

HB0385 compared with HB0385S03

- 17 ▶ prohibits advertising of electronic cigarette products and nicotine products in certain locations;
- 19 ▶ creates fees and penalties related to the license; {and}
- 20 ▶ criminalizes the criminally negligent sale of tobacco, electronic cigarettes, and nicotine to

minors{-} ; and

- 24 ▶ amends provisions related to underage tobacco sales.

25 Money Appropriated in this Bill:

26 None

27 Other Special Clauses:

28 None

29 Utah Code Sections Affected:

30 AMENDS:

31 **26B-1-310** , as last amended by Laws of Utah 2025, First Special Session, Chapter 9

32 **76-9-1102** , as renumbered and amended by Laws of Utah 2025, Chapter 173

33 **76-9-1116** , as renumbered and amended by Laws of Utah 2025, Chapter 173

34 **77-39-101** , as last amended by Laws of Utah 2025, Chapters 114, 173

35 ENACTS:

36 **4-45a-101** , Utah Code Annotated 1953

37 **4-45a-102** , Utah Code Annotated 1953

38 **4-45a-103** , Utah Code Annotated 1953

39 **4-45a-104** , Utah Code Annotated 1953

40 **4-45a-105** , Utah Code Annotated 1953

41 **59-14-106** , Utah Code Annotated 1953

42

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

44 Section 1. Section 1 is enacted to read:

46 **4-45a-101. Definitions.**

45a. Specialized Product Regulation

As used in this section:

48 (1) "Conventional food" means:

49 (a) an article used for food or drink for human or animal consumption or the components of the article;

or

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- 51 (b) chewing gum or chewing gum components.
44 (1){(2)}
- (a) "Crime involving a nicotine containing product" means an offense described in any of the following sections:
- 54 (i) Section 76-9-1102, Illegal sale of clove cigarette;
55 (ii) Section 76-9-1103, Permitting minors to use tobacco or electronic cigarette product in place of business;
57 (iii) Section 76-9-1104, Providing tobacco product, electronic cigarette product, or nicotine product to a minor;
59 (iv) Section 76-9-1105, Providing tobacco paraphernalia to a minor;
60 (v) Section 76-9-1107, Requirement of direct, face-to-face sale -- Restrictions on remote sales;
62 (vi) Section 76-9-1108, Illegal presence of a minor inside a retail tobacco specialty business;
64 (vii) Section 76-9-1112, Illegal provision of smokeless tobacco or electronic cigarette product;
66 (viii) Section 76-9-1113, Illegal distribution of a tobacco product on school property;
67 (ix) Section 76-9-1114, Illegal distribution of a flavored electronic cigarette product;
68 (x) Section 76-9-1115, Illegal distribution of electronic cigarette product without premarket authorization; or
70 (xi) Section 76-9-1116, Unlawful sale of a tobacco product, electronic cigarette product, or nicotine product.
- 72 (b) "Crime involving a nicotine containing product" includes a conviction for an offense previously in statute in this state that is the same or substantially similar to an offense described in Subsection (2)
(a).
- 75 (3) "Electronic cigarette product" means the same as that term is defined in Section 76-9-1101.
77 (4) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco specialty business.
79 (5) "License" means the license described in Section 4-45a-102.
80 (6) "Licensee" means a specialized product retailer licensed under Section 4-45a-102.
81 (7) "Nicotine product" means the same as that term is defined in Section 76-9-1101.
82 (8) "Product list" means a list of specialized products sold by a licensee.
83 (9) "Self-service display" means the same as that term is defined in Section 76-9-1107.
84 (10)

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(a) ~~{"Consumable"}~~ "Specialized" product means any product intended to be ingested, inhaled, absorbed, or introduced into the human body ~~{-}~~ that is:

46 ~~{(b) {"Consumable product" includes:} }~~

47 ~~(i) a cannabinoid product as defined in Section 4-41-102;~~

48 ~~(ii) a kratom product as defined in Section 4-45-102;~~

49 ~~(iii) a tobacco product that is not tobacco paraphernalia;~~

50 ~~(iv) a nicotine product;~~

51 ~~(v) an electronic cigarette substance as defined in Section 76-9-1101; {or}~~

52 ~~(vi) a prefilled electronic cigarette as defined in Section 76-9-1101{-} ; or~~

53 ~~{(2) }~~

~~{(a) {"Crime involving a nicotine containing product" means an offense described in any of the following sections:} }~~

55 ~~{(i) {Section 76-9-1102, Illegal sale of clove cigarette;} }~~

56 ~~{(ii) {Section 76-9-1103, Permitting minors to use tobacco or electronic cigarette product in place of business;} }~~

