

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

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kraig Powell**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions of the Utah Code regarding the age limit corresponding
10 with tobacco and related products.

11 **Highlighted Provisions:**

12 This bill:

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

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

17 ▶ prohibits a person less than 21 years of age from being present at certain
18 establishments where tobacco, e-cigarettes, or paraphernalia are sold or used;

19 ▶ prohibits a proprietor of a business from allowing an individual less than 21 years of
20 age to frequent the business while the individual is using tobacco;

21 ▶ addresses the investigation and enforcement of the provisions of this bill; and

22 ▶ makes technical and conforming amendments.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**



28 AMENDS:

- 29 **10-8-47**, as last amended by Laws of Utah 2012, Chapter 140
- 30 **26-38-2.6**, as enacted by Laws of Utah 2012, Chapter 171
- 31 **26-42-103**, as last amended by Laws of Utah 2011, Chapter 96
- 32 **51-9-203**, as last amended by Laws of Utah 2012, Chapter 242
- 33 **53-3-207**, as last amended by Laws of Utah 2014, Chapter 85
- 34 **53-3-806**, as last amended by Laws of Utah 2010, Chapter 276
- 35 **59-14-203.5**, as last amended by Laws of Utah 2011, Chapter 96
- 36 **59-14-301.5**, as last amended by Laws of Utah 2011, Chapter 96
- 37 **76-10-103**, as enacted by Laws of Utah 1973, Chapter 196
- 38 **76-10-104**, as last amended by Laws of Utah 2010, Chapter 114
- 39 **76-10-104.1**, as last amended by Laws of Utah 2013, Chapter 278
- 40 **76-10-105**, as last amended by Laws of Utah 2010, Chapter 114
- 41 **76-10-105.1**, as last amended by Laws of Utah 2010, Chapter 114
- 42 **76-10-112**, as enacted by Laws of Utah 1989, Chapter 193
- 43 **77-39-101**, as last amended by Laws of Utah 2010, Chapters 114 and 276

44

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

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

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

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

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

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

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

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

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

65 (6) prohibit the sale, giving away, or furnishing of narcotics[;] or alcoholic beverages
66 to a person [~~younger~~] less than 21 years of age, or tobacco to any person [~~younger~~] less than
67 [~~19~~] 21 years of age; [~~cities may, by ordinance,~~]

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

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

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

76 **26-38-2.6. Temporary exemption for certain restrictions on the use of**
77 **e-cigarettes.**

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

80 (a) the use of the e-cigarette occurs in the place of public access that is a retail
81 establishment that sells e-cigarettes and the use is for the purpose of:

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

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

85 (b) the retailer of e-cigarettes:

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

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

90 sold; and

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

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

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

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

97 **26-42-103. Violations and penalties -- Imposition by enforcing agency and tax**
98 **commission.**

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

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

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

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

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

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

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

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

118 (4) When the commission revokes a license under Subsection (3)(b), the commission
119 may not issue to the licensee, or to the business entity using the license that is revoked, a
120 license under Section 59-14-202 or 59-14-301 to sell tobacco at the location for which the

121 license was issued for one year after:

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

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

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

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

130 **51-9-203. Requirements for tobacco programs.**

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

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

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

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

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

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

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

146 (C) if directed toward youth:

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

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

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

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

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

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

156 The report shall contain the following:

157 (i) the amount funded;

158 (ii) the amount expended;

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

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

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

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

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

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

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

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

172 (C) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to [~~Underaged~~] Underage
173 Persons; and

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

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

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

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

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

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

- 183 (b) may be conducted by an independent evaluator; and
- 184 (c) may be paid for by funds appropriated from the account for that purpose.
- 185 (3) The Department of Health shall annually report to the Social Services
- 186 Appropriations Subcommittee on the reviews conducted pursuant to Subsection (2).
- 187 (4) An organization that fails to comply with the contract requirements set forth in
- 188 Subsection (1) shall:
 - 189 (a) repay the state as provided in Subsection (1)(d); and
 - 190 (b) be disqualified from receiving funds under this part in any subsequent fiscal year.
- 191 (5) The attorney general shall be responsible for recovering funds that are required to
- 192 be repaid to the state under this section.
- 193 (6) Nothing in this section may be construed as applying to funds that are not
- 194 appropriated under this part.

