holder is 19 years of age, which is the legal age for purchasing tobacco products under Section~~
328 ~~[76-10-104](#).]~~

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

331 (a) that it is temporary; and

332 (b) its expiration date.

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

334 **59-14-203.5. Commission action to suspend or revoke license.**

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

338 notice of an enforcing agency's finding of a violation of Section 26-42-103.

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

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

343 (3) When the commission revokes a licensee's license under this section the
344 commission may not issue to the licensee, or to the business entity using the license that is
345 revoked, a license under Section 59-14-202 [or], 59-14-301, or 59-14-803 to sell tobacco at the
346 location for which the license was issued for one year after:

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

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

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

351 **59-14-301.5. Commission action to suspend or revoke license.**

352 (1) (a) The commission shall suspend or revoke licenses to sell tobacco, as required
353 under Section 26-42-103 regarding suspension or revocation of a license due to the sale of
354 tobacco products to [~~a person younger than 19~~] an individual less than 21 years of age, upon
355 receipt of notice of an enforcing agency's order or order of default, finding a violation of
356 Section 26-42-103.

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

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

362 (3) When the commission revokes a licensee's license under this section the
363 commission may not issue to the licensee, or to the business entity using the license that is
364 revoked, a license under Section 59-14-202 [or], 59-14-301, or 59-14-803 to sell tobacco at the
365 location for which the license was issued for one year after:

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

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

369 Section 9. Section **59-14-703** is amended to read:

370 **59-14-703. Certification of cigarette rolling machine operators -- Renewal of**
371 **certification -- Requirements for certification or renewal of certification -- Denial.**

372 (1) A cigarette rolling machine operator may not perform the following without first
373 obtaining certification from the commission as provided in this part:

374 (a) locate a cigarette rolling machine within this state;

375 (b) make or offer to make a cigarette rolling machine available for use within this state;

376 or

377 (c) offer a cigarette for sale within this state if the cigarette is produced by:

378 (i) the cigarette rolling machine operator; or

379 (ii) another person at the location of the cigarette rolling machine operator's cigarette
380 rolling machine.

381 (2) A cigarette rolling machine operator shall renew its certification as provided in this
382 section.

383 (3) The commission shall prescribe a form for certifying a cigarette rolling machine
384 operator under this part.

385 (4) (a) A cigarette rolling machine operator shall apply to the commission for
386 certification before the cigarette rolling machine operator performs an act described in
387 Subsection (1) within the state for the first time.

388 (b) A cigarette rolling machine operator shall apply to the commission for a renewal of
389 certification on or before the earlier of:

390 (i) December 31 of each year; or

391 (ii) the day on which there is a change in any of the information the cigarette rolling
392 machine operator provides on the form described in Subsection (3).

393 (5) To obtain certification or renewal of certification under this section from the
394 commission, a cigarette rolling machine operator shall:

395 (a) identify:

396 (i) the cigarette rolling machine operator's name and address;

397 (ii) the location, make, and brand of the cigarette rolling machine operator's cigarette
398 rolling machine; and

399 (iii) each person from whom the cigarette rolling machine operator will purchase or be

400 provided tobacco products that the cigarette rolling machine operator will use to produce
401 cigarettes; and

402 (b) certify, under penalty of perjury, that:

403 (i) the tobacco to be used in the cigarette rolling machine operator's cigarette rolling
404 machine, regardless of the tobacco's label or description, shall be only of a:

405 (A) brand family listed on the commission's directory listing required by Section
406 59-14-603; and

407 (B) tobacco product manufacturer listed on the commission's directory listing required
408 by Section 59-14-603;

409 (ii) the cigarette rolling machine operator shall prohibit another person who uses the
410 cigarette rolling machine operator's cigarette rolling machine from using tobacco, a wrapper, or
411 a cover except for tobacco, a wrapper, or a cover purchased by or provided to the cigarette
412 rolling machine operator from a person identified in accordance with Subsection (5)(a)(iii);

