

1 **ELECTRONIC CIGARETTE AND OTHER NICOTINE**

2 **PRODUCT AMENDMENTS**

3 2020 GENERAL SESSION

4 STATE OF UTAH

5

6 **LONG TITLE**

7 **General Description:**

8 This bill enacts and amends provisions relating to electronic cigarette products and
9 nicotine products.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ imposes permitting requirements and processes for the sale of a nicotine product;
- 14 ▶ require a tobacco retailer to provide itemized receipts and to maintain an itemized
15 transaction log for sales of a tobacco product, an electronic cigarette product, or a
16 nicotine product;
- 17 ▶ applies civil penalties to the improper sale of a nicotine product;
- 18 ▶ requires certain nicotine products to have a statement on the products' exterior
19 packages that the products contain nicotine;
- 20 ▶ imposes licensing and bonding requirements on a person that sells or distributes an
21 electronic cigarette product or a nicotine product;
- 22 ▶ imposes an excise tax on the sale in the state of an electronic cigarette substance, a
23 prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic
24 nicotine device substance, and a prefilled nontherapeutic nicotine device;
- 25 ▶ provides for the remittance of the tax collected;
- 26 ▶ creates the Electronic Cigarette Substance and Nicotine Product Tax Restricted
27 Account;
- 28 ▶ addresses use of revenue from the taxation of an electronic cigarette substance, a
29 prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic
30 nicotine device substance, and a prefilled nontherapeutic nicotine device;
- 31 ▶ provides criminal penalties for a sale or a purchase of an electronic cigarette product

- 32 or a nicotine product in violation of the law;
- 33 ▶ prohibits a manufacturer, a wholesaler, or a retailer from providing certain discounts
- 34 or giveaways for electronic cigarettes; and
- 35 ▶ makes technical and conforming changes.

36 **Money Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 This bill provides a special effective date.

40 **Utah Code Sections Affected:**

41 AMENDS:

- 42 **10-8-41.6**, as last amended by Laws of Utah 2018, Chapter 231
- 43 **17-50-333**, as last amended by Laws of Utah 2018, Chapter 231
- 44 **26-57-101**, as enacted by Laws of Utah 2015, Chapter 132
- 45 **26-57-102**, as enacted by Laws of Utah 2015, Chapter 132
- 46 **26-62-101**, as enacted by Laws of Utah 2018, Chapter 231
- 47 **26-62-102**, as renumbered and amended by Laws of Utah 2018, Chapter 231
- 48 **26-62-201**, as enacted by Laws of Utah 2018, Chapter 231
- 49 **26-62-202**, as last amended by Laws of Utah 2019, Chapter 157
- 50 **26-62-301**, as enacted by Laws of Utah 2018, Chapter 231
- 51 **26-62-304 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
- 52 **26-62-305 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
- 53 **26-62-306**, as renumbered and amended by Laws of Utah 2018, Chapter 231
- 54 **26A-1-128**, as enacted by Laws of Utah 2018, Chapter 231
- 55 **53-3-229**, as last amended by Laws of Utah 2010, Chapters 114 and 276
- 56 **53-3-810**, as last amended by Laws of Utah 2010, Chapters 114 and 276
- 57 **53G-4-402**, as last amended by Laws of Utah 2019, Chapters 83, 293, and 451
- 58 **53G-8-209**, as last amended by Laws of Utah 2019, Chapter 293
- 59 **59-14-102**, as last amended by Laws of Utah 2013, Chapter 148
- 60 **59-14-302**, as last amended by Laws of Utah 2014, Chapter 189
- 61 **59-14-801**, as enacted by Laws of Utah 2015, Chapter 132
- 62 **59-14-802**, as last amended by Laws of Utah 2019, Chapter 136

- 63 **59-14-803**, as last amended by Laws of Utah 2018, Chapter 231
- 64 **76-8-311.3**, as last amended by Laws of Utah 2010, Chapter 114
- 65 **76-10-101**, as last amended by Laws of Utah 2015, Chapters 66, 132 and last amended
- 66 by Coordination Clause, Laws of Utah 2015, Chapter 132
- 67 **76-10-104 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
- 68 **76-10-104.1 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
- 69 **76-10-105 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
- 70 **76-10-105.1 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
- 71 **76-10-111**, as last amended by Laws of Utah 2010, Chapter 114
- 72 **77-39-101 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232