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

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

199 (1) As used in this section:

- 200 (a) "Driving privilege" means the privilege granted under this chapter to drive a motor
- 201 vehicle.
- 202 (b) "Governmental entity" means the state and its political subdivisions as defined in
- 203 this Subsection (1).
- 204 (c) "Political subdivision" means any county, city, town, school district, public transit
- 205 district, community development and renewal agency, special improvement or taxing district,
- 206 local district, special service district, an entity created by an interlocal agreement adopted under
- 207 Title 11, Chapter 13, Interlocal Cooperation Act, or other governmental subdivision or public
- 208 corporation.
- 209 (d) "State" means this state, and includes any office, department, agency, authority,
- 210 commission, board, institution, hospital, college, university, children's justice center, or other
- 211 instrumentality of the state.
- 212 (2) (a) The division shall issue to every person privileged to drive a motor vehicle, a
- 213 regular license certificate, a limited-term license certificate, or a driving privilege card

214 indicating the type or class of motor vehicle the person may drive.

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

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

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

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

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

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

223 (v) a photograph of the person;

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

225 (vii) an indication whether the person intends to make an anatomical gift under Title
226 26, Chapter 28, Revised Uniform Anatomical Gift Act, unless the driving privilege is extended
227 under Subsection 53-3-214(3); and

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

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

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

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

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

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

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

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

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

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

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

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

268 (ii) The division may issue a learner permit issued in accordance with Section
269 53-3-210.5 to an applicant for a driving privilege card.

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

275 (b) The division shall distinguish a regular license certificate, limited-term license

276 certificate, or driving privilege card issued to any person[~~:(i) younger~~] less than 21 years of age
277 by use of a portrait-style format not used for other regular license certificates, limited-term
278 license certificates, or driving privilege cards and by plainly printing the date the regular
279 license certificate, limited-term license certificate, or driving privilege card holder is 21 years
280 of age, which is the legal age for purchasing an alcoholic beverage or alcoholic product under
281 Section [32B-4-403](#)[~~; and~~] and the legal age for purchasing tobacco products under Section
282 [76-10-104](#).

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

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

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

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

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

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

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

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

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

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

307 (11) A person who violates Subsection (2)(b) is guilty of a class C misdemeanor.

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

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

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

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

315 **53-3-806. Portrait-style format -- Minor's card distinguishable.**

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

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

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

327 [~~(b) younger than 19 years of age by plainly printing the date the identification card~~
328 ~~holder is 19 years of age, which is the legal age for purchasing tobacco products under Section~~
329 ~~76-10-104~~.]

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

332 (a) that it is temporary; and

333 (b) its expiration date.

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

335 **59-14-203.5. Commission action to suspend or revoke license.**

336 (1) (a) The commission shall suspend or revoke licenses to sell tobacco, as required
337 under Section 26-42-103 regarding suspension or revocation of a license due to the sale of

338 cigarettes to [~~a person younger than 19~~] an individual less than 21 years of age, upon receipt of
339 notice of an enforcing agency's finding of a violation of Section 26-42-103.

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

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

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

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

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

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

352 **59-14-301.5. Commission action to suspend or revoke license.**

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

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

371 **76-10-103. Permitting minors to use tobacco in place of business.**

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

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

376 **76-10-104. Providing a cigar, cigarette, electronic cigarette, or tobacco to a minor**

377 **-- Penalties.**

378 (1) Any person who knowingly, intentionally, recklessly, or with criminal negligence
379 provides any cigar, cigarette, electronic cigarette, or tobacco in any form, to ~~[any person under~~
380 ~~19]~~ an individual less than 21 years of age, is guilty of a class C misdemeanor on the first
381 offense, a class B misdemeanor on the second offense, and a class A misdemeanor on
382 subsequent offenses.

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

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

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

389 Section 11. Section **76-10-104.1** is amended to read:

390 **76-10-104.1. Providing tobacco paraphernalia to minors -- Penalties.**

391 (1) For purposes of this section:

392 (a) "Provides":

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

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

398 (b) "Tobacco paraphernalia":

399 (i) means any equipment, product, or material of any kind which is used, intended for

400 use, or designed for use to package, repackage, store, contain, conceal, ingest, inhale, or
401 otherwise introduce a cigar, cigarette, or tobacco in any form into the human body, including:

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

404 (B) water pipes;

405 (C) carburetion tubes and devices;

406 (D) smoking and carburetion masks;

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

409 (F) chamber pipes;

410 (G) carburetor pipes;

411 (H) electric pipes;

412 (I) air-driven pipes;

413 (J) chillums;

414 (K) bongs; and

415 (L) ice pipes or chillers; and

416 (ii) does not include matches or lighters.

