

TOBACCO AGE AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the age when a person may lawfully obtain, possess, and use tobacco products and creates a restricted account.

Highlighted Provisions:

This bill:

▶ modifies provisions of the Utah Code to provide that:

• beginning on July 1, 2019, the minimum age for obtaining, possessing, or using tobacco products or paraphernalia is 20 years of age; and

• beginning on January 1, 2020, the minimum age for obtaining, possessing, or using tobacco products or paraphernalia is 21 years of age;

▶ creates the Legal Tobacco Age Restricted Account;

▶ addresses identification requirements; and

▶ makes technical and conforming changes.

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



- 28 [26-42-103](#), as last amended by Laws of Utah 2015, Chapter 132
- 29 [51-9-203](#), as last amended by Laws of Utah 2012, Chapter 242
- 30 [53-3-207](#), as last amended by Laws of Utah 2016, Chapter 350
- 31 [53-3-806](#), as last amended by Laws of Utah 2010, Chapter 276
- 32 [59-14-203.5](#), as last amended by Laws of Utah 2011, Chapter 96
- 33 [59-14-301.5](#), as last amended by Laws of Utah 2011, Chapter 96
- 34 [59-14-703](#), as enacted by Laws of Utah 2013, Chapter 148
- 35 [76-10-103](#), as enacted by Laws of Utah 1973, Chapter 196
- 36 [76-10-104](#), as last amended by Laws of Utah 2010, Chapter 114
- 37 [76-10-104.1](#), as last amended by Laws of Utah 2013, Chapter 278
- 38 [76-10-105](#), as last amended by Laws of Utah 2017, Chapter 330
- 39 [76-10-105.1](#), as last amended by Laws of Utah 2015, Chapters 66 and 132
- 40 [77-39-101](#), as last amended by Laws of Utah 2010, Chapters 114 and 276

41 ENACTS:

42 [59-14-216](#), Utah Code Annotated 1953



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

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

46 **10-8-47. Intoxication -- Fights -- Disorderly conduct -- Assault and battery -- Petit**
47 **larceny -- Riots and disorderly assemblies -- Firearms and fireworks -- False pretenses**
48 **and embezzlement -- Sale of liquor, narcotics, or tobacco to minors -- Possession of**
49 **controlled substances -- Treatment of alcoholics and narcotics or drug addicts.**

50 (1) A municipal legislative body may:

51 (a) prevent intoxication, fighting, quarreling, dog fights, cockfights, prize fights,
52 bullfights, and all disorderly conduct and provide against and punish the offenses of assault and
53 battery and petit larceny; [~~the municipal legislative body may~~]

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

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

58 (d) provide against and prevent the offense of obtaining money or property under false

59 pretenses and the offense of embezzling money or property in all cases where the money or
 60 property embezzled or obtained under false pretenses does not exceed in value the sum of \$500
 61 [~~and may~~];

62 (e) prohibit the sale, giving away, or furnishing of narcotics[;] or alcoholic beverages to
 63 a person younger than 21 years of age[; ~~or tobacco to any person younger than 19 years of age;~~
 64 ~~cities~~];

65 (f) prohibit the sale, giving away, or furnishing of combustible or chewing tobacco to a
 66 person younger than:

67 (i) beginning July 1, 2019, and ending December 31, 2019, 20 years of age; and

68 (ii) beginning January 1, 2020, 21 years of age; and

69 (g) prohibit the sale, giving away, or furnishing of e-cigarettes to a person younger than
 70 19 years of age.

71 (2) Cities may, by ordinance, prohibit the possession of controlled substances as
 72 defined in the Utah Controlled Substances Act or any other endangering or impairing
 73 substance, provided the conduct is not a class A misdemeanor or felony[; ~~and~~].

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

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

79 **26-42-103. Violations and penalties -- Imposition by enforcing agency and tax**
 80 **commission.**

81 (1) If, following an investigation or issuance of a citation or information under Section
 82 **77-39-101**, an enforcing agency determines under Section **26-42-104** that a licensee or any
 83 employee has sold tobacco to a person [~~younger than 19 years of age, as prohibited by~~] in
 84 violation of Section **76-10-104**, the enforcing agency may impose upon the licensee the
 85 following administrative penalties:

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

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

89 (c) upon a third or subsequent violation at the same retail location, and within 12

90 months of the first violation, a penalty of not more than \$1,000.

