

ENROLLED ACT NO. 53, SENATE

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

AN ACT relating to nicotine products; prohibiting the sale or furnishing of nicotine products to persons under twenty-one years of age as specified; prohibiting the possession and use of nicotine products by persons under twenty-one years of age as specified; providing penalties; repealing specified penalty provisions; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 14-3-301(a)(i) through (v) and by creating new paragraphs (vi) and (vii), 14-3-302(a), (b)(i) and (ii), (c), (d)(i) and (ii), (e), (f) and (g)(i) through (iii), 14-3-303(a)(intro), (b)(intro), (i)(B) and (C), (ii)(B), (c)(i) and (ii) and (e), 14-3-304(a), (b)(intro), (c) and (d), 14-3-305(a), (b)(intro), (d) and (e), 14-3-307(b), (d)(intro), (i) through (iii), (e)(iii)(C), (F) and (v) and 14-3-308(a) and (c) are amended to read:

ARTICLE 3

SALE OF NICOTINE PRODUCTS

14-3-301. Definitions.

(a) As used in this article:

(i) "Tobacco products" means any substance containing tobacco leaf, or any product made or derived from tobacco that contains nicotine, including, but not limited to, cigarettes, ~~electronic cigarettes~~, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco;

(ii) "Vending machine" means any mechanical, electric or electronic self-service device which, upon

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insertion of money, tokens, or any other form of payment, dispenses ~~tobacco~~nicotine products;

(iii) "Retailer" means a business of any kind at a specific location that sells ~~tobacco~~nicotine products to a user or consumer;

(iv) "Self service display" means any display of ~~tobacco~~nicotine products that is located in an area where customers are permitted and where the ~~tobacco~~nicotine products are readily accessible to a customer without the assistance of a salesperson;

(v) "Electronic cigarette" means ~~a product that employs any mechanical heating element, battery or electronic circuit, regardless of shape or size, that can be used to deliver doses of nicotine vapor by means of heating a liquid nicotine solution contained in a cartridge or other delivery system.~~ any device that can be used to deliver aerosolized or vaporized nicotine or synthetic nicotine to the person using the device and includes any component, part and accessory of the device and any vapor material intended to be aerosolized or vaporized during the use of the device. "Electronic cigarette" includes, without limitation, any electronic cigar, electronic cigarillo, electronic pipe, electronic hooka, vapor pen and any similar product or device. "Electronic cigarette" does not include a battery or battery charger if sold separately from the electronic cigarette and does not include any product regulated as a drug or device by the United States food and drug administration under subchapter V of the Food, Drug and Cosmetic Act;

(vi) "Nicotine products" means tobacco products and electronic cigarettes;

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(vii) "Vapor material" means any liquid solution or other material containing nicotine or synthetic nicotine that is depleted as an electronic cigarette is used. "Vapor material" includes liquid solution or other material containing nicotine or synthetic nicotine that is sold with or inside an electronic cigarette.

14-3-302. Prohibited sales or delivery.

(a) No individual shall sell, offer for sale, give away or deliver ~~tobacco~~nicotine products to any person under the age of ~~eighteen (18)~~twenty-one (21) years.

(b) Any individual violating subsection (a) of this section is guilty of a misdemeanor punishable by a fine of not more than:

(i) ~~Fifty dollars (\$50.00)~~Two hundred fifty dollars (\$250.00) for a first violation committed within a twenty-four (24) month period. The court may allow the defendant to perform community service or attend a tobacco or nicotine cessation program and be granted credit against his fine and court costs at the rate of ~~five dollars (\$5.00)~~ten dollars (\$10.00) for each hour of work performed or each hour of tobacco or nicotine cessation program attended;

(ii) ~~Two hundred fifty dollars (\$250.00)~~Five hundred dollars (\$500.00) for a second violation committed within a twenty-four (24) month period, regardless of the locations where the violations occurred. The court may allow the defendant to perform community service or attend a tobacco or nicotine cessation program and be granted credit against his fine and court costs at the rate of ~~five~~

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~~dollars (\$5.00)~~ ten dollars (\$10.00) for each hour of work performed or each hour of tobacco or nicotine cessation program attended;

(c) No retailer shall sell, permit the sale, offer for sale, give away or deliver ~~tobacco~~ nicotine products to any person under the age of ~~eighteen (18)~~ twenty-one (21) years.