73 ENACTS:

- 74 **26-57-104**, Utah Code Annotated 1953
- 75 **26-62-206**, Utah Code Annotated 1953
- 76 **59-14-804**, Utah Code Annotated 1953
- 77 **59-14-805**, Utah Code Annotated 1953
- 78 **59-14-806**, Utah Code Annotated 1953
- 79 **59-14-807**, Utah Code Annotated 1953

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

82 Section 1. Section **10-8-41.6** is amended to read:

83 **10-8-41.6. Regulation of retail tobacco specialty business.**

84 (1) As used in this section:

85 (a) "Community location" means:

86 (i) a public or private kindergarten, elementary, middle, junior high, or high school;

87 (ii) a licensed child-care facility or preschool;

88 (iii) a trade or technical school;

89 (iv) a church;

90 (v) a public library;

91 (vi) a public playground;

92 (vii) a public park;

93 (viii) a youth center or other space used primarily for youth oriented activities;

94 (ix) a public recreational facility;

95 (x) a public arcade; or

96 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.

97 (b) "Department" means the Department of Health, created in Section 26-1-4.

98 (c) "Electronic cigarette product" means the same as that term is defined in Section
99 59-14-102.

100 (d) "Licensee" means a person licensed under this section to conduct business as a
101 retail tobacco specialty business.

102 ~~[(c)]~~ (e) "Local health department" means the same as that term is defined in Section
103 26A-1-102.

104 (f) "Nicotine product" means the same as that term is defined in Section 59-14-102.

105 ~~[(d) "Permittee" means a person licensed under this section to conduct business as a~~
106 ~~retail tobacco specialty business.]~~

107 ~~[(e)]~~ (g) "Retail tobacco specialty business" means a commercial establishment in
108 which:

109 (i) ~~[the sale of tobacco products accounts]~~ sales of tobacco products, electronic
110 cigarette products, and nicotine products account for more than 35% of the total quarterly gross
111 receipts for the establishment;

112 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
113 storage of tobacco products, electronic cigarette products, and nicotine products;

114 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
115 tobacco products, electronic cigarette products, and nicotine products; or

116 (iv) the retail space features a self-service display for tobacco products, electronic
117 cigarette products, and nicotine products.

118 ~~[(f)]~~ (h) "Self-service display" means the same as that term is defined in Section
119 76-10-105.1.

120 ~~[(g)]~~ (i) "Tobacco product" means:

121 (i) any cigar~~;~~ or cigarette, ~~[or electronic cigarette,]~~ as those terms are defined in
122 Section 76-10-101;

123 (ii) a tobacco product, as that term is defined in Section 59-14-102, including:

124 (A) chewing tobacco; or

125 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;

126 and

127 (iii) tobacco paraphernalia, as that term is defined in Section 76-10-104.1.

128 (2) The regulation of a retail tobacco specialty business is an exercise of the police

129 powers of the state, and through delegation, to other governmental entities.

130 (3) (a) A person may not operate a retail tobacco specialty business in a municipality

131 unless the person obtains a license from the municipality in which the retail tobacco specialty

132 business is located.

133 (b) A municipality may only issue a retail tobacco specialty business license to a

134 person if the person complies with the provisions of Subsections (4) and (5).

135 (4) (a) Except as provided in Subsection (7), a municipality may not issue a license for

136 a person to conduct business as a retail tobacco specialty business if the retail tobacco specialty

137 business is located within:

138 (i) 1,000 feet of a community location;

139 (ii) 600 feet of another retail tobacco specialty business; or

140 (iii) 600 feet from property used or zoned for:

141 (A) agriculture use; or

142 (B) residential use.

143 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in

144 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest

145 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard

146 to intervening structures or zoning districts.

147 (5) [~~(a) Except as provided in Subsection (5)(b), beginning July 1, 2018, a~~] A

148 municipality may not issue or renew a license for a person to conduct business as a retail

149 tobacco specialty business until the person provides the municipality with proof that the retail

150 tobacco specialty business has:

151 ~~(a)~~ (a) a valid permit for a retail tobacco specialty business issued under Title 26,

152 Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local

153 health department having jurisdiction over the area in which the retail tobacco specialty

154 business is located; and

155 ~~[(ii)]~~ (b) (i) a valid license issued by the State Tax Commission in accordance with
156 Section 59-14-201 or 59-14-301 to sell [tobacco products from the State Tax Commission.] a
157 tobacco product; or

158 (ii) a valid license issued by the State Tax Commission in accordance with Section
159 59-14-803 to sell an electronic cigarette product or a nicotine product.