58 ~~{(iii) {Section 76-9-1104, Providing tobacco product, electronic cigarette product, or nicotine product to a minor;} }~~

60 ~~{(iv) {Section 76-9-1105, Providing tobacco paraphernalia to a minor;} }~~

61 ~~{(v) {Section 76-9-1107, Requirement of direct, face-to-face sale -- Restrictions on remote sales;} }~~

63 ~~{(vi) {Section 76-9-1108, Illegal presence of a minor inside a retail tobacco specialty business;} }~~

65 ~~{(vii) {Section 76-9-1112, Illegal provision of smokeless tobacco or electronic cigarette product;} }~~

67 ~~(viii){(vii)}~~ {Section 76-9-1113, Illegal distribution of } a {tobacco} product {on school property;} containing a substance:

68 ~~{(ix) {Section 76-9-1114, Illegal distribution of a flavored electronic cigarette product;} }~~

69 ~~{(x) {Section 76-9-1115, Illegal distribution of electronic cigarette product without premarket authorization; or} }~~

71 ~~{(xi) {Section 76-9-1116, Unlawful sale of a tobacco product, electronic cigarette product, or nicotine product.} }~~

93 (A) not generally recognized as safe for use in a conventional food product under applicable federal food additive regulations; and

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(B) that is known or intended to have psychoactive, euphoric, analgesic, sedative, or intoxicating effects.

73 (b) ~~{ "Crime involving a nicotine containing" }~~ "Specialized" product includes a ~~{ conviction for an offense previously in statute in this state that is the same or substantially similar to an offense }~~ product described in Subsection ~~{ (2)(a) }~~ (10)(a) even if the product complies with the federal Dietary Supplement Health and Education Act, 21 U.S.C. Sec. 321(ff) et seq.

100 (c) "Specialized product" does not include a conventional food product that does not contain any substance or product type described in Subsection (10)(a).

76 (3)~~{ (11) }~~ ~~{ "Electronic cigarette" }~~ "Specialized product retailer" means ~~{ the same as }~~ a person that ~~{ term is defined in Section 76-9-1101 }~~ sells a specialized product.

78 ~~{ (4) {"License" means the license described in Section 4-45a-102.} }~~

79 ~~{ (5) {"Licensee" means a retail tobacco specialty business licensed under Section 4-45a-102.} }~~

80 ~~{ (6) {"Nicotine product" means the same as that term is defined in Section 76-9-1101.} }~~

81 ~~{ (7) {"Product list" means a list of consumable products sold by a licensee.} }~~

82 ~~{ (8) {"Retail tobacco specialty business" means a commercial establishment in which:} }~~

83 ~~{ (a) { sales of tobacco products, electronic cigarette products, and nicotine products account for more than 35% of the total quarterly gross receipts for the establishment; } }~~

85 ~~{ (b) { 20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, or nicotine products; } }~~

87 ~~{ (c) { 20% or more of the total shelf space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, or nicotine products; } }~~

89 ~~{ (d) { the commercial establishment; } }~~

90 ~~{ (i) { holds itself out as a retail tobacco specialty business; and } }~~

91 ~~{ (ii) { causes a reasonable person to believe the commercial establishment is a retail tobacco specialty business; or } }~~

93 ~~{ (e) { the retail space features a self-service display for tobacco products, electronic cigarette products, or nicotine products. } }~~

95 ~~{ (9) {"Self-service display" means the same as that term is defined in Section 76-9-1107.} }~~

96 (10)~~{ (12) }~~ "Tobacco product" means:

97 (a) a tobacco product as defined in Section 76-9-1101; or

98 (b) tobacco paraphernalia as defined in Section 76-9-1101.

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106 (13) "Tobacco retailer" means a person that is required to obtain a State Tax Commission license for the
107 sale of an electronic cigarette product, nicotine product, or tobacco product.

109 Section 2. Section 2 is enacted to read:

110 **4-45a-102. License.**

101 (1) A ~~{retail tobacco specialty business}~~ specialized product retailer may not ~~{operate}~~ sell a
102 specialized product in the state unless the ~~{retail tobacco specialty business}~~ specialized product
103 retailer obtains a license from the department.

{(2) }

(a){(2)} ~~{A fee for}~~ The department shall charge the following fees to obtain a license under this
{section is \$10,000.} chapter:

114 (a) \$2,500 for a retail tobacco specialty business;

115 (b) \$600 for any retailer that sells:

116 (i) a cannabinoid product as defined in Section 4-41-102;

117 (ii) a kratom product as defined in Section 4-45-102; or

118 (iii) a product containing a substance:

119 (A) not generally recognized as safe for use in a conventional food product under applicable federal
food additive regulations; and

121 (B) that is known or intended to have psychoactive, euphoric, analgesic, sedative, or intoxicating
effects; and

123 (c) \$300 for a general tobacco retailer not described in Subsection (2)(b).