(d) Any person violating subsection (c) of this section is guilty of a misdemeanor punishable by a fine of not more than:

(i) ~~Fifty dollars (\$50.00)~~ Two hundred fifty dollars (\$250.00) for a first violation committed within a twenty-four (24) month period;

(ii) ~~Two hundred fifty dollars (\$250.00)~~ Five hundred dollars (\$500.00) for a second violation committed within a twenty-four (24) month period;

(e) In addition to the penalties under paragraph (d)(iii) of this section, any person violating subsection (c) of this section for a third or subsequent time within a two (2) year period may be subject to an injunction. The department of revenue or the district attorney of the county in which the offense occurred, may petition the district court for an injunction to prohibit the sale of ~~tobacco~~ nicotine products in the establishment where the violation occurred. If the court finds that the respondent in the action has violated the provisions of subsection (c) of this section for a third or subsequent time within a two (2) year period and may continue to violate such provisions, it may grant an injunction prohibiting the respondent from selling ~~tobacco~~ nicotine products in the

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establishment where the violation occurred for a period of not more than one hundred eighty (180) days. For the purposes of this subsection, multiple violations occurring before the petition for the injunction is filed shall be deemed part of the violation for which the injunction is sought. If the person against whom the injunction is sought operates multiple, geographically separate establishments, the injunction shall apply only to the establishment where the violation occurred. The injunction shall prohibit all sales of ~~tobacco~~-nicotine products in the establishment where the violation occurred, regardless of any change in ownership or management of the establishment that is not a bona fide, arms length transaction while the injunction is in effect.

(f) It is an affirmative defense to a prosecution under subsections (a) and (c) of this section that, in the case of a sale, the person who sold the ~~tobacco~~-nicotine product was presented with, and reasonably relied upon, an identification card which identified the person buying or receiving the ~~tobacco~~-nicotine product as being over ~~eighteen (18)~~-twenty-one (21) years of age.

(g) Notwithstanding the provisions of subsection (d) of this section, no fine for a violation of subsection (c) of this section shall be imposed for a first offense in a twenty-four (24) month period if the retailer can show it had:

(i) Adopted and enforced a written policy against selling ~~tobacco~~-nicotine products to persons under the age of ~~eighteen (18)~~-twenty-one (21) years;

(ii) Informed its employees of the applicable laws regarding the sale of ~~tobacco~~-nicotine products to

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persons under the age of ~~eighteen (18)~~ twenty-one (21) years;

(iii) Required employees to verify the age of ~~tobacco-nicotine~~ product customers by way of photographic identification or by means of electronic transaction scan device; and

14-3-303. Posted notice required; location of vending machines.

(a) Any person who sells ~~tobacco-nicotine~~ products shall post signs informing the public of the age restrictions provided by this article at or near every display of ~~tobacco-nicotine~~ products and on or upon every vending machine which offers ~~tobacco-nicotine~~ products for sale. Each sign shall be plainly visible and shall contain a statement communicating that the sale of ~~tobacco-nicotine~~ products to persons under ~~eighteen (18)~~ twenty-one (21) years of age is prohibited by law. ~~Effective January 1, 2001,~~ Any person who owns, operates or manages a business where ~~tobacco-nicotine~~ products are offered for sale at retail and at which persons under the age of ~~eighteen (18)~~ twenty-one (21) are allowed admission with or without an adult, shall maintain all ~~tobacco-nicotine~~ products within the line of sight of a cashier or other employee or under the control of the cashier or other employee. For purposes of this subsection:

(b) No person shall sell or offer ~~tobacco-nicotine~~ products:

(i) Through a vending machine unless the vending machine is located in:

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(B) Places to which persons under the age of ~~eighteen (18)~~ twenty-one (21) years of age are not permitted access; or

(C) Business premises where alcoholic or malt beverages are sold or dispensed and where entry by persons under ~~eighteen (18)~~ twenty-one (21) years of age is prohibited.

(ii) Through a self service display except in:

(B) A business where entry by persons under ~~eighteen (18)~~ twenty-one (21) years of age is prohibited.