160 ~~[(b) A person that was licensed to conduct business as a retail tobacco specialty~~
161 ~~business in a municipality before July 1, 2018, shall obtain a permit from a local health~~
162 ~~department under Title 26, Chapter 62, Tobacco Retail Permit, on or before January 1, 2019.]~~

163 (6) (a) Nothing in this section:

164 (i) requires a municipality to issue a retail tobacco specialty business license; or

165 (ii) prohibits a municipality from adopting more restrictive requirements on a person
166 seeking a license or renewal of a license to conduct business as a retail tobacco specialty
167 business.

168 (b) A municipality may suspend or revoke a retail tobacco specialty business license
169 issued under this section:

170 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,
171 Part 16, Pattern of Unlawful Activity Act;

172 (ii) if a licensee violates the regulations restricting the sale and distribution of
173 cigarettes and smokeless tobacco to protect children and adolescents issued by the United
174 States Food and Drug Administration, 21 C.F.R. Part 1140;

175 (iii) upon the recommendation of the department or a local health department under
176 Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit; or

177 (iv) under any other provision of state law or local ordinance.

178 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has
179 a business license and is operating in a municipality in accordance with all applicable laws
180 except for the requirement in Subsection (4), on or before December 31, 2015, is exempt from
181 Subsection (4).

182 (b) A retail tobacco specialty business may maintain an exemption under Subsection
183 (7)(a) if:

184 (i) the retail tobacco specialty business license is renewed continuously without lapse
185 or permanent revocation;

186 (ii) the retail tobacco specialty business does not close for business or otherwise
 187 suspend the sale of tobacco products, electronic cigarette products, or nicotine products for
 188 more than 60 consecutive days;

189 (iii) the retail tobacco specialty business does not substantially change the business
 190 premises or business operation; and

191 (iv) the retail tobacco specialty business maintains the right to operate under the terms
 192 of other applicable laws, including:

193 (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;

194 (B) zoning ordinances;

195 (C) building codes; and

196 (D) the requirements of a retail tobacco specialty business license issued before
 197 December 31, 2015.

198 Section 2. Section **17-50-333** is amended to read:

199 **17-50-333. Regulation of retail tobacco specialty business.**

200 (1) As used in this section:

201 (a) "Community location" means:

202 (i) a public or private kindergarten, elementary, middle, junior high, or high school;

203 (ii) a licensed child-care facility or preschool;

204 (iii) a trade or technical school;

205 (iv) a church;

206 (v) a public library;

207 (vi) a public playground;

208 (vii) a public park;

209 (viii) a youth center or other space used primarily for youth oriented activities;

210 (ix) a public recreational facility;

211 (x) a public arcade; or

212 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.

213 (b) "Department" means the Department of Health, created in Section 26-1-4.

214 (c) "Electronic cigarette product" means the same as that term is defined in Section
 215 59-14-102.

216 [~~(c)~~] (d) "Licensee" means a person licensed under this section to conduct business as a

217 retail tobacco specialty business.

218 ~~[(d)]~~ (e) "Local health department" means the same as that term is defined in Section
219 26A-1-102.

220 (f) "Nicotine product" means the same as that term is defined in Section 59-14-102.

221 ~~[(e)]~~ (g) "Retail tobacco specialty business" means a commercial establishment in
222 which:

223 (i) ~~[the sale of tobacco products accounts]~~ sales of tobacco products, electronic
224 cigarette products, and nicotine products account for more than 35% of the total quarterly gross
225 receipts for the establishment;

226 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
227 storage of tobacco products, electronic cigarette products, and nicotine products;

228 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
229 tobacco products, electronic cigarette products, and nicotine products; or

230 (iv) the retail space features a self-service display for tobacco products, electronic
231 cigarette products, and nicotine products.

232 ~~[(f)]~~ (h) "Self-service display" means the same as that term is defined in Section
233 76-10-105.1.

234 ~~[(g)]~~ (i) "Tobacco product" means:

235 (i) any cigar[;] or cigarette, ~~[or electronic cigarette]~~ as those terms are defined in
236 Section 76-10-101;

237 (ii) a tobacco product as that term is defined in Section 59-14-102, including:

238 (A) chewing tobacco; or

239 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;

240 and

241 (iii) tobacco paraphernalia as that term is defined in Section 76-10-104.1.