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

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

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

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

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

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

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

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

111 Section 3. Section 51-9-203 is amended to read:

112 **51-9-203. Requirements for tobacco programs.**

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

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

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

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

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

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

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

128 (C) if directed toward youth:

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

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

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

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

134 (iv) for enforcement, control, and compliance program, the request shall demonstrate
135 that the proposed program can reasonably be expected to reduce the extent to which
136 combustible and chewing tobacco products are available to individuals under [the age of 19];

137 (A) beginning July 1, 2019, and ending December 31, 2019, 20 years of age; and

138 (B) beginning January 1, 2020, 21 years of age;

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

140 The report shall contain the following:

141 (i) the amount funded;

142 (ii) the amount expended;

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

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

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

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

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

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

- 154 (A) the provisions of the Master Settlement Agreement;
- 155 (B) Title 26, Chapter 38, Utah Indoor Clean Air Act;
- 156 (C) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; and
- 157 (D) Title 77, Chapter 39, Sale of Tobacco or Alcohol to Under Age Persons; and
- 158 (d) agree, by contract, to repay the funds provided under this part if the organization:

- 159 (i) fails to file a timely report as required by Subsection (1)(b); or
- 160 (ii) uses any portion of the funds in violation of Subsection (1)(c).

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

- 164 (a) shall include a comparison of annual smoking trends;
- 165 (b) may be conducted by an independent evaluator; and
- 166 (c) may be paid for by funds appropriated from the account for that purpose.

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

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

- 171 (a) repay the state as provided in Subsection (1)(d); and
- 172 (b) be disqualified from receiving funds under this part in any subsequent fiscal year.

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

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

177 Section 4. Section **53-3-207** is amended to read:

178 **53-3-207. License certificates or driving privilege cards issued to drivers by class**
179 **of motor vehicle -- Contents -- Release of anatomical gift information -- Temporary**
180 **licenses or driving privilege cards -- Minors' licenses, cards, and permits -- Violation.**

181 (1) As used in this section:

- 182 (a) "Driving privilege" means the privilege granted under this chapter to drive a motor

183 vehicle.

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

186 (c) "Political subdivision" means any county, city, town, school district, public transit
187 district, community reinvestment agency, special improvement or taxing district, local district,
188 special service district, an entity created by an interlocal agreement adopted under Title 11,
189 Chapter 13, Interlocal Cooperation Act, or other governmental subdivision or public
190 corporation.

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

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

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

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

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

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

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

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

205 (v) a photograph of the person;

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

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

208 26, Chapter 28, Revised Uniform Anatomical Gift Act, unless the driving privilege is extended
209 under Subsection 53-3-214(3); and

210 (viii) except as provided in Subsection (3)(b), if the person states that the person is a
211 veteran of the United States military on the application for a driver license in accordance with
212 Section 53-3-205 and provides verification that the person was granted an honorable or general
213 discharge from the United States Armed Forces, an indication that the person is a United States

214 military veteran for a regular license certificate or limited-term license certificate issued on or
215 after July 1, 2011.

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

220 (c) A new license certificate issued by the division may not bear the person's social
221 security number.

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

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

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

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

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

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

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

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

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

250 (ii) The division may issue a learner permit issued in accordance with Section
251 [53-3-210.5](#) to an applicant for a driving privilege card.

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

257 (b) The division shall distinguish a regular license certificate, limited-term license
258 certificate, or driving privilege card issued to any person[~~:(\hat{r})~~] younger than 21 years of age by
259 use of a portrait-style format not used for other regular license certificates, limited-term license
260 certificates, or driving privilege cards and by plainly printing the date the regular license
261 certificate, limited-term license certificate, or driving privilege card holder is 21 years of age[
262 ~~which is the legal age for purchasing an alcoholic beverage or alcoholic product under Section~~
263 [32B-4-403](#), and].

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

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

269 (a) that it is temporary; and

270 (b) its expiration date.

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

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

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

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

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

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

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

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

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

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

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

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

295 Section 5. Section 53-3-806 is amended to read:

296 **53-3-806. Portrait-style format -- Minor's card distinguishable.**

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

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

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

307 ~~[(b) younger than 19 years of age by plainly printing the date the identification card~~
308 ~~holder is 19 years of age, which is the legal age for purchasing tobacco products under Section~~
309 ~~76-10-104.]~~

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

312 (a) that it is temporary; and

313 (b) its expiration date.