(c) Any person violating subsection (a) or (b) of this section is guilty of a misdemeanor punishable by a fine of not more than:

(i) ~~Fifty dollars (\$50.00)~~ Two hundred fifty dollars (\$250.00) for a first violation committed within a twenty-four (24) month period;

(ii) ~~Two hundred fifty dollars (\$250.00)~~ Five hundred dollars (\$500.00) for a second violation committed within a twenty-four (24) month period;

(e) In addition to the penalties under paragraph (c)(iii) of this section, any person violating subsection (a) or (b) of this section for a third or subsequent time within a two (2) year period may be subject to an injunction. The department or the district attorney of the county in which the offense occurred, may petition the district court for an injunction to prohibit the sale of ~~tobacco~~ nicotine products from the vending machines or the establishment where the violation occurred. If the court

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finds that the respondent in the action has violated the provisions of subsection (a) or (b) of this section for a third or subsequent time within a two (2) year period and may continue to violate such provisions, it may grant an injunction prohibiting the respondent from selling ~~tobacco~~ nicotine products from vending machines or from the establishment where the violation occurred for a period of not more than one hundred eighty (180) days. For the purposes of this subsection, multiple violations occurring before the petition for the injunction is filed shall be deemed part of the violation for which the injunction is sought. If the person against whom the injunction is sought operates multiple, geographically separate establishments or vending machines, the injunction shall apply only to the establishment where the violation occurred and to the vending machines resulting in the violation. The injunction shall prohibit all sales of ~~tobacco-nicotine~~ products from the vending machines or the establishment involved in the violation, regardless of any change in ownership or management of the vending machines or the establishment that is not a bona fide, arms length transaction while the injunction is in effect.

14-3-304. Purchase by person under twenty-one years of age prohibited.

(a) No person under the age of ~~eighteen~~ (18) twenty-one (21) years shall purchase or attempt to purchase ~~tobacco-nicotine~~ products, or misrepresent his identity or age, or use any false or altered identification for the purpose of purchasing or attempting to purchase ~~tobacco~~ nicotine products. A person shall not be arrested for an alleged violation of this subsection but shall be issued a citation as a charging document by a peace officer having probable cause to believe the person violated this

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subsection. An officer issuing a citation shall deposit one (1) copy of the citation with the court having jurisdiction over the alleged offense. Bond may be posted and forfeited for an offense charged under this section in an amount equal to the fine imposed by subsection (b) of this section.

(b) Any person violating subsection (a) of this section is guilty of a misdemeanor punishable by a fine of ~~not more than~~ twenty-five dollars (\$25.00).

(c) In lieu of the fine under subsection (b) of this section, the court may allow the defendant to perform community service or attend a tobacco or nicotine cessation program and be granted credit against his fine and court costs at the rate of ~~five dollars (\$5.00)~~ ten dollars (\$10.00) for each hour of work performed or each hour of tobacco or nicotine cessation program attended.

(d) ~~After twenty-four (24) months or upon reaching the age of majority, whichever occurs later,~~ No conviction under this section, whether by guilty plea, adjudication of guilt or forfeiture of bond shall be reported by the court to any law enforcement agency. Upon payment of the fine imposed by subsection (b) of this section, a criminal conviction under this section may shall be expunged in accordance with W.S. 14-6-241 by operation of law from all records of the court six (6) months after the entry of conviction. For any person whose record of conviction was expunged under this subsection, the conviction is deemed not to have occurred and the individual may reply accordingly upon any inquiry in the matter. No expungement under this subsection shall be considered for purposes of any other law providing for expungement.

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14-3-305. Possession or use by person under twenty-one years of age prohibited.

(a) It is unlawful for any person under the age of ~~eighteen (18)~~ twenty-one (21) years to possess or use any ~~tobacco~~ nicotine products. A person shall not be arrested for an alleged violation of this subsection but shall be issued a citation as a charging document by a peace officer having probable cause to believe the person violated this subsection. An officer issuing a citation shall deposit one (1) copy of the citation with the court having jurisdiction over the alleged offense. Bond may be posted and forfeited for an offense charged under this section in an amount equal to the fine imposed by subsection (b) of this section.

(b) Any person violating subsection (a) of this section is guilty of a misdemeanor punishable by a fine of ~~not more than~~ twenty-five dollars (\$25.00).

