

# HB0372S01 compared with HB0372

~~{deleted text}~~ shows text that was in HB0372 but was deleted in HB0372S01.

inserted text shows text that was not in HB0372 but was inserted into HB0372S01.

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Representative Brian M. Greene proposes the following substitute bill:

## CIGARETTE, TOBACCO, AND NICOTINE AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor:** Paul Ray

Senate Sponsor: \_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill makes changes related to cigarettes, tobacco, and nicotine products.

#### Highlighted Provisions:

This bill:

- ▶ defines terms and amends definitions;
- ~~{~~ ▶ ~~amends the definition of tobacco product to include certain nicotine products and provides for the taxation of those products;~~
- ~~}~~ ▶ amends criminal provisions related to cigarettes ~~{and}~~ tobacco, and nicotine products; and
- ▶ makes technical and conforming changes.

#### Money Appropriated in this Bill:

None

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### Other Special Clauses:

This bill takes effect on July 1, 2013.

### Utah Code Sections Affected:

AMENDS:

- ~~{ 59-14-102, as last amended by Laws of Utah 2011, Chapter 229~~
- ~~}~~ 76-10-101, as last amended by Laws of Utah 2010, Chapter 114
- 76-10-102, as last amended by Laws of Utah 1986, Chapter 66
- 76-10-103, as enacted by Laws of Utah 1973, Chapter 196
- 76-10-104, as last amended by Laws of Utah 2010, Chapter 114
- 76-10-105, as last amended by Laws of Utah 2010, Chapter 114
- 76-10-105.1, as last amended by Laws of Utah 2010, Chapter 114
- 76-10-111, as last amended by Laws of Utah 2010, Chapter 114

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

Section 1. Section ~~{59-14-102}~~76-10-101 is amended to read:

~~{ 59-14-102. Definitions:~~

~~As used in this chapter:~~

- ~~(1) "Cigarette" means a roll for smoking made wholly or in part of tobacco:~~
  - ~~(a) regardless of:~~
    - ~~(i) the size of the roll;~~
    - ~~(ii) the shape of the roll; or~~
    - ~~(iii) whether the tobacco is:~~
      - ~~(A) flavored;~~
      - ~~(B) adulterated; or~~
      - ~~(C) mixed with any other ingredient; and~~
  - ~~(b) if the wrapper or cover of the roll is made of paper or any other substance or material except tobacco.~~
- ~~(2) "Consumer" means a person that is not required:~~
  - ~~(a) under Section 59-14-201 to obtain a license under Section 59-14-202; or~~
  - ~~(b) under Section 59-14-301 to obtain a license under Section 59-14-202.~~
- ~~(3) "Counterfeit cigarette" means:~~

