

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. [BILL NUMBER]

Nicotine products-lawful age and penalties.

Sponsored by: Joint Revenue Interim Committee

A BILL

for

1 AN ACT relating to nicotine products; prohibiting the sale
2 or furnishing of nicotine products to persons under
3 nineteen years of age as specified; prohibiting the
4 possession and use of nicotine products by persons under
5 nineteen years of age as specified; providing penalties;
6 and providing for an effective date.

7

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

9

10 **Section 1.** W.S. 14-3-301(a)(i) through (v) and by
11 creating a new paragraph (vi), 14-3-302(a), (b)(i) and
12 (ii), (c), (d)(i) and (ii), (e), (f) and (g)(i) through
13 (iii), 14-3-303(a)(intro), (b)(i)(B) and (C), (b)(ii)(B),

(c)(i) and (ii) and (e), 14-3-304(a), (b)(i) and (ii), (c) and (d), 14-3-305(a), (b)(i) and (ii), (d) and (e), 14-3-307(b), (d), by creating a new subsection (e), by renumbering (e) as (f) and by amending renumbered (f)(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~~Nicotine 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. "Nicotine products" also means electronic cigarettes and vapor material;

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

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

3
4 (iii) "Retailer" means a business of any kind at
5 a specific location that sells ~~tobacco~~nicotine products to
6 a user or consumer;

7
8 (iv) "Self service display" means any display of
9 ~~tobacco~~nicotine products that is located in an area where
10 customers are permitted and where the ~~tobacco~~nicotine
11 products are readily accessible to a customer without the
12 assistance of a salesperson;

13
14 (v) "Electronic cigarette" means ~~a product that~~
15 ~~employs any mechanical heating element, battery or~~
16 ~~electronic circuit, regardless of shape or size, that can~~
17 ~~be used to deliver doses of nicotine vapor by means of~~
18 ~~heating a liquid nicotine solution contained in a cartridge~~
19 ~~or other delivery system.~~ means any device that can be used
20 to deliver aerosolized or vaporized nicotine or synthetic
21 nicotine to the person using the device and includes any
22 component, part and accessory of the device and any vapor
23 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) "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.

STAFF COMMENT

Of note, though not specifically discussed by the committee, the definitions of "electronic cigarette" and "vapor material" include synthetic nicotine which, according to the National Institutes of Health, has in the past few years entered the consumer marketplace primarily as an ingredient for use in e-cigarette liquids.

1 *****
2

3 **14-3-302. Prohibited sales or delivery.**

4

5 (a) No individual shall sell, offer for sale, give
6 away or deliver ~~tobacco~~nicotine products to any person
7 under the age of ~~eighteen (18)~~nineteen (19) years.

8

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

12

13 (i) ~~Fifty dollars (\$50.00)~~Two hundred fifty
14 dollars (\$250.00) for a first violation committed within a
15 twenty-four (24) month period. The court may allow the
16 defendant to perform community service and be granted
17 credit against his fine and court costs at the rate of five
18 dollars (\$5.00) for each hour of work performed;

19

20 (ii) ~~Two hundred fifty dollars (\$250.00)~~Five
21 hundred dollars (\$500.00) for a second violation committed
22 within a twenty-four (24) month period, regardless of the
23 locations where the violations occurred. The court may

1 allow the defendant to perform community service and be
2 granted credit against his fine and court costs at the rate
3 of five dollars (\$5.00) for each hour of work performed;

4
5 (c) No retailer shall sell, permit the sale, offer
6 for sale, give away or deliver ~~tobacco~~nicotine products to
7 any person under the age of ~~eighteen (18)~~nineteen (19)
8 years.

9
10 (d) Any person violating subsection (c) of this
11 section is guilty of a misdemeanor punishable by a fine of
12 not more than:

13
14 (i) ~~Fifty dollars (\$50.00)~~Two hundred fifty
15 dollars (\$250.00) for a first violation committed within a
16 twenty-four (24) month period;

17
18 (ii) ~~Two hundred fifty dollars (\$250.00)~~Five
19 hundred dollars (\$500.00) for a second violation committed
20 within a twenty-four (24) month period;

21
22 (e) In addition to the penalties under paragraph
23 (d)(iii) of this section, any person violating subsection

1 (c) of this section for a third or subsequent time within a
2 two (2) year period may be subject to an injunction. The
3 department of revenue or the district attorney of the
4 county in which the offense occurred, may petition the
5 district court for an injunction to prohibit the sale of
6 ~~tobacco~~nicotine products in the establishment where the
7 violation occurred. If the court finds that the respondent
8 in the action has violated the provisions of subsection (c)
9 of this section for a third or subsequent time within a two
10 (2) year period and may continue to violate such
11 provisions, it may grant an injunction prohibiting the
12 respondent from selling ~~tobacco~~nicotine products in the
13 establishment where the violation occurred for a period of
14 not more than one hundred eighty (180) days. For the
15 purposes of this subsection, multiple violations occurring
16 before the petition for the injunction is filed shall be
17 deemed part of the violation for which the injunction is
18 sought. If the person against whom the injunction is sought
19 operates multiple, geographically separate establishments,
20 the injunction shall apply only to the establishment where
21 the violation occurred. The injunction shall prohibit all
22 sales of ~~tobacco~~nicotine products in the establishment
23 where the violation occurred, regardless of any change in

1 ownership or management of the establishment that is not a
2 bona fide, arms length transaction while the injunction is
3 in effect.

4
5 (f) It is an affirmative defense to a prosecution
6 under subsections (a) and (c) of this section that, in the
7 case of a sale, the person who sold the ~~tobacco~~nicotine
8 product was presented with, and reasonably relied upon, an
9 identification card which identified the person buying or
10 receiving the ~~tobacco~~nicotine product as being over
11 ~~eighteen (18)~~nineteen (19) years of age.

12
13 (g) Notwithstanding the provisions of subsection (d)
14 of this section, no fine for a violation of subsection (c)
15 of this section shall be imposed for a first offense in a
16 twenty-four (24) month period if the retailer can show it
17 had:

18
19 (i) Adopted and enforced a written policy
20 against selling ~~tobacco~~nicotine products to persons under
21 the age of ~~eighteen (18)~~nineteen (19) years;

1 (ii) Informed its employees of the applicable
2 laws regarding the sale of ~~tobacco~~nicotine products to
3 persons under the age of ~~eighteen (18)~~nineteen (19) years;
4

5 (iii) Required employees to verify the age of
6 ~~tobacco~~nicotine product customers by way of photographic
7 identification or by means of electronic transaction scan
8 device; and
9

10 **14-3-303. Posted notice required; location of vending**
11 **machines.**
12

13 (a) Any person who sells ~~tobacco~~nicotine products
14 shall post signs informing the public of the age
15 restrictions provided by this article at or near every
16 display of ~~tobacco~~nicotine products and on or upon every
17 vending machine which offers ~~tobacco~~nicotine products for
18 sale. Each sign shall be plainly visible and shall contain
19 a statement communicating that the sale of ~~tobacco~~nicotine
20 products to persons under ~~eighteen (18)~~nineteen (19) years
21 of age is prohibited by law. ~~Effective January 1, 2001, any~~
22 Any person who owns, operates or manages a business where
23 ~~tobacco~~nicotine products are offered for sale at retail

1 and at which persons under the age of ~~eighteen (18)~~
2 nineteen (19) are allowed admission with or without an
3 adult, shall maintain all ~~tobacco~~ nicotine products within
4 the line of sight of a cashier or other employee or under
5 the control of the cashier or other employee. For purposes
6 of this subsection:

7

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

10

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

13

14 (B) Places to which persons under the age
15 of ~~eighteen (18)~~ nineteen (19) years of age are not
16 permitted access; or

17

18 (C) Business premises where alcoholic or
19 malt beverages are sold or dispensed and where entry by
20 persons under ~~eighteen (18)~~ nineteen (19) years of age is
21 prohibited.

22

23 (ii) Through a self service display except in:

1

2 (B) A business where entry by persons under
3 ~~eighteen (18)~~ nineteen (19) years of age is prohibited.

4

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

8

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

12

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

16

17 (e) In addition to the penalties under paragraph
18 (c)(iii) of this section, any person violating subsection
19 (a) or (b) of this section for a third or subsequent time
20 within a two (2) year period may be subject to an
21 injunction. The department or the district attorney of the
22 county in which the offense occurred, may petition the
23 district court for an injunction to prohibit the sale of

1 ~~tobacco~~nicotine products from the vending machines or the
2 establishment where the violation occurred. If the court
3 finds that the respondent in the action has violated the
4 provisions of subsection (a) or (b) of this section for a
5 third or subsequent time within a two (2) year period and
6 may continue to violate such provisions, it may grant an
7 injunction prohibiting the respondent from selling ~~tobacco~~
8 nicotine products from vending machines or from the
9 establishment where the violation occurred for a period of
10 not more than one hundred eighty (180) days. For the
11 purposes of this subsection, multiple violations occurring
12 before the petition for the injunction is filed shall be
13 deemed part of the violation for which the injunction is
14 sought. If the person against whom the injunction is sought
15 operates multiple, geographically separate establishments
16 or vending machines, the injunction shall apply only to the
17 establishment where the violation occurred and to the
18 vending machines resulting in the violation. The
19 injunction shall prohibit all sales of ~~tobacco~~nicotine
20 products from the vending machines or the establishment
21 involved in the violation, regardless of any change in
22 ownership or management of the vending machines or the

1 establishment that is not a bona fide, arms length
2 transaction while the injunction is in effect.

3
4 **14-3-304. Purchase by person under nineteen years of**
5 **age prohibited.**

6
7 (a) No person under the age of ~~eighteen (18)~~ nineteen
8 (19) years shall purchase or attempt to purchase ~~tobacco~~
9 nicotine products, or misrepresent his identity or age, or
10 use any false or altered identification for the purpose of
11 purchasing or attempting to purchase ~~tobacco~~ nicotine
12 products.