(d) In lieu of the fine under subsection (b) of this section, the court may allow the defendant to perform community service or attend a tobacco or nicotine cessation program and be granted credit against his fine and court costs at the rate of ~~five dollars (\$5.00)~~ ten dollars (\$10.00) for each hour of work performed or each hour of tobacco or nicotine cessation program attended.

(e) ~~After twenty four (24) months or upon reaching the age of majority, whichever occurs later,~~ No conviction under this section, whether by guilty plea, adjudication of guilt or forfeiture of bond shall be reported by the court to any law enforcement agency. Upon payment of the fine imposed by subsection (b) of this section, a criminal conviction under this section ~~may~~ shall be expunged ~~in~~

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accordance with W.S. 14-6-241 by operation of law from all records of the court six (6) months after the entry of conviction. For any person whose record of conviction was expunged under this subsection, the conviction is deemed not to have occurred and the individual may reply accordingly upon any inquiry in the matter. No expungement under this subsection shall be considered for purposes of any other law providing for expungement.

14-3-307. Compliance inspections.

(b) The department of health shall develop strategies to coordinate and support local law enforcement efforts to enforce all state statutes relating to the prohibition of the sale of tobacco-nicotine products to minors-persons under twenty-one (21) years of age.

(d) To coordinate the enforcement of state statutes relating to the prohibition of the sale of tobacco-nicotine products to minors-persons under twenty-one (21) years of age and to comply with applicable federal law, the department of health shall have authority to contract with or provide grants to local law enforcement agencies or other local individuals or entities having the appropriate level of enforcement authority on the local level to conduct random, unannounced inspections at retail locations where tobacco-nicotine products are sold. The use of minors during inspections is authorized subject to the following local law enforcement agencies or other local individuals or entities authorized to conduct inspections shall be permitted to use minors and persons under twenty-one (21) years of age subject to the following:

(i) The Prior to the inspection, the local law enforcement agency or other authorized individual or entity

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shall obtain the written consent ~~shall include notification that testimony in a subsequent court proceeding may be required.~~ The of the person being used in the inspection or if using a minor, the written consent of the minor's parents or guardian shall be obtained prior to the minor participating in an inspection. The written consent required under this paragraph shall include a notification that testimony in a subsequent court proceeding may be required;

(ii) ~~A minor~~ Any person under twenty-one (21) years of age participating in an inspection shall, if questioned, state his true age and that he is less than ~~eighteen (18)~~ twenty-one (21) years of age;

(iii) The ~~minor's~~ appearance of a person under twenty-one (21) years of age shall not be altered to make him appear to be ~~eighteen (18)~~ twenty-one (21) years of age or older;

(e) The person conducting an inspection under this section shall:

(iii) Within two (2) days, prepare a report of the inspection containing:

(C) The name and position of the person from whom the participant attempted to purchase ~~tobacco~~ nicotine products;

(F) The results of the inspection, including whether the inspection resulted in the sale or distribution of, or offering for sale, ~~tobacco~~ nicotine products to ~~the minor~~ a person under twenty-one (21) years of age.

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(v) Request a law enforcement officer to issue a citation for any illegal acts relating to providing ~~tobacco~~ nicotine products to ~~minors~~ persons under twenty-one (21) years of age during the inspection.

14-3-308. Further regulation by local ordinance.

(a) Except as specified under subsection (b) of this section, this article shall not be construed to prohibit the imposition by local law or ordinance of further regulation or prohibition upon the sale, use and possession of ~~tobacco~~ nicotine products to any person under ~~eighteen (18)~~ twenty-one (21) years of age, but the governmental entity shall not permit or authorize the sale, use or possession of ~~tobacco~~ nicotine products to any person under ~~eighteen (18)~~ twenty-one (21) years of age in violation of this article.

(c) The governmental entity may require that sellers of ~~tobacco~~ nicotine products obtain a license to sell ~~tobacco~~ nicotine products and may deny or revoke the license in the case of reported violations of W.S. 14-3-302 or similar local ordinance.

ORIGINAL SENATE
FILE NO. SF0050

ENGROSSED

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Section 2. W.S. 14-3-304(b)(i) through (iii) and 14-3-305(b)(i) through (iii) are repealed.

Section 3. This act is effective July 1, 2020.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk