

HB0157S01 compared with HB0157

~~text~~ shows text that was in HB0157 but was deleted in HB0157S01.

text shows text that was not in HB0157 but was inserted into HB0157S01.

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Representative Kraig Powell proposes the following substitute bill:

AGE LIMIT FOR TOBACCO AND RELATED PRODUCTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kraig Powell

Senate Sponsor: Brian E. Shiozawa

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ prohibits the distribution or sale of tobacco, e-cigarettes, or tobacco paraphernalia to an individual less than 21 years of age;
- ▶ makes corresponding changes to municipalities' authority to regulate tobacco;
- ▶ makes corresponding changes to the Utah Indoor Clean Air Act, enforcement provisions of the Utah Health Code, tobacco program requirements, the Driver Licensing Act, the Cigarette and Tobacco Tax and Licensing Act, the Utah Criminal Code, and provisions relating to the investigation of sales to underage individuals;

HB0157S01 compared with HB0157

and

- ▶ makes technical amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

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

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

26-42-103, as last amended by Laws of Utah 2015, Chapter 132

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

53-3-207, as last amended by Laws of Utah 2015, Chapter 412

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

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

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

59-14-703, as enacted by Laws of Utah 2013, Chapter 148

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

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

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

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

76-10-105.1, as last amended by Laws of Utah 2015, Chapters 66 and 132

76-10-111, as last amended by Laws of Utah 2010, Chapter 114

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

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

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

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

10-8-47. Municipal authority -- Intoxication -- Fights -- Disorderly conduct -- Assault and battery -- Petit larceny -- Riots and disorderly assemblies -- Firearms and fireworks -- False pretenses and embezzlement -- Sale of liquor, narcotics, or tobacco to

HB0157S01 compared with HB0157

minors -- Possession of controlled substances -- Treatment of alcoholics and narcotics addicts.

A [~~municipal legislative body~~] municipality may:

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

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

(3) restrain riots, routs, noises, disturbances, or disorderly assemblies in any street, house, or place in the [~~city, the municipal legislative body may~~] municipality;

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

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

(6) prohibit the sale, giving away, or furnishing of narcotics, alcoholic beverages, or tobacco to a person [~~younger~~] less than 21 years of age[~~, or tobacco to any person younger than 19 years of age, cities may, by ordinance,~~];

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

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

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

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

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

(a) the use of the e-cigarette occurs in the place of public access that is a retail

HB0157S01 compared with HB0157

establishment that sells e-cigarettes and the use is for the purpose of:

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

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

(b) the retailer of e-cigarettes:

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

(ii) does not permit [~~a person under the age of 19~~] an individual less than 21 years of age to enter any part of the premises of the retail establishment in which the e-cigarettes are sold; and

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

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

(3) This section sunsets in accordance with Section 631-1-226.

Section 3. 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~~] an individual less than 21 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

HB0157S01 compared with HB0157

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).

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

51-9-203. Requirements for tobacco programs.

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

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

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

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

(iii) for community-based programs to prevent and reduce smoking, the request shall

HB0157S01 compared with HB0157

demonstrate that the proposed program:

- (A) has a comprehensive strategy with a clear mission and goals;
- (B) provides for committed, caring, and professional leadership; and
- (C) if directed toward youth:
 - (I) offers youth-centered activities in youth accessible facilities;
 - (II) is culturally sensitive, inclusive, and diverse;
 - (III) involves youth in the planning, delivery, and evaluation of services that affect

them; and

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

(iv) for enforcement, control, and compliance program, the request shall demonstrate that the proposed program can reasonably be expected to reduce the extent to which tobacco products are available to individuals [~~under the age of 19~~] less than 21 years of age;

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

The report shall contain the following:

- (i) the amount funded;
- (ii) the amount expended;
- (iii) a description of the program or campaign and the number of adults and youth who participated;

participated;

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

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

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

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

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

- (A) the provisions of the Master Settlement Agreement;
- (B) Title 26, Chapter 38, Utah Indoor Clean Air Act;
- (C) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; and
- (D) Title 77, Chapter 39, Sale of Tobacco or Alcohol to Under Age Persons; and

HB0157S01 compared with HB0157

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

(c) "Political subdivision" means any county, city, town, school district, public transit district, community development and renewal agency, special improvement or taxing district, local district, special service district, an entity created by an interlocal agreement adopted under

HB0157S01 compared with HB0157

Title 11, Chapter 13, Interlocal Cooperation Act, or other governmental subdivision or public corporation.

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

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

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

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

- (i) the distinguishing number assigned to the person by the division;
- (ii) the name, birth date, and Utah residence address of the person;
- (iii) a brief description of the person for the purpose of identification;
- (iv) any restrictions imposed on the license under Section 53-3-208;
- (v) a photograph of the person;
- (vi) a photograph or other facsimile of the person's signature;
- (vii) an indication whether the person intends to make an anatomical gift under Title 26, Chapter 28, Revised Uniform Anatomical Gift Act, unless the driving privilege is extended under Subsection 53-3-214(3); and

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

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

HB0157S01 compared with HB0157

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

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

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

(iii) The commissioner may also prescribe the issuance of a special type of limited regular license certificate, limited-term license certificate, or driving privilege card under Subsection 53-3-220(4).

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

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

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

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

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

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

(ii) The division may issue a learner permit issued in accordance with Section

HB0157S01 compared with HB0157

53-3-210.5 to an applicant for a driving privilege card.

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

(b) The division shall distinguish a regular license certificate, limited-term license certificate, or driving privilege card issued to any person[~~:(i) younger~~] less than 21 years of age by use of a portrait-style format not used for other regular license certificates, limited-term license certificates, or driving privilege cards and by plainly printing the date the regular license certificate, limited-term license certificate, or driving privilege card holder is 21 years of age, which is the legal age for purchasing an alcoholic beverage or alcoholic product under Section 32B-4-403[~~;~~] and the legal age for purchasing tobacco products under Section 76-10-104.

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

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

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

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

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

- (i) use of a format, color, font, or other means; and
- (ii) clearly displaying on the front of the driving privilege card a phrase substantially similar to "FOR DRIVING PRIVILEGES ONLY -- NOT VALID FOR IDENTIFICATION".

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

HB0157S01 compared with HB0157

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The division shall distinguish a limited-term identification card by clearly

HB0157S01 compared with HB0157

indicating on the card:

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

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

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

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

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

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

(3) When the commission revokes a licensee's license under this section 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 ~~{f} or {j}~~ 59-14-301 ~~{, or 59-14-803}~~ to sell tobacco, or a license under Section 59-14-803 to sell an electronic cigarette product, 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.

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

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

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

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

(2) It is the duty of the enforcing agency to advise the commission of any order or order

HB0157S01 compared with HB0157

of default finding a violation of Section 26-42-103, for which suspension or revocation of the license is a penalty.

(3) When the commission revokes a licensee's license under this section 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, or a license under Section 59-14-803 to sell an electronic cigarette product, 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.

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

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

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

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

or

- (c) offer a cigarette for sale within this state if the cigarette is produced by:
 - (i) the cigarette rolling machine operator; or
 - (ii) another person at the location of the cigarette rolling machine operator's cigarette rolling machine.

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

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

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

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

HB0157S01 compared with HB0157

- (i) December 31 of each year; or
 - (ii) the day on which there is a change in any of the information the cigarette rolling machine operator provides on the form described in Subsection (3).
- (5) To obtain certification or renewal of certification under this section from the commission, a cigarette rolling machine operator shall:
- (a) identify:
 - (i) the cigarette rolling machine operator's name and address;
 - (ii) the location, make, and brand of the cigarette rolling machine operator's cigarette rolling machine; and
 - (iii) each person from whom the cigarette rolling machine operator will purchase or be provided tobacco products that the cigarette rolling machine operator will use to produce cigarettes; and
 - (b) certify, under penalty of perjury, that:
 - (i) the tobacco to be used in the cigarette rolling machine operator's cigarette rolling machine, regardless of the tobacco's label or description, shall be only of a:
 - (A) brand family listed on the commission's directory listing required by Section 59-14-603; and
 - (B) tobacco product manufacturer listed on the commission's directory listing required by Section 59-14-603;
 - (ii) the cigarette rolling machine operator shall prohibit another person who uses the cigarette rolling machine operator's cigarette rolling machine from using tobacco, a wrapper, or a cover except for tobacco, a wrapper, or a cover purchased by or provided to the cigarette rolling machine operator from a person identified in accordance with Subsection (5)(a)(iii);
 - (iii) the cigarette rolling machine operator holds a current license issued in accordance with this chapter;
 - (iv) the cigarettes produced from the cigarette rolling machine shall comply with Title 53, Chapter 7, Part 4, The Reduced Cigarette Ignition Propensity and Firefighter Protection Act;
 - (v) the cigarette rolling machine shall be located in a separate and defined area where the cigarette rolling machine operator ensures that [~~a person younger~~] an individual less than [19] 21 years of age may not be:

HB0157S01 compared with HB0157

(A) present at any time; or

(B) permitted to enter at any time; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) does not include the acts of the United States Postal Service or other common carrier when engaged in the business of transporting and delivering packages for others or the

HB0157S01 compared with HB0157

acts of a person, whether compensated or not, who transports or delivers a package for another person without any reason to know of the package's content.

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

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

(1) For purposes of this section:

(a) "Provides":

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

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

(b) "Tobacco paraphernalia":

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

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

(B) water pipes;

(C) carburetion tubes and devices;

(D) smoking and carburetion masks;

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

(F) chamber pipes;

(G) carburetor pipes;

(H) electric pipes;

(I) air-driven pipes;

(J) chillums;

(K) bongs; and

(L) ice pipes or chillers; and

(ii) does not include matches or lighters.

(2) (a) It is unlawful for a person to knowingly, intentionally, recklessly, or with

HB0157S01 compared with HB0157

criminal negligence provide any tobacco paraphernalia to [~~any person under 19~~] an individual less than 21 years of age.

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

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

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

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

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

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

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

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

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

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

Section 14. Section **76-10-105.1** is 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" 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:

HB0157S01 compared with HB0157

(A) vending machine; or

(B) self-service display.

(c) "Retailer" means a person who:

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

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

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

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

(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~~] 21 years [~~old~~] of age 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~~] of age or older and an active duty member of the United States Armed Forces, as demonstrated by a valid, government-issued military identification card.

HB0157S01 compared with HB0157

(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) A violation of Subsection (2) or (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 by this section and Section 76-10-102.

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

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

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

(1) The Legislature finds that:

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

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

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

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

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

HB0157S01 compared with HB0157

and ~~[is guilty of]~~ a class B misdemeanor for any subsequent offense.

(3) (a) ~~{Smokeless tobacco,}~~ [Smokeless] A manufacturer, wholesaler, or retailer may give or distribute, without charge, smokeless tobacco, including chewing tobacco, or ~~{an}~~ electronic ~~{cigarette}~~ {cigarettes} ~~[may be distributed {to adults} without charge]~~ to ~~{individuals}~~ an individual at least ~~{18}~~ 21 years of age at a professional ~~[conventions]~~ convention where the general public is excluded.

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

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

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

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

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

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

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

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

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

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

HB0157S01 compared with HB0157

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

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

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

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

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

- (i) alcohol; or
- (ii) (A) a cigar;
- (B) a cigarette;
- (C) tobacco in any form; or
- (D) an electronic cigarette.

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

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

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

- (i) be a trained volunteer; or
- (ii) receive payment, but may not be paid based on the number of successful purchases of alcohol, tobacco, or an electronic cigarette.

(4) The individual requested by the peace officer to attempt a purchase and anyone accompanying the individual attempting a purchase may not during the attempted purchase

HB0157S01 compared with HB0157

misrepresent the age of the individual by false or misleading identification documentation in attempting the purchase.

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

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

(i) on a random basis; and

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

(A) four times for the attempted purchase of:

(I) a cigar;

(II) a cigarette;

(III) tobacco in any form; or

(IV) an electronic cigarette; and

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

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

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

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

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

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

(i) the name of the supervising peace officer;

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

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

HB0157S01 compared with HB0157

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

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

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

Section 18. **Effective date.**

This bill takes effect on July 1, 2018.

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Legislative Review Note

~~Office of Legislative Research and General Counsel~~