13
14 (b) Any person violating subsection (a) of this
15 section is guilty of a misdemeanor punishable by a fine of
16 not more than:

17
18 (i) ~~Fifty dollars (\$50.00)~~ Two hundred fifty
19 dollars (\$250.00) for a first violation committed within a
20 twenty-four (24) month period;

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

4
5 (c) In lieu of the fine under subsection (b) of this
6 section, the court may allow the defendant to perform
7 community service or attend a tobacco or nicotine cessation
8 program and be granted credit against his fine and court
9 costs at the rate of five dollars (\$5.00) for each hour of
10 work performed or each hour of tobacco or nicotine
11 cessation program attended.

12
13 (d) After twenty-four (24) months or upon reaching
14 the age of majority, whichever occurs later, ~~a criminal~~
15 ~~conviction under this section may be expunged~~ a minor
16 convicted under this section may petition the court for the
17 expungement of his record in accordance with W.S. 14-6-241.

18
19 **14-3-305. Possession or use by person under nineteen**
20 **years of age prohibited.**

21

1 (a) It is unlawful for any person under the age of
2 ~~eighteen (18)~~ nineteen (19) years to possess or use any
3 ~~tobacco~~ nicotine products.

4

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

8

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

12

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

16

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

1

2 (e) After twenty-four (24) months or upon reaching
3 the age of majority, whichever occurs later, ~~a criminal~~
4 ~~conviction under this section may be expunged~~ a minor
5 convicted under this section may petition the court for the
6 expungement of his record in accordance with W.S. 14-6-241.

7

8 **14-3-307. Compliance inspections.**

9

10 (b) The department of health shall develop strategies
11 to coordinate and support local law enforcement efforts to
12 enforce all state statutes relating to the prohibition of
13 the sale of ~~tobacco~~ nicotine products to ~~minors~~ persons
14 under nineteen (19) years of the age.

15

16 (d) To coordinate the enforcement of state statutes
17 relating to the prohibition of the sale of ~~tobacco~~ nicotine
18 products to ~~minors~~ persons under nineteen (19) years of the
19 age and to comply with applicable federal law, the
20 department of health shall have authority to contract with
21 or provide grants to local law enforcement agencies or
22 other local individuals or entities having the appropriate
23 level of enforcement authority on the local level to

1 conduct random, unannounced inspections at retail locations
2 where ~~tobacco~~ nicotine products are sold. ~~The use of minors~~
3 ~~during inspections is authorized subject to the following:~~

4
5 (e) The local law enforcement agencies or other local
6 individuals or entities authorized to conduct inspections
7 under subsection (d) of this section shall be permitted to
8 use minors and persons under nineteen (19) years of the age
9 subject to the following:

10
11 (i) ~~The~~ Prior to the inspection, the local law
12 enforcement agency or other authorized individual or entity
13 shall obtain the written consent ~~shall include notification~~
14 ~~that testimony in a subsequent court proceeding may be~~
15 ~~required. The~~ of the person being used in the inspection or
16 if using a minor, the written consent of the minor's
17 parents or guardian shall be obtained prior to the minor
18 participating in an inspection. The written consent
19 required under this paragraph shall include a notification
20 that testimony in a subsequent court proceeding may be
21 required;

1 (ii) ~~A minor~~ Any person under nineteen (19)
2 years of the age participating in an inspection shall, if
3 questioned, state his true age and that he is less than
4 ~~eighteen (18)~~ nineteen (19) years of age;

5

6 (iii) The ~~minor's~~ appearance of a person under
7 nineteen (19) years of the age shall not be altered to make
8 him appear to be ~~eighteen (18)~~ nineteen (19) years of age
9 or older;

10

11 ~~(e)~~ (f) The person conducting an inspection under this
12 section shall:

13

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

16

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

20

21 (F) The results of the inspection,
22 including whether the inspection resulted in the sale or
23 distribution of, or offering for sale, ~~tobacco~~ nicotine

1 products to ~~the minor~~ a person under nineteen (19) years of
2 the age.

3

4 (v) Request a law enforcement officer to issue a
5 citation for any illegal acts relating to providing ~~tobacco~~
6 nicotine products to ~~minors~~ persons under nineteen (19)
7 years of age during the inspection.

8

9 **14-3-308. Further regulation by local ordinance.**

10

11 (a) Except as specified under subsection (b) of this
12 section, this article shall not be construed to prohibit
13 the imposition by local law or ordinance of further
14 regulation or prohibition upon the sale, use and possession
15 of ~~tobacco~~ nicotine products to any person under ~~eighteen~~
16 ~~(18)~~ nineteen (19) years of age, but the governmental
17 entity shall not permit or authorize the sale, use or
18 possession of ~~tobacco~~ nicotine products to any person under
19 ~~eighteen (18)~~ nineteen (19) years of age in violation of
20 this article.

21

22 (c) The governmental entity may require that sellers
23 of ~~tobacco~~ nicotine products obtain a license to sell

1 ~~tobacco~~ nicotine products and may deny or revoke the
2 license in the case of reported violations of W.S. 14-3-302
3 or similar local ordinance.

4

5 **Section 2.** This act is effective July 1, 2020.

6

7 (END)