104 (b){(3)} The term for a license under this section is one year.

105 (3){(4)} The department may not issue a license to a person under this section unless the person
provides proof that the person has obtained the applicable license, registration, or permit, required by
law for each specialized product type that the person sells which may include:

107 (a) ~~{is licensed under}~~ a license for a retail tobacco specialty business described in Section 10-8-41.6
and Section 17-78-1004;

108 (b) ~~{has}~~ a valid permit for a ~~{retail}~~ tobacco ~~{specialty business}~~ retailer issued under Title 26B,
Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine Products, by the local
health department having jurisdiction over the area in which the ~~{retail tobacco specialty business}~~
tobacco retailer is located; and

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(c) ~~{has-}~~ each appropriate license from the State Tax Commission for each product the person will sell that requires a license from the State Tax Commission.

114 (4) ~~{(5)}~~ A person that operates a ~~{retail tobacco specialty business-}~~ specialized product retailer without a current and valid license described in Subsection (1) is subject to a \$50,000 civil fine.

139 (6) A person that operates as a retail tobacco specialty business without the current and valid licenses required by law to be a retail tobacco specialty business is subject to a \$50,000 civil fine.

116 (5) ~~{(7)}~~ The department shall deposit fees collected under this section into the Qualified Patient Enterprise Fund described in Section 26B-1-310.

144 Section 3. Section 3 is enacted to read:

145 **4-45a-103. Applicants.**

120 (1) An applicant for a license shall provide the name and address of any individual who has:

121 (a) for a publicly traded company, a financial or voting interest of 10% or greater in the {retail tobacco specialty business} specialized product retailer;

123 (b) for a privately held company, a financial or voting interest in the {retail tobacco specialty business} specialized product retailer; or

125 (c) the power to direct or cause the management or control of the {retail tobacco specialty business} specialized product retailer.

127 (2) The department may not issue a license to an applicant if an individual described in Subsection (1) has been convicted under state or federal law of:

129 (a) a felony in the preceding 10 years;

130 (b) a crime involving a nicotine containing product; or

131 (c) after December 3, 2018, a misdemeanor or felony for drug distribution.

158 Section 4. Section 4 is enacted to read:

159 **4-45a-104. Registration of products.**

134 (1)

(a) A licensee shall provide the department a product list.

135 (b) At least seven days before selling a {consumable} specialized product not on the product list, a licensee shall notify the department and provide an updated product list that includes the additional {consumable} specialized product.

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- (c) For any product on a product list or that is being added to a product list under Subsection (1)(b), the licensee shall provide the department with access to the ingredient list for the {consumable} specialized product.
- 141 (d) The department may remove {consumable} specialized products from a product list if the
143 possession or sale of the {consumable} specialized product violates state law.
- 145 (2) A licensee may not sell a {consumable} specialized product that is not on the product list provided
147 to the department.
- (3) If requested by the department to provide a {consumable} specialized product for inspection or
testing, a licensee shall provide the requested {consumable} specialized product to the department.
- (4)
- (a) A licensee that sells a product in violation of Subsection (2) is subject to a \$1,000 fine for each
product sold in violation of Subsection (2).
- 149 (b) In addition to the monetary fine described in Subsection (4)(a), a licensee is subject to the following
for violations of Subsection (2):
- 151 (i) for a first violation, a public reprimand posted on the department's website;
152 (ii) for a second violation, a 30-day license suspension;
153 (iii) for a third violation, a 60-day license suspension;
154 (iv) for a fourth violation, a 90-day license suspension; and
155 (v) for a fifth violation, revocation of the license.
- 182 Section 5. Section 5 is enacted to read:
183 **4-45a-105. Rulemaking.**
In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
department shall make rules to implement this chapter.
- 186 Section 6. Section 26B-1-310 is amended to read:
187 **26B-1-310. Qualified Patient Enterprise Fund -- Creation -- Revenue neutrality -- Uniform**
fee.
- 163 (1) There is created an enterprise fund known as the "Qualified Patient Enterprise Fund."
164 (2) The fund created in this section is funded from:
165 (a) money the department deposits into the fund under Chapter 4, Part 2, Cannabinoid Research and
Medical Cannabis;
167 (b) appropriations the Legislature makes to the fund; and