413 (iii) the cigarette rolling machine operator holds a current license issued in accordance
414 with this chapter;

415 (iv) the cigarettes produced from the cigarette rolling machine shall comply with Title
416 53, Chapter 7, Part 4, The Reduced Cigarette Ignition Propensity and Firefighter Protection
417 Act;

418 (v) the cigarette rolling machine shall be located in a separate and defined area where
419 the cigarette rolling machine operator ensures that [~~a person younger~~] an individual less than
420 [~~19~~] 21 years of age may not be:

421 (A) present at any time; or

422 (B) permitted to enter at any time; and

423 (vi) the cigarette rolling machine operator may not barter, distribute, exchange, offer,
424 or sell cigarettes produced from a cigarette rolling machine in a quantity of less than 20
425 cigarettes per retail transaction.

426 (6) If the commission determines that a cigarette rolling machine operator meets the
427 requirements for certification or renewal of certification under this section, the commission
428 shall grant the certification or renewal of certification.

429 (7) If the commission determines that a cigarette rolling machine operator does not
430 meet the requirements for certification or renewal of certification under this section, the

431 commission shall:

432 (a) deny the certification or renewal of certification; and

433 (b) provide the cigarette rolling machine operator the grounds for denial of the
434 certification or renewal of certification in writing.

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

436 **76-10-103. Permitting minors to use tobacco in place of business.**

437 It is a class C misdemeanor for the proprietor of ~~[any]~~ a place of business to knowingly
438 permit ~~[persons under age 19]~~ an individual less than 21 years of age to frequent ~~[a]~~ the place
439 of business while ~~[they are]~~ the individual is using tobacco.

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

441 **76-10-104. Providing a cigar, cigarette, electronic cigarette, or tobacco to a minor**
442 **-- Penalties.**

443 (1) ~~[Any]~~ A person who knowingly, intentionally, recklessly, or with criminal
444 negligence provides any cigar, cigarette, electronic cigarette, or tobacco in any form, to ~~[any~~
445 ~~person under 19]~~ an individual less than 21 years of age~~;~~ is guilty of a class C misdemeanor
446 on the first offense, a class B misdemeanor on the second offense, and a class A misdemeanor
447 on subsequent offenses.

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

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

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

454 Section 12. Section **76-10-104.1** is amended to read:

455 **76-10-104.1. Providing tobacco paraphernalia to minors -- Penalties.**

456 (1) For purposes of this section:

457 (a) "Provides":

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

459 (ii) does not include the acts of the United States Postal Service or other common
460 carrier when engaged in the business of transporting and delivering packages for others or the
461 acts of a person, whether compensated or not, who transports or delivers a package for another

462 person without any reason to know of the package's content.

463 (b) "Tobacco paraphernalia":

464 (i) means any equipment, product, or material of any kind which is used, intended for
465 use, or designed for use to package, repackage, store, contain, conceal, ingest, inhale, or

466 otherwise introduce a cigar, cigarette, or tobacco in any form into the human body, including:

467 (A) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
468 screens, permanent screens, hashish heads, or punctured metal bowls;

469 (B) water pipes;

470 (C) carburetion tubes and devices;

471 (D) smoking and carburetion masks;

472 (E) roach clips[?], meaning objects used to hold burning material, such as a cigarette,
473 that has become too small or too short to be held in the hand;

474 (F) chamber pipes;

475 (G) carburetor pipes;

476 (H) electric pipes;

477 (I) air-driven pipes;

478 (J) chillums;

479 (K) bongs; and

480 (L) ice pipes or chillers; and

481 (ii) does not include matches or lighters.

482 (2) (a) It is unlawful for a person to knowingly, intentionally, recklessly, or with
483 criminal negligence provide any tobacco paraphernalia to [~~any person under 19~~] an individual
484 less than 21 years of age.