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

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

422 Section 12. Section **76-10-105** is amended to read:

423 **76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco**
424 **by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.**

425 (1) ~~[Any 18 year old person]~~ An individual who is at least 18 years of age, but less than
426 21 years of age, who buys or attempts to buy, accepts, or has in the ~~[person's]~~ individual's
427 possession any cigar, cigarette, electronic cigarette, or tobacco in any form is guilty of a class C
428 misdemeanor and subject to:

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

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

431 participation fee.

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

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

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

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

441 Section 13. Section **76-10-105.1** is amended to read:

442 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products and**
443 **electronic cigarettes -- Supremacy clause -- Penalties.**

444 (1) As used in this section:

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

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

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

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

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

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

461 (i) an employee of the retailer; and

462 (ii) the purchaser.

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

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

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

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

470 (b) sales from vending machines, including vending machines that sell packaged,
471 single cigarettes or cigars, and self-service displays that are located in a separate and defined
472 area within a facility where the retailer ensures that no ~~[person younger than 19]~~ individual less
473 than 21 years of age is present, or permitted to enter, at any time, unless accompanied by a
474 parent or legal guardian; and

475 (c) sales by a retailer from a retail store which derives at least 80% of its revenue from
476 tobacco and tobacco related products and where the retailer ensures that no ~~[person younger~~
477 ~~than 19]~~ individual less than 21 years of age is present, or permitted to enter at any time, unless
478 accompanied by a parent or legal guardian.

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

484 (5) (a) A parent or legal guardian who accompanies ~~[a person younger than 19]~~ an
485 individual less than 21 years of age into an area described in Subsection (3)(b) or into a retail
486 store as described in Subsection (3)(c) and permits the ~~[person younger than 19 years of age]~~
487 individual to purchase or otherwise take a cigar, cigarette, electronic cigarette, or tobacco in
488 any form is guilty of providing tobacco as provided for in Section 76-10-104 and the penalties
489 provided for in that section.

490 (b) Nothing in this section may be construed as permitting a person to provide tobacco
491 to ~~[a minor]~~ an individual less than 21 years of age in violation of Section 76-10-104.

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

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

496 Section 14. Section **76-10-112** is amended to read:

497 **76-10-112. Prohibition of distribution of cigarettes or other tobacco products --**
498 **Exceptions.**

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

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

507 (3) The prohibition described in Subsection (1) does not apply to retailers,
508 manufacturers, or distributors who give cigarettes or other tobacco products to persons of legal
509 age upon their purchase of cigarettes or other tobacco products.

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

511 **77-39-101. Investigation of sales of alcohol, tobacco, and electronic cigarettes to**
512 **underage individuals.**

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

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

516 (i) Section **32B-4-403** by requesting an individual [~~under the age of 21 years~~] less than
517 21 years of age to enter into and attempt to purchase or make a purchase of alcohol from a
518 retail establishment; or

519 (ii) Section **76-10-104** by requesting an individual [~~under the age of 19 years~~] less than
520 21 years of age to enter into and attempt to purchase or make a purchase from a retail
521 establishment of:

522 (A) a cigar;

523 (B) a cigarette;

524 (C) tobacco in any form; or

525 (D) an electronic cigarette.

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

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

531 (i) alcohol; or

532 (ii) (A) a cigar;

533 (B) a cigarette;

534 (C) tobacco in any form; or

535 (D) an electronic cigarette.

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

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

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

542 (i) be a trained volunteer; or

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

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

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

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

555 (i) on a random basis; and
556 (ii) within a 12-month period at any one retail establishment location not more often

557 than:

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

559 (I) a cigar;

560 (II) a cigarette;

561 (III) tobacco in any form; or

562 (IV) an electronic cigarette; and

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

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

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

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

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

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

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

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

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

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

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

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

Legislative Review Note
as of 1-7-15 10:00 AM

Office of Legislative Research and General Counsel