314 Section 6. Section **59-14-203.5** is amended to read:

315 **59-14-203.5. Commission action to suspend or revoke license.**

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

321 ~~(i) beginning July 1, 2019, and ending December 31, 2019, 20 years of age; and~~

322 ~~(ii) beginning January 1, 2020, 21 years of age.~~

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

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

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

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

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

334 Section 7. Section **59-14-216** is enacted to read:

335 **59-14-216. Legal Tobacco Age Restricted Account.**

336 ~~(1) There is created within the General Fund a restricted account known as the "Legal~~
337 ~~Tobacco Age Restricted Account."~~

338 (2) The account created in Subsection (1) consists of:

339 (a) the cumulative annual growth of revenue from cigarette and tobacco taxes over the
340 amount collected in fiscal year 2019, beginning in fiscal year 2020; and

341 (b) the first \$1,000,000 of annual growth from the gross revenue from the sale of liquor
342 by the Department of Alcoholic Beverage Control, as provided under Title 32B, Chapter 2,
343 Alcoholic Beverage Control Administration Act, over the amount collected in fiscal year 2019,
344 beginning in fiscal year 2020.

345 (3) Upon appropriations by the Legislature, money from the account created in
346 Subsection (1) shall be deposited into the General Fund.

347 (4) The account created in Subsection (1) is repealed on June 30, 2023.

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

349 **59-14-301.5. Commission action to suspend or revoke license.**

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

356 (i) beginning July 1, 2019, and ending December 31, 2019, 20 years of age; and

357 (ii) beginning January 1, 2020, 21 years of age.

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

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

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

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

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

369 revocation becomes final.

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

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

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

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

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

377 or

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

379 (i) the cigarette rolling machine operator; or

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

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

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

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

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

391 (i) December 31 of each year; or

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

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

396 (a) identify:

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

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

400 (iii) each person from whom the cigarette rolling machine operator will purchase or be
401 provided tobacco products that the cigarette rolling machine operator will use to produce
402 cigarettes; and

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

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

406 (A) brand family listed on the commission's directory listing required by Section
407 [59-14-603](#); and

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

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

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

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

419 (v) the cigarette rolling machine shall be located in a separate and defined area where
420 the cigarette rolling machine operator ensures that a person younger than ~~[19 years of age]~~
421 beginning July 1, 2019, and ending December 31, 2019, 20 years of age, and beginning January
422 1, 2020, 21 years of age may not be:

423 (A) present at any time; or

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

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

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

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

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

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

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

438 **76-10-103. Permitting minors to use tobacco in place of business.**

439 It is a class C misdemeanor for the proprietor of any place of business to knowingly
 440 permit ~~[persons under age 19]~~ an individual to frequent a place of business while ~~[they are]~~
 441 using combustible or chewing tobacco if the individual is younger than:

442 (1) beginning July 1, 2019, and ending December 31, 2019, 20 years of age; and

443 (2) beginning January 1, 2020, 21 years of age.

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

445 **76-10-104. Providing a cigar, cigarette, electronic cigarette, or tobacco to a minor**
 446 **-- Penalties.**

447 (1) (a) ~~[Any person]~~ A person violates this section who knowingly, intentionally,
 448 recklessly, or with criminal negligence provides:

449 (i) any cigar, cigarette, ~~[electronic cigarette,]~~ or tobacco in any form[;] to any person
 450 under ~~[19 years of age,];~~

451 (A) beginning July 1, 2019, and ending December 31, 2019, 20 years of age; and

452 (B) beginning January 1, 2020, 21 years of age; or

453 (ii) an electronic cigarette to a person under 19 years of age.

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

457 (2) ~~[For purposes of]~~ As used in this section, "provides":

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

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

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

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

464 **76-10-104.1. Providing tobacco paraphernalia to minors -- Penalties.**

465 (1) For purposes of this section:

466 (a) "Provides":

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

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

472 (b) "Tobacco paraphernalia":

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

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

478 (B) water pipes;

479 (C) carburetion tubes and devices;

480 (D) smoking and carburetion masks;

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

483 (F) chamber pipes;

484 (G) carburetor pipes;

485 (H) electric pipes;

486 (I) air-driven pipes;

487 (J) chillums;

488 (K) bongs; and

489 (L) ice pipes or chillers; and

490 (ii) does not include matches or lighters.

491 (2) (a) It is unlawful for a person to knowingly, intentionally, recklessly, or with
492 criminal negligence provide any tobacco paraphernalia to any person under [~~19 years of age~~];

493 (i) beginning July 1, 2019, and ending December 31, 2019, 20 years of age; and

494 (ii) beginning January 1, 2020, 21 years of age.

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

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

498 **76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco**
499 **by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.**

500 (1) (a) ~~[Any 18-year-old]~~ A person who is 18 years or older, but younger than the age
501 specified in Subsection (1)(b), and buys or attempts to buy, accepts, or has in the person's
502 possession any cigar, cigarette, ~~[electronic cigarette,]~~ or tobacco in any form is guilty of a class
503 C misdemeanor and subject to:

504 ~~[(a)]~~ (i) a minimum fine or penalty of \$60; and

505 ~~[(b)]~~ (ii) participation in a court-approved tobacco education program, which may
506 include a participation fee.

507 (b) For purposes of Subsection (1)(a), the person is younger than:

508 (i) beginning July 1, 2019, and ending December 31, 2019, 20 years of age; and

509 (ii) beginning January 1, 2020, 21 years of age.

510 (c) Any person who is 18 years or older, but younger than 19 years of age, buys or
511 attempts to buy, accepts, or has in the person's possession an electronic cigarette is guilty of a
512 class C misdemeanor and subject to:

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

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

516 (2) ~~[Any]~~ A person under the age of 18 who buys or attempts to buy, accepts, or has in
517 the person's possession [any] a cigar, cigarette, electronic cigarette, or tobacco in any form is
518 subject to the jurisdiction of the juvenile court and subject to Section 78A-6-602, unless the
519 violation is committed on school property. If a violation under this section is adjudicated under
520 Section 78A-6-117, the minor may be subject to the following:

521 (a) a fine or penalty, in accordance with Section 78A-6-117; and

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

524 (3) A compliance officer appointed by a board of education under Section [~~53A-3-402~~]
525 [53G-4-402](#) may not issue a citation for a violation of this section committed on school
526 property. A cited violation committed on school property shall be addressed in accordance with
527 Section [~~53A-11-911~~] [53G-8-211](#).

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

529 **76-10-105.1. Requirement of direct, face-to-face sale of cigarettes, tobacco, and**
530 **electronic cigarettes -- Minors not allowed in tobacco specialty shop -- Penalties.**

531 (1) As used in this section:

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

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

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

536 (A) vending machine; or

537 (B) self-service display.

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

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

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

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

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

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

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

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

553 (a) a mail-order, telephone, or Internet sale made in compliance with Section
554 [59-14-509](#);

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

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

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

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

561 (4) (a) An individual who is less than ~~[19 years old]~~ the age specified in Subsection
562 (4)(b) may not enter or be present at a tobacco specialty shop unless the individual is:

563 ~~[(a)]~~ (i) accompanied by a parent or legal guardian;

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

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

568 (b) For purposes of Subsection (4)(a), the person is younger than:

569 (i) beginning July 1, 2019, and ending December 31, 2019, 20 years of age; and

570 (ii) beginning January 1, 2020, 21 years of age.

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

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

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

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

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

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

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

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

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

587 **77-39-101. Investigation of sales of alcohol, tobacco, and electronic cigarettes to**
588 **underage persons.**

589 (1) As used in this section, "electronic cigarette" ~~[is-as]~~ means the same as that term is
590 defined in Section 76-10-101.

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

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

595 (ii) Section 76-10-104 by requesting an individual under the age ~~[of 19 years]~~ specified
596 in Subsection (2)(f) to enter into and attempt to purchase or make a purchase from a retail
597 establishment of:

598 (A) a cigar;

599 (B) a cigarette; or

600 (C) tobacco in any form~~[; or]~~.

601 ~~[(D) an electronic cigarette.]~~

602 (b) A peace officer, as defined by Title 53, Chapter 13, Peace Officer Classifications,
603 may investigate the possible violation of Section 76-10-104 by requesting an individual under
604 the age of 19 years to enter into and attempt to purchase or make a purchase from a retail
605 establishment of an electronic cigarette.

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

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

611 (i) alcohol; or

612 (ii) (A) a cigar;

613 (B) a cigarette;

614 (C) tobacco in any form; or

615 (D) an electronic cigarette.

616 ~~[(d)]~~ (e) If a citation or information is issued, ~~[it]~~ the citation or information shall be

617 issued within seven days of the purchase.

618 (f) For purposes of Subsection (2)(a)(ii), the person is younger than:

619 (i) beginning July 1, 2019, and ending December 31, 2019, 20 years of age; and

620 (ii) beginning January 1, 2020, 21 years of age.

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

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

625 (i) be a trained volunteer; or

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

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

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

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

638 (i) on a random basis; and

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

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

642 (I) a cigar;

643 (II) a cigarette;

644 (III) tobacco in any form; or

645 (IV) an electronic cigarette; and

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

647 (b) ~~[Nothing in this section shall]~~ This section does not prohibit an investigation under

648 this section if:

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

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

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

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

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

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

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

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

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

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

666 Section 16. **Effective date.**

667 This bill takes effect on July 1, 2019.

Legislative Review Note
Office of Legislative Research and General Counsel