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

487 Section 13. Section **76-10-105** is amended to read:

488 **76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco**
489 **by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.**

490 (1) [~~Any 18 year old person~~] An individual who is at least 18 years of age, but less than
491 21 years of age, who buys or attempts to buy, accepts, or has in the [~~person's~~] individual's
492 possession any cigar, cigarette, electronic cigarette, or tobacco in any form is guilty of a class C

493 misdemeanor and subject to:

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

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

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

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

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

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

506 Section 14. Section **76-10-105.1** is amended to read:

507 **76-10-105.1. Requirement of direct, face-to-face sale of cigarettes, tobacco, and**
508 **electronic cigarettes -- Minors not allowed in tobacco specialty shop -- Penalties.**

509 (1) As used in this section:

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

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

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

514 (A) vending machine; or

515 (B) self-service display.

516 (c) "Retailer" means a person who:

517 (i) sells a cigarette, tobacco, or an electronic cigarette to an individual for personal
518 consumption; or

519 (ii) operates a facility with a vending machine that sells a cigarette, tobacco, or an
520 electronic cigarette.

521 (d) "Self-service display" means a display of a cigarette, tobacco, or an electronic
522 cigarette to which the public has access without the intervention of a retailer or retailer's
523 employee.

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

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

527 (2) Except as provided in Subsection (3), a retailer may sell a cigarette, tobacco, or an
528 electronic cigarette only in a face-to-face exchange.

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

530 (a) a mail-order, telephone, or Internet sale made in compliance with Section
531 59-14-509;

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

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

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

537 (c) a sale at a tobacco specialty shop.

538 (4) An individual who is less than ~~[19]~~ 21 years ~~[old]~~ of age may not enter or be
539 present at a tobacco specialty shop unless the individual is:

540 (a) accompanied by a parent or legal guardian;

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

543 (c) 18 years ~~[old]~~ of age or older and an active duty member of the United States
544 Armed Forces, as demonstrated by a valid, government-issued military identification card.

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

548 (6) A violation of Subsection (2) or (4) is a:

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

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

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

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

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

555 subdivision of the state or by a state agency that affects the sale, placement, or display of
556 cigarettes, tobacco, or electronic cigarettes that is not essentially identical to the provisions of
557 this section and Section [76-10-102](#) is superseded by this section and Section [76-10-102](#).

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

560 Section 15. Section **76-10-111** is amended to read:

561 **76-10-111. Prohibition on giving or distributing smokeless tobacco, chewing**
562 **tobacco, or electronic cigarettes without charge -- Exceptions.**

563 (1) The Legislature finds that:

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

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

567 (c) the use of electronic cigarettes may lead to unhealthy behavior such as the use of
568 tobacco products; and

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

571 (2) Except as provided in Subsection (3), it is unlawful for a manufacturer, wholesaler,
572 [~~and~~] or retailer to give or distribute without charge any smokeless tobacco, chewing tobacco,
573 or electronic cigarette in this state. [~~Any~~] A person who violates this section is guilty of a class
574 C misdemeanor for the first offense[-] and [~~is guilty of~~] a class B misdemeanor for any
575 subsequent offense.

576 (3) (a) Smokeless tobacco, chewing tobacco, or [~~an~~] electronic [~~cigarette~~] cigarettes
577 may be distributed [~~to adults~~] without charge to individuals at least 18 years of age at
578 professional conventions where the general public is excluded.

579 (b) The prohibition described in Subsection (2) does not apply to a retailer,
580 manufacturer, or distributor who gives smokeless tobacco, chewing tobacco, or an electronic
581 cigarette to [~~a person of legal~~] an individual at least 21 years of age upon the [~~person's~~]
582 individual's purchase of another tobacco product or electronic cigarette.

583 Section 16. Section **76-10-112** is amended to read:

584 **76-10-112. Prohibition on giving or distributing cigarettes or other tobacco**
585 **products without charge -- Exceptions.**

586 (1) Except as provided in Subsection (2), it is unlawful for a manufacturer, wholesaler,
587 or retailer to give or distribute cigarettes or other tobacco products in this state without charge.

588 ~~[Any]~~ A person who violates this ~~[subsection]~~ Subsection (1) is guilty of a class C
589 misdemeanor for the first offense and a class B misdemeanor for any subsequent offense.

590 (2) ~~[Cigarettes and other tobacco products may be distributed to adults without charge]~~
591 A manufacturer, wholesaler, or retailer may give or distribute, without charge, cigarettes or
592 other tobacco products to an individual at least 21 years of age at a professional ~~[conventions]~~
593 convention where the general public is excluded.

594 (3) The prohibition described in Subsection (1) does not apply to ~~[retailers;~~
595 ~~manufacturers, or distributors]~~ a retailer, manufacturer, or distributor who ~~[give]~~ gives
596 cigarettes or other tobacco products to ~~[persons of legal]~~ an individual at least 21 years of age
597 upon ~~[their]~~ the individual's purchase of cigarettes or other tobacco products.

598 Section 17. Section ~~77-39-101~~ is amended to read:

599 **77-39-101. Investigation of sales of alcohol, tobacco, and electronic cigarettes to**
600 **underage individuals.**

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

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

604 (i) Section ~~32B-4-403~~ by requesting an individual ~~[under the age of 21 years]~~ less than
605 21 years of age to enter into and attempt to purchase or make a purchase of alcohol from a
606 retail establishment; or

607 (ii) Section ~~76-10-104~~ by requesting an individual ~~[under the age of 19 years]~~ less than
608 21 years of age to enter into and attempt to purchase or make a purchase from a retail
609 establishment of:

610 (A) a cigar;

611 (B) a cigarette;

612 (C) tobacco in any form; or

613 (D) an electronic cigarette.

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

616 (c) Immediately following a purchase or attempted purchase or as soon as practical the

617 supervising peace officer shall inform the cashier and the proprietor or manager of the retail
618 establishment that the attempted purchaser was under the legal age to purchase:

619 (i) alcohol; or

620 (ii) (A) a cigar;

621 (B) a cigarette;

622 (C) tobacco in any form; or

623 (D) an electronic cigarette.

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

626 (3) (a) If an individual [~~under the age of 18 years old~~] less than 18 years of age is
627 requested to attempt a purchase, a written consent of that individual's parent or guardian shall
628 be obtained prior to that individual participating in any attempted purchase.

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

630 (i) be a trained volunteer; or

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

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

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

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

643 (i) on a random basis; and

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

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

647 (I) a cigar;

648 (II) a cigarette;
649 (III) tobacco in any form; or
650 (IV) an electronic cigarette; and
651 (B) four times for the attempted purchase of alcohol.
652 (b) Nothing in this section shall prohibit an investigation under this section if:
653 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a
654 cigar, a cigarette, tobacco in any form, or an electronic cigarette to an individual under the age
655 established by Section [32B-4-403](#) or [76-10-104](#); and
656 (ii) the supervising peace officer makes a written record of the grounds for the
657 reasonable suspicion.
658 (7) (a) The peace officer exercising direction, supervision, and monitoring of the
659 attempted purchase shall make a report of the attempted purchase, whether or not a purchase
660 was made.
661 (b) The report required by this Subsection (7) shall include:
662 (i) the name of the supervising peace officer;
663 (ii) the name of the individual attempting the purchase;
664 (iii) a photograph of the individual attempting the purchase showing how that
665 individual appeared at the time of the attempted purchase;
666 (iv) the name and description of the cashier or proprietor from whom the individual
667 attempted the purchase;
668 (v) the name and address of the retail establishment; and
669 (vi) the date and time of the attempted purchase.
670 Section 18. **Effective date.**
671 This bill takes effect on July 1, 2018.

Legislative Review Note
Office of Legislative Research and General Counsel