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- 168 (c) the interest described in Subsection (3).
169 (3) Interest earned on the fund shall be deposited into the fund.
170 (4)
(a) ~~Money~~ Except as provided in Subsection (4)(b), money deposited into the fund may only be used
by:
172 ~~(a)~~ (i) the department to accomplish the department's responsibilities described in Chapter 4, Part
2, Cannabinoid Research and Medical Cannabis;
200 ~~(b)~~ (ii) ~~{-and{-}~~
174 ~~(b)~~ (ii) the Center for Medical Cannabis Research created in Section 53H-4-206 to accomplish the
Center for Medical Cannabis Research's responsibilities~~{; and{; } -}~~
176 ~~(c)~~ (iii) {the Department of Agriculture and Food for the one time purchase of equipment to meet
the requirements described in Section 4-41a-204.1.}
178 (b) For money deposited under Section 4-45a-102, the department shall:
179 (i) use 10% of the money for tobacco and nicotine prevention purposes; and
180 (ii) provide the remainder of the money to the Department of Agriculture and Food to:
181 (A) expand and improve testing services at the state lab; and
182 (B) enforce Title 4, Chapter 45a, Specialized Product Regulation.
183 (5) The department shall set fees authorized under Chapter 4, Part 2, Cannabinoid Research and
Medical Cannabis, in amounts that the department anticipates are necessary, in total, to cover the
department's cost to implement Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.
187 (6) The department may impose a uniform fee on each medical cannabis transaction in a medical
cannabis pharmacy in an amount that, subject to Subsection (5), the department sets in accordance
with Section 63J-1-504.

216 Section 7. Section 7 is enacted to read:

217 **59-14-106. Revocation of license for controlled substance sale and distribution.**

218 (1) As used in this section:

219 (a) "Controlled substance" means the same as that term is defined in Section 58-37-2.

220 (b) "Licensee" means a person that holds a license under Section 59-14-201, 59-14-301, or 59-14-803.

222 (2) As a condition for each license issued under this chapter, a licensee agrees to not store, sell, or
attempt to sell illegally obtained controlled substances.

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(3) The tax commission shall revoke each license described in Section 59-14-201, 59-14-301, and 59-14-803 that a licensee holds if the tax commission receives notice that a licensee has been charged with a criminal offense involving possession with intent to distribute, distribution, or sale of a controlled substance.

228 Section 8. Section **76-9-1102** is amended to read:

229 **76-9-1102. Cigarette or tobacco advertising violation.**

192 (1) Terms defined in Sections 76-1-101.5 and 76-9-1101 apply to this section.

193 (2) Except as provided in Subsection (4), an actor commits cigarette or tobacco advertising violation if the actor displays on a billboard, streetcar sign, streetcar, bus, placard, or on any other object or place of display, an advertisement of cigarettes, electronic cigarette products, cigarette papers, cigars, chewing tobacco, nicotine products, or smoking tobacco or any disguise or substitute of cigarettes, cigarette papers, tobacco, or cigars.

198 (3) A violation of Subsection (2) is a class B misdemeanor.

199 (4)

(a) A dealer of cigarettes, electronic cigarette products, cigarette papers, tobacco, cigars, nicotine products, or a substitute for cigarettes, cigarette papers, tobacco, or cigars may have a sign on the front of the dealer's place of business stating that the dealer is a dealer of cigarettes, electronic cigarette products, cigarette papers, tobacco, cigars, nicotine products, or a substitute for cigarettes, cigarette papers, tobacco, or cigars.

205 (b) This section does not prohibit the advertisement of an item listed in Subsection (4)(a) in a newspaper, magazine or periodical printed or circulating in this state.

245 Section 9. Section **76-9-1116** is amended to read:

246 **76-9-1116. Unlawful sale of a tobacco product, electronic cigarette product, or nicotine product.**

210 (1)

(a) As used in this section:

211 (i) "Compensatory service" means service or unpaid work performed by an employee, in lieu of the payment of a fine or imprisonment.

213 (ii) "Employee" means an employee or an owner of a tobacco retailer.

214 (b) Terms defined in Sections 76-1-101.5 and 76-9-1101 apply to this section.

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(2) An actor commits unlawful sale of a tobacco product, electronic cigarette product, or nicotine product if the actor:

- 217 (a) is an employee; and
218 (b) [~~intentionally or knowingly~~] with criminal negligence, sells or gives a tobacco product, an
electronic cigarette product, or a nicotine product in the course of business to an individual younger
than 21 years old.
- 221 (3) A violation of Subsection (2) is:
222 (a) on a first violation:
223 (i) an infraction; and
224 (ii) subject to:
225 (A) a fine not exceeding \$1,000; or
226 (B) compensatory service; or
227 (b) on a subsequent violation:
228 (i) a class C misdemeanor; and
229 (ii) subject to:
230 (A) a fine not exceeding \$2,000; or
231 (B) compensatory service.