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- ~~\_\_\_\_\_ (a) a cigarette that has a false manufacturing label; or~~
- ~~\_\_\_\_\_ (b) a package of cigarettes bearing a counterfeit tax stamp;~~
- ~~\_\_\_\_\_ (4) "E-cigarette" means an electronic oral device that:~~
  - ~~\_\_\_\_\_ (a) provides a vapor of nicotine;~~
  - ~~\_\_\_\_\_ (b) simulates smoking through its use or through inhalation of the vapor generated by the device;~~
  - ~~\_\_\_\_\_ (c) is not approved by the United States Food and Drug Administration as an aid in quitting the use of tobacco or a nicotine product;~~
  - ~~\_\_\_\_\_ (d) is composed of a heating element, battery, or electronic circuit; and~~
  - ~~\_\_\_\_\_ (e) is marketed, manufactured, distributed, or sold as:~~
    - ~~\_\_\_\_\_ (i) an e-cigarette;~~
    - ~~\_\_\_\_\_ (ii) an e-cigar;~~
    - ~~\_\_\_\_\_ (iii) an e-pipe; or~~
    - ~~\_\_\_\_\_ (iv) another electronic oral device if the electronic oral device meets the requirements of Subsections (4)(a) through (d);~~
- ~~\_\_\_\_\_ (5) "E-cigarette cartridge" means a container that:~~
  - ~~\_\_\_\_\_ (a) has openings on each end;~~
  - ~~\_\_\_\_\_ (b) serves as a liquid reservoir and mouthpiece;~~
  - ~~\_\_\_\_\_ (c) allows the passage of:~~
    - ~~\_\_\_\_\_ (i) liquid to an atomizer; and~~
    - ~~\_\_\_\_\_ (ii) vapor from the atomizer to the user's mouth; and~~
  - ~~\_\_\_\_\_ (d) contains liquid for producing vapor in an electronic cigarette.~~
- ~~\_\_\_\_\_ [(4)] (6) "Importer" means a person who imports into the United States, either directly or indirectly, a finished cigarette for sale or distribution;~~
- ~~\_\_\_\_\_ [(5)] (7) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity, or any other person doing business as a distributor or retailer of cigarettes on tribal lands located in the state;~~
- ~~\_\_\_\_\_ [(6)] (8) "Little cigar" means a roll for smoking:~~
  - ~~\_\_\_\_\_ (a) made wholly or in part of tobacco;~~
  - ~~\_\_\_\_\_ (b) that uses an integrated cellulose acetate filter or other similar filter; and~~
  - ~~\_\_\_\_\_ (c) that is wrapped in a substance;~~

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- ~~—— (i) containing tobacco; and~~
- ~~—— (ii) that is not exclusively natural leaf tobacco.~~
- ~~—— [(7)] (9) "Manufacturer" means a person who manufactures, fabricates, assembles, processes, or labels a finished cigarette.~~
- ~~—— [(8)] (10) "Moist snuff" means tobacco that:~~
  - ~~—— (a) is finely:~~
    - ~~—— (i) cut;~~
    - ~~—— (ii) ground; or~~
    - ~~—— (iii) powdered;~~
  - ~~—— (b) has at least 45% moisture content, as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;~~
  - ~~—— (c) is not intended to be:~~
    - ~~—— (i) smoked; or~~
    - ~~—— (ii) placed in the nasal cavity; and~~
  - ~~—— (d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or distributed in single-use units, including:~~
    - ~~—— (i) tablets;~~
    - ~~—— (ii) lozenges;~~
    - ~~—— (iii) strips;~~
    - ~~—— (iv) sticks; or~~
    - ~~—— (v) packages containing multiple single-use units.~~
- ~~—— (11) "Nicotine candy" means an item that:~~
  - ~~—— (a) contains:~~
    - ~~—— (i) nicotine; and~~
    - ~~—— (ii) a natural or artificial sweetener;~~
  - ~~—— (b) is ingested orally; and~~
  - ~~—— (c) is not approved by the United States Food and Drug Administration as an aid in quitting the use of tobacco or a nicotine product.~~
- ~~—— (12) "Nicotine product" means:~~
  - ~~—— (a) an e-cigarette;~~
  - ~~—— (b) an e-cigarette cartridge;~~

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- ~~\_\_\_\_\_ (c) nicotine candy; or~~
- ~~\_\_\_\_\_ (d) a product containing nicotine that:~~
  - ~~\_\_\_\_\_ (i) dissolves in the mouth; and~~
  - ~~\_\_\_\_\_ (ii) is not approved by the United States Food and Drug Administration as an aid in quitting the use of tobacco or nicotine.~~
- ~~\_\_\_\_\_ [(9)] (13) "Retailer" means a person that:~~
  - ~~\_\_\_\_\_ (a) sells or distributes a cigarette to a consumer in the state; or~~
  - ~~\_\_\_\_\_ (b) intends to sell or distribute a cigarette to a consumer in the state.~~
- ~~\_\_\_\_\_ [(10)] (14) "Stamp" means the indicia required to be placed on a cigarette package that evidences payment of the tax on cigarettes required by Section 59-14-205.~~
- ~~\_\_\_\_\_ [(11)] (15) (a) "Tobacco product" means:~~
  - ~~\_\_\_\_\_ (i) a product made of, or containing, tobacco[.]; or~~
  - ~~\_\_\_\_\_ (ii) a nicotine product.~~
- ~~\_\_\_\_\_ (b) "Tobacco product" includes:~~
  - ~~\_\_\_\_\_ (i) a little cigar; or~~
  - ~~\_\_\_\_\_ (ii) moist snuff.~~
- ~~\_\_\_\_\_ (c) "Tobacco product" does not include a cigarette.~~
- ~~\_\_\_\_\_ [(12)] (16) "Tribal lands" means land held by the United States in trust for a federally recognized Indian tribe.~~

~~\_\_\_\_\_ Section 2. Section 76-10-101 is amended to read:~~

‡ **76-10-101. Definitions.**

As used in this part:

(1) "Cigar" means a product that contains nicotine, is intended to be burned under ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in any substance containing tobacco, other than any roll of tobacco that is a cigarette as described in Subsection (2).

(2) "Cigarette" [~~means a product that contains nicotine, is intended to be burned under ordinary conditions of use, and consists of:~~] is as defined in Section 59-14-102.

~~[(a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or]~~

~~[(b) any roll of tobacco wrapped in any substance containing tobacco which, because of~~

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~~its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in Subsection (2)(a).]~~

(3) "Electronic cigarette" ~~{}~~ means any device, other than a cigarette or cigar, intended to deliver vapor containing nicotine into a person's respiratory system ~~{}~~ has the same meaning as e-cigarette, as defined in Section 59-14-102.

~~(4)~~

(4) "Nicotine product" means a product containing nicotine, except for a cigarette or a tobacco product, that is not approved by the United States Food and Drug Administration as an aid in quitting the use of tobacco or nicotine.

~~(4)~~ (5) "Place of business" includes:

- (a) a shop;
- (b) a store;
- (c) a factory;
- (d) a public garage;
- (e) an office;
- (f) a theater;
- (g) a recreation hall;
- (h) a dance hall;
- (i) a poolroom;
- (j) a café;
- (k) a cafeteria;
- (l) a cabaret;
- (m) a restaurant;
- (n) a hotel;
- (o) a lodging house;
- (p) a streetcar;
- (q) a bus;
- (r) an interurban or railway passenger coach;
- (s) a waiting room; and
- (t) any other place of business.

~~(5)~~ (6) "Retail tobacco specialty business" is as defined in Section 10-8-41.6.

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(5) ~~(6)~~7 "Smoking" [~~means the possession of any lighted cigar, cigarette, pipe, or other lighted smoking equipment~~] is as defined in Section 26-38-2.

~~(7)~~8 "Tobacco product" is as defined in Section 59-14-102.

Section ~~(3)~~2. Section 76-10-102 is amended to read:

### **76-10-102. Cigarettes and tobacco -- Advertising restrictions -- Warnings in smokeless tobacco advertisements.**

(1) It is a class B misdemeanor for any person to display on any billboard, streetcar sign, streetcar, bus, placard, or on any other object or place of display, any advertisement of cigarettes, cigarette papers, cigars, chewing tobacco, ~~or~~ smoking tobacco, ~~for~~ other tobacco product, or nicotine product or any disguise or substitute of either, except that a dealer in cigarettes, cigarette papers, a tobacco product, a nicotine product, or cigars, or their substitutes, may have a sign on the front of ~~his~~ the dealer's place of business stating that ~~he~~ the dealer is a dealer in the articles~~;~~, provided that nothing herein shall be construed to prohibit the advertising of cigarettes, cigarette papers, chewing tobacco ~~or~~, smoking tobacco, ~~for~~ other tobacco product, or nicotine product or any substitute of either, in any newspaper, magazine or periodical printed or circulating in this state.