270 Section 10. Section **77-39-101** is amended to read:

271 **77-39-101. Investigation of sales of alcohol, tobacco products, electronic cigarette products,
nicotine products, and cannabinoid products to underage individuals.**

- 235 (1) As used in this section:
236 (a) "Cannabinoid product" means the same as that term is defined in Section 4-41-102.
237 (b) "Electronic cigarette product" means the same as that term is defined in Section 76-9-1101.
239 (c) "Nicotine product" means the same as that term is defined in Section 76-9-1101.
240 (d) "Peace officer" means the same as the term is described in Section 53-13-109.
241 (e) "Tobacco product" means the same as that term is defined in Section 76-9-1101.

242 (2)

- (a) A peace officer may investigate the possible violation of:
243 (i) Section 32B-4-403 by requesting an individual under 21 years old to enter into and attempt to
purchase or make a purchase of alcohol from a retail establishment;

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(ii) Section 76-9-1103, 76-9-1104, 76-9-1105, or 76-9-1116 by requesting an individual under 21 years old to enter into and attempt to purchase or make a purchase from a retail establishment of:

248 (A) a tobacco product;

249 (B) an electronic cigarette product; or

250 (C) a nicotine product; or

251 (iii) Subsection 4-41-105(2)(a)(iv) by requesting an individual under 21 years old to enter into and attempt to purchase or make a purchase of a cannabinoid product that contains THC or a THC analog from a retail establishment.

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

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

260 (i) alcohol;

261 (ii)

(A) a tobacco product;

262 (B) an electronic cigarette product; or

263 (C) a nicotine product; or

264 (iii) a cannabinoid product that contains THC or a THC analog.

265 (d) If a citation or information is issued, the citation or information shall be issued within seven days after the day on which the purchase occurs.

267 (3)

(a) If an individual under 18 years old is requested to attempt a purchase, a written consent of that individual's parent or guardian shall be obtained before the individual participates in any attempted purchase.

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

271 (i) be a trained volunteer; or

272 (ii) receive payment, but may not be paid based on the number of successful purchases of alcohol, tobacco products, electronic cigarette products, nicotine products, or cannabinoid products that contain THC or a THC analog.

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- 275 (4) The individual requested by the peace officer to attempt a purchase and anyone accompanying the
individual attempting a purchase may use false identification in attempting the purchase if:
- 278 (a) the Department of Public Safety created in Section 53-1-103 provides the false identification;
- 280 (b) the false identification:
- 281 (i) accurately represents the individual's age; and
- 282 (ii) displays a current photo of the individual; and
- 283 (c) the peace officer maintains possession of the false identification at all times outside the attempt to
purchase.
- 285 (5) An individual requested to attempt to purchase or make a purchase pursuant to this section is
immune from prosecution, suit, or civil liability for the purchase of, attempted purchase of, or
possession of alcohol, a tobacco product, an electronic cigarette product,[-] a nicotine product, or a
cannabinoid product that contains THC or a THC analog if a peace officer directs, supervises, and
monitors the individual.
- 290 (6)
- (a) Except as provided in Subsection (6)(b), a purchase attempted under this section shall be conducted
within a 12-month period:
- 292 (i) on a random basis at any one retail establishment location, not more often than four times for the
attempted purchase of alcohol;
- 294 (ii) a minimum of two times at a retail establishment that sells tobacco products, electronic cigarette
products, or nicotine products for the attempted purchase of a tobacco product, an electronic
cigarette product, or a nicotine product; and
- 297 (iii) a minimum of one time at a retail establishment that sells a cannabinoid product that contains
THC or a THC analog.
- 299 (b) This section does not prohibit an investigation or an attempt to purchase alcohol, a tobacco product,
an electronic cigarette product, or a nicotine product under this section if:
- 302 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a tobacco product,
an electronic cigarette product,[-] a nicotine product, or a cannabinoid product that contains THC or
a THC analog to an individual under the age established by Section 32B-4-403, Section 76-9-1116,
or Subsection 4-41-105(2)(d); and
- 307 (ii) the supervising peace officer makes a written record of the grounds for the reasonable suspicion.
- 309 (7)

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

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

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

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

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

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

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

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

359 Section 11. **Effective date.**

Effective Date.

This bill takes effect on May 6, 2026.

3-2-26 6:25 PM