(2) Any advertisement for smokeless tobacco placed in a newspaper, magazine, or periodical published in this state must bear a warning which states: "Use of smokeless tobacco may cause oral cancer and other mouth disorders and is addictive." This warning must be in a conspicuous location and in conspicuous and legible type, in contrast with the typography, layout, and color of all other printed material in the advertisement. For purposes of this subsection, "smokeless tobacco" means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral cavity or nasal passage. In the event the United States Congress passes legislation which requires warnings in advertisements of smokeless tobacco, the specific language required to be placed in advertisements by that legislation shall take precedence over this subsection.

Section ~~(4)~~3. Section 76-10-103 is amended to read:

### **76-10-103. Permitting minors to use tobacco in place of business -- Permitting minors to enter a retail tobacco specialty business.**

(1) It is a class C misdemeanor for the proprietor of any place of business to knowingly permit persons under age 19 to frequent a place of business while they are using a cigarette, a

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nicotine product, or a tobacco product.

(2) It is a class C misdemeanor for the proprietor of a retail tobacco specialty business to knowingly permit a person under age 19 to enter the retail tobacco specialty business.

Section ~~5~~4. Section **76-10-104** is amended to read:

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

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

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

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

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

Section ~~6~~5. Section **76-10-105** is amended to read:

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

(1) Any 18 year old person who buys or attempts to buy, accepts, or has in the person's possession any cigar, cigarette, electronic cigarette, ~~[or]~~ other tobacco product, or nicotine product in any form is guilty of a class C misdemeanor and subject to:

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

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

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

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

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

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participation fee.

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

Section ~~77~~6. Section **76-10-105.1** is amended to read:

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

(1) As used in this section:

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

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

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

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

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

(2) (a) Except as provided in Subsection (3), a retailer may sell cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, ~~[and]~~ smokeless tobacco, ~~and~~other tobacco products, or a nicotine product only in a direct, face-to-face exchange between:

(i) an employee of the retailer; and

(ii) the purchaser.

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

(c) Subsections (2)(a) and (b) do not prohibit the use or display of locked cabinets containing cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, ~~[or]~~ smokeless tobacco, ~~or~~other tobacco products, or a nicotine product if the locked cabinets are

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accessible only to the retailer or the retailer's employees.

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

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

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

(c) sales [~~by a retailer from a retail store which derives at least 80% of its revenue from tobacco and tobacco related products and where the retailer ensures that no person younger than 19 years of age is present, or permitted to enter at any time, unless accompanied by a parent or legal guardian~~] from a vending machine or a self-service display, including a vending machine that sells packaged, single cigarettes or cigars, if the vending machine or self-service display is located in a retail tobacco specialty business.

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

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

~~[(b)]~~ (5) Nothing in this section may be construed as permitting a person to provide tobacco to a minor in violation of Section 76-10-104.

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

(a) class C misdemeanor on the first offense;

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

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

Section ~~{8}~~7. Section **76-10-111** is amended to read:

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### 76-10-111. Prohibition of gift or free distribution of smokeless tobacco or electronic cigarettes -- Exceptions.

(1) The Legislature finds that:

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

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

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

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

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

(3) (a) Smokeless tobacco, chewing tobacco, [or] an electronic cigarette, ~~for~~ other tobacco product, or nicotine product may be distributed to adults without charge at professional conventions where the general public is excluded.

(b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who gives smokeless tobacco, chewing tobacco, [or] an electronic cigarette, ~~for~~ other tobacco product, or nicotine product to a person of legal age upon the person's purchase of another tobacco product or electronic cigarette.

Section ~~9~~8. **Effective date.**

This bill takes effect on July 1, 2013.

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**Legislative Review Note**

~~as of 2-21-13 4:09 PM~~

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~~Office of Legislative Research and General Counsel~~