242 (2) The regulation of a retail tobacco specialty business is an exercise of the police
243 powers of the state, and through delegation, to other governmental entities.

244 (3) (a) A person may not operate a retail tobacco specialty business in a county unless
245 the person obtains a license from the county in which the retail tobacco specialty business is
246 located.

247 (b) A county may only issue a retail tobacco specialty business license to a person if

248 the person complies with the provisions of Subsections (4) and (5).

249 (4) (a) Except as provided in Subsection (7), a county may not issue a license for a
250 person to conduct business as a retail tobacco specialty business if the retail tobacco specialty
251 business is located within:

252 (i) 1,000 feet of a community location;

253 (ii) 600 feet of another retail tobacco specialty business; or

254 (iii) 600 feet from property used or zoned for:

255 (A) agriculture use; or

256 (B) residential use.

257 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in
258 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
259 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard
260 to intervening structures or zoning districts.

261 (5) ~~[(a) Except as provided in Subsection (5)(b), beginning July 1, 2018, a]~~ A county
262 may not issue or renew a license for a person to conduct business as a retail tobacco specialty
263 business until the person provides the county with proof that the retail tobacco specialty
264 business has:

265 ~~[(+)]~~ (a) a valid permit for a retail tobacco specialty business issued under Title 26,
266 Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local
267 health department having jurisdiction over the area in which the retail tobacco specialty
268 business is located; and

269 ~~[(+)]~~ (b) (i) a valid license issued by the State Tax Commission in accordance with
270 Section 59-14-201 or 59-14-301 to sell ~~[tobacco products from the State Tax Commission:]~~ a
271 tobacco product; or

272 (ii) a valid license issued by the State Tax Commission in accordance with Section
273 59-14-803 to sell an electronic cigarette product or a nicotine product.

274 ~~[(b) A person that was licensed to conduct business as a retail tobacco specialty~~
275 ~~business in a county before July 1, 2018, shall obtain a permit from a local health department~~
276 ~~under Title 26, Chapter 62, Tobacco Retail Permit, on or before January 1, 2019.]~~

277 (6) (a) Nothing in this section:

278 (i) requires a county to issue a retail tobacco specialty business license; or

279 (ii) prohibits a county from adopting more restrictive requirements on a person seeking
280 a license or renewal of a license to conduct business as a retail tobacco specialty business.

281 (b) A county may suspend or revoke a retail tobacco specialty business license issued
282 under this section:

283 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,
284 Part 16, Pattern of Unlawful Activity Act;

285 (ii) if a licensee violates the regulations restricting the sale and distribution of
286 cigarettes and smokeless tobacco to protect children and adolescents issued by the United
287 States Food and Drug Administration, 21 C.F.R. Part 1140;

288 (iii) upon the recommendation of the department or a local health department under
289 Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit; or

290 (iv) under any other provision of state law or local ordinance.

291 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has
292 a business license and is operating in a county in accordance with all applicable laws except for
293 the requirement in Subsection (4), on or before December 31, 2015, is exempt from Subsection
294 (4).

295 (b) A retail tobacco specialty business may maintain an exemption under Subsection
296 (7)(a) if:

297 (i) the retail tobacco specialty business license is renewed continuously without lapse
298 or permanent revocation;

299 (ii) the retail tobacco specialty business does not close for business or otherwise
300 suspend the sale of tobacco products, electronic cigarette products, or nicotine products for
301 more than 60 consecutive days;

302 (iii) the retail tobacco specialty business does not substantially change the business
303 premises or business operation; and

304 (iv) the retail tobacco specialty business maintains the right to operate under the terms
305 of other applicable laws, including:

306 (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;

307 (B) zoning ordinances;

308 (C) building codes; and

309 (D) the requirements of a retail tobacco specialty business license issued before

310 December 31, 2015.

311 Section 3. Section **26-57-101** is amended to read:

312 **CHAPTER 57. ELECTRONIC CIGARETTE AND NICOTINE PRODUCT**
 313 **REGULATION ACT.**

314 **26-57-101. Title.**

315 This chapter is known as the "Electronic Cigarette and Nicotine Product Regulation
 316 Act."

317 Section 4. Section **26-57-102** is amended to read:

318 **26-57-102. Definitions.**

319 As used in this chapter:

320 (1) "Cigarette" means the same as that term is defined in Section 59-14-102.

321 (2) "Electronic cigarette" means the same as that term is defined in Section
 322 ~~[59-14-802]~~ 59-14-102.

323 (3) "Electronic cigarette product" means an electronic cigarette or an electronic
 324 cigarette substance.

325 (4) "Electronic cigarette substance" means the same as that term is defined in Section
 326 ~~[59-14-802]~~ 59-14-102.

327 (5) "Local health department" means the same as that term is defined in Section
 328 26A-1-102.

329 ~~[(5)]~~ (6) "Manufacture" includes:

330 (a) to cast, construct, or make electronic cigarettes; or

331 (b) to blend, make, process, or prepare an electronic cigarette substance.

332 ~~[(6)]~~ (7) "Manufacturer sealed electronic cigarette substance" means an electronic
 333 cigarette substance that is sold in a container that:

334 (a) is ~~[pre-filled]~~ prefilled by the electronic cigarette substance manufacturer; and

335 (b) the electronic cigarette manufacturer does not intend for a consumer to open.

336 (8) "Nicotine" means the same as that term is defined in Section 59-14-102.

337 (9) "Nicotine product" means the same as that term is defined in Section 59-14-102.

338 Section 5. Section **26-57-104** is enacted to read:

339 **26-57-104. Labeling of nicotine products containing nicotine.**

340 (1) Any nicotine product shall contain the statement described in Subsection (2) if the

341 nicotine product:

342 (a) (i) is not a tobacco product as defined in 21 U.S.C. Sec. 321 and related federal
343 regulations; or

344 (ii) is not otherwise required under federal or state law to contain a nicotine warning;
345 and

346 (b) contains nicotine.

347 (2) A statement shall appear on the exterior packaging of a nicotine product described
348 in Subsection (1) as follows:

349 "This product contains nicotine."

350 Section 6. Section **26-62-101** is amended to read:

351 **CHAPTER 62. TOBACCO, ELECTRONIC CIGARETTE, AND NICOTINE**

352 **PRODUCT RETAIL PERMIT.**

353 **26-62-101. Title.**

354 This chapter is known as "Tobacco, Electronic Cigarette, and Nicotine Product Retail
355 Permit."

356 Section 7. Section **26-62-102** is amended to read:

357 **26-62-102. Definitions.**

358 As used in this chapter:

359 (1) "Community location" means the same as that term is defined:

360 (a) as it relates to a municipality, in Section 10-8-41.6; and

361 (b) as it relates to a county, in Section 17-50-333.

362 (2) "Electronic cigarette product" means the same as that term is defined in Section
363 59-14-102.

364 [~~(2)~~] (3) "Employee" means an employee of a tobacco retailer.

365 [~~(3)~~] (4) "Enforcing agency" means the state Department of Health, or any local health
366 department enforcing the provisions of this chapter.

367 [~~(4)~~] (5) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco
368 specialty business.

369 [~~(5)~~] (6) "Local health department" means the same as that term is defined in Section
370 26A-1-102.

371 (7) "Nicotine product" means the same as that term is defined in Section 59-14-102.

- 372 ~~[(6)]~~ (8) "Permit" means a tobacco retail permit issued under this chapter.
- 373 ~~[(7)]~~ (9) "Retail tobacco specialty business" means the same as that term is defined:
- 374 (a) as it relates to a municipality, in Section 10-8-41.6; and
- 375 (b) as it relates to a county, in Section 17-50-333.
- 376 ~~[(8)]~~ (10) "Tax commission license" means a license issued by the State Tax
- 377 Commission under:
- 378 (a) Section 59-14-201 to sell ~~[cigarettes]~~ a cigarette at retail;
- 379 (b) Section 59-14-301 to sell ~~[tobacco products]~~ a tobacco product at retail; or
- 380 (c) Section 59-14-803 to sell an electronic cigarette product or a nicotine product.
- 381 ~~[(9)]~~ (11) "Tobacco product" means:
- 382 (a) a cigar~~;~~ or cigarette, ~~[or electronic cigarette]~~ as those terms are defined in Section
- 383 76-10-101;
- 384 (b) a tobacco product as that term is defined in Section 59-14-102, including:
- 385 (i) chewing tobacco; or
- 386 (ii) any substitute for a tobacco product, including flavoring or additives to tobacco; or
- 387 (c) tobacco paraphernalia as that term is defined in Section 76-10-104.1.
- 388 ~~[(10)]~~ (12) "Tobacco retailer" means a person that is required to obtain a tax
- 389 commission license.
- 390 Section 8. Section **26-62-201** is amended to read:
- 391 **26-62-201. Permitting requirement.**
- 392 (1) (a) ~~[Beginning July 1, 2018, a]~~ A tobacco retailer shall hold a valid tobacco retail
- 393 permit issued in accordance with this chapter by the local health department with jurisdiction
- 394 over the physical location where the tobacco retailer operates.
- 395 (b) A tobacco retailer without a valid permit may not:
- 396 (i) place ~~[tobacco products]~~ a tobacco product, an electronic cigarette product, or a
- 397 nicotine product in public view;
- 398 (ii) display any advertisement related to ~~[tobacco products]~~ a tobacco product, an
- 399 electronic cigarette product, or a nicotine product that promotes the sale, distribution, or use of
- 400 those products; or
- 401 (iii) sell, offer for sale, or offer to exchange for any form of consideration, tobacco ~~[or~~
- 402 ~~tobacco products]~~, a tobacco product, an electronic cigarette product, or a nicotine product.

- 403 (2) A local health department may issue a permit under this chapter for a tobacco
404 retailer in the classification of:
- 405 (a) a general tobacco retailer; or
 - 406 (b) a retail tobacco specialty business.
- 407 (3) A permit under this chapter is:
- 408 (a) valid only for one physical location, including a vending machine;
 - 409 (b) valid only at one fixed business address; and
 - 410 (c) if multiple tobacco retailers are at the same address, separately required for each
411 tobacco retailer.

412 ~~[(4) Notwithstanding the requirement in Subsection (1), a person that holds a tax~~
413 ~~commission license that was valid on July 1, 2018:]~~

414 ~~[(a) may operate without a permit under this chapter until December 31, 2018; and]~~
415 ~~[(b) shall obtain a permit from a local health department under this chapter before~~
416 ~~January 1, 2019.]~~

417 Section 9. Section **26-62-202** is amended to read:

418 **26-62-202. Permit application.**

- 419 (1) A local health department shall issue a permit under this chapter for a tobacco
420 retailer if the local health department determines that the applicant:
- 421 (a) accurately provided all information required under Subsection (3) and, if applicable,
422 Subsection (4); and
 - 423 (b) meets all requirements for a permit under this chapter.
- 424 (2) An applicant for a permit shall:
- 425 (a) submit an application described in Subsection (3) to the local health department
426 with jurisdiction over the area where the tobacco retailer is located; and
 - 427 (b) pay all applicable fees described in Section 26-62-203.
- 428 (3) The application for a permit shall include:
- 429 (a) the name, address, and telephone number of each proprietor;
 - 430 (b) the name and mailing address of each proprietor authorized to receive
431 permit-related communication and notices;
 - 432 (c) the business name, address, and telephone number of the single, fixed location for
433 which a permit is sought;

434 (d) evidence that the location for which a permit is sought has a valid tax commission
435 license;

436 (e) information regarding whether, in the past 24 months, any proprietor of the tobacco
437 retailer has been determined to have violated, or has been a proprietor at a location that has
438 been determined to have violated:

439 (i) a provision of this chapter;

440 (ii) Chapter 38, Utah Indoor Clean Air Act;

441 (iii) Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic Chemical
442 Solvents;

443 (iv) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;

444 (v) regulations restricting the sale and distribution of cigarettes and smokeless tobacco
445 issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140; or

446 (vi) any other provision of state law or local ordinance regarding the sale, marketing, or
447 distribution of [~~tobacco products~~] a tobacco product, an electronic cigarette product, or a
448 nicotine product; and

449 (f) the dates of all violations disclosed under this Subsection (3).

450 (4) (a) In addition to the information described in Subsection (3), an applicant for a
451 retail tobacco specialty business permit shall include evidence showing whether the business is
452 located within:

453 (i) 1,000 feet of a community location;

454 (ii) 600 feet of another retail tobacco specialty business; or

455 (iii) 600 feet of property used or zoned for agricultural or residential use.

456 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in
457 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
458 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard
459 to intervening structures or zoning districts.

460 (5) The department or a local health department may not deny a permit to a retail
461 tobacco specialty business under Subsection (4) if the retail tobacco specialty business obtained
462 a license to operate the retail tobacco specialty business before December 31, 2015, from:

463 (a) a municipality under Section 10-8-41.6; or

464 (b) a county under Section 17-50-333.

465 (6) (a) The department shall establish by rule made in accordance with Title 63G,
466 Chapter 3, Utah Administrative Rulemaking Act, a permit process for local health departments
467 in accordance with this chapter.

468 (b) The permit process established by the department under Subsection (6)(a) may not
469 require any information in an application that is not required by this section.

470 Section 10. Section **26-62-206** is enacted to read:

471 **26-62-206. Requirements for the sale of tobacco product, electronic cigarette**
472 **product, or nicotine product.**

473 (1) A tobacco retailer shall:

474 (a) provide the customer with an itemized receipt for each sale of a tobacco product, an
475 electronic cigarette product, or a nicotine product that separately identifies:

476 (i) the name of the tobacco product, the electronic cigarette product, or the nicotine
477 product;

478 (ii) the amount charged for each tobacco product, electronic cigarette product, or
479 nicotine product; and

480 (iii) the date and time of the sale; and

481 (b) maintain an itemized transaction log that separately identifies, for each sale of a
482 tobacco product, an electronic cigarette product, or a nicotine product:

483 (i) the name of the tobacco product, the electronic cigarette product, or the nicotine
484 product;

485 (ii) the amount charged for each tobacco product, electronic cigarette product, or
486 nicotine product; and

487 (iii) the date and time of the sale.

488 (2) The itemized transaction log described in Subsection (1)(b) shall be:

489 (a) maintained for at least one year from the date of each transaction in the itemized
490 transaction log; and

491 (b) made available to an enforcing agency or a peace officer at the request of the
492 enforcing agency or the peace officer.

493 Section 11. Section **26-62-301** is amended to read:

494 **26-62-301. Permit violation.**

495 A person is in violation of the permit issued under this chapter if the person violates:

- 496 (1) a provision of this chapter;
- 497 (2) a provision of licensing laws under Section 10-8-41.6 or Section 17-50-333;
- 498 (3) a provision of Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic
499 Chemical Solvents;
- 500 (4) a provision of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
- 501 (5) a regulation restricting the sale and distribution of cigarettes and smokeless tobacco
502 issued by the United States Food and Drug Administration under 21 C.F.R. Part 1140; or
- 503 (6) any other provision of state law or local ordinance regarding the sale, marketing, or
504 distribution of [~~tobacco products~~] a tobacco product, an electronic cigarette product, or a
505 nicotine product.

506 Section 12. Section **26-62-304 (Effective 07/01/20)** is amended to read:

507 **26-62-304 (Effective 07/01/20). Hearing -- Evidence of criminal conviction.**

508 (1) At a civil hearing conducted under Section 26-62-302, evidence of the final
509 criminal conviction of a tobacco retailer or employee for violation of Section 76-10-104 at the
510 same location and within the same time period as the location and time period alleged in the
511 civil hearing for violation of this chapter for sale of [~~tobacco products~~] a tobacco product, an
512 electronic cigarette product, or a nicotine product to an individual under the following ages is
513 prima facie evidence of a violation of this chapter:

- 514 (a) beginning July 1, 2020, and ending June 30, 2021, under 20 years old; and
- 515 (b) beginning July 1, 2021, under 21 years old.
- 516 (2) If the tobacco retailer is convicted of violating Section 76-10-104, the enforcing
517 agency:
- 518 (a) may not assess an additional monetary penalty under this chapter for the same
519 offense for which the conviction was obtained; and
- 520 (b) may revoke or suspend a permit in accordance with Section 26-62-305.

521 Section 13. Section **26-62-305 (Effective 07/01/20)** is amended to read:

522 **26-62-305 (Effective 07/01/20). Penalties.**

523 (1) (a) If, following an inspection by an enforcing agency, or an investigation or
524 issuance of a citation or information under Section 77-39-101, an enforcing agency determines
525 that a person has violated the terms of a permit issued under this chapter, the enforcing agency
526 may impose the penalties described in this section.

527 (b) If multiple violations are found in a single inspection or investigation, only one
528 violation shall count toward the penalties described in this section.

529 (2) (a) The administrative penalty for a first violation at a retail location is a penalty of
530 not more than \$500.

531 (b) The administrative penalty for a second violation at the same retail location that
532 occurs within one year of a previous violation is a penalty of not more than \$750.

533 (c) The administrative penalty for a third or subsequent violation at the same retail
534 location that occurs within two years after two or more previous violations is:

535 (i) a suspension of the retail tobacco business permit for 30 consecutive business days
536 within 60 days after the day on which the third or subsequent violation occurs; or

537 (ii) a penalty of not more than \$1,000.

538 (3) The department or a local health department may:

539 (a) revoke a permit if a fourth violation occurs within two years of three previous
540 violations;

541 (b) in addition to a monetary penalty imposed under Subsection (2), suspend the permit
542 if the violation is due to a sale of ~~[tobacco products]~~ a tobacco product, an electronic cigarette
543 product, or a nicotine product to an individual under:

544 (i) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and

545 (ii) beginning July 1, 2021, 21 years old; and

546 (c) if applicable, recommend to a municipality or county that a retail tobacco specialty
547 business license issued under Section 10-8-41.6 or 17-50-333 be suspended or revoked.

548 (4) (a) Except when a transfer described in Subsection (5) occurs, a local health
549 department may not issue a permit to:

550 (i) a tobacco retailer for whom a permit is suspended or revoked under Subsection (3);
551 or

552 (ii) a tobacco retailer that has the same proprietor, director, corporate officer, partner,
553 or other holder of significant interest as another tobacco retailer for whom a permit is
554 suspended or revoked under Subsection (3).

555 (b) A person whose permit:

556 (i) is suspended under this section may not apply for a new permit for any other
557 tobacco retailer for a period of 12 months after the day on which an enforcing agency suspends

558 the permit; and

559 (ii) is revoked may not apply for a new permit for any tobacco retailer for a period of
560 24 months after the day on which an enforcing agency revokes the permit.

561 (5) Violations of this chapter, Section 10-8-41.6, or Section 17-50-333 that occur at a
562 tobacco retailer location shall stay on the record for that tobacco retailer location unless:

563 (a) the tobacco retailer is transferred to a new proprietor; and

564 (b) the new proprietor provides documentation to the local health department that the
565 new proprietor is acquiring the tobacco retailer in an arm's length transaction from the previous
566 proprietor.

567 Section 14. Section **26-62-306** is amended to read:

568 **26-62-306. Recognition of tobacco retailer training program.**

569 (1) In determining the amount of the monetary penalty to be imposed for an employee's
570 violation of this chapter, a hearing officer shall reduce the civil penalty by at least 50% if the
571 hearing officer determines that:

572 (a) the tobacco retailer has implemented a documented employee training program; and

573 (b) the employees have completed that training program within 30 days after the day on
574 which each employee commences the duties of selling [~~tobacco products~~] a tobacco product, an
575 electronic cigarette product, or a nicotine product.

576 (2) (a) For the first offense at a location, if the hearing officer determines under
577 Subsection (1) that the tobacco retailer licensee has not implemented a documented training
578 program with a written curriculum for employees at that location regarding compliance with
579 this chapter, the hearing officer may suspend all or a portion of the penalty if:

580 (i) the tobacco retailer agrees to initiate a training program for employees at that
581 location; and

582 (ii) the training program begins within 30 days after the hearing officer makes a
583 determination under this Subsection (2)(a).

584 (b) If the hearing officer determines at a subsequent hearing that the tobacco retailer
585 has not implemented the training program within the time period required under Subsection
586 (2)(a)(ii), the hearing officer shall promptly impose the suspended monetary penalty, unless the
587 tobacco retailer demonstrates good cause for an extension of time for implementation of the
588 training program.

589 Section 15. Section **26A-1-128** is amended to read:

590 **26A-1-128. Tobacco, electronic cigarette, and nicotine product permits --**

591 **Enforcement.**

592 A local health department:

593 (1) shall enforce the requirements of Title 26, Chapter 62, Tobacco, Electronic
594 Cigarette, and Nicotine Product Retail Permit;

595 (2) may enforce licensing requirements for entities that hold a business license to sell
596 [~~tobacco products~~] a tobacco product, an electronic cigarette product, or a nicotine product
597 under Section 10-8-41.6 or Section 17-50-333; and

598 (3) may recommend to a municipality or county that the business license of a retail
599 tobacco specialty business be suspended or revoked for a violation of Section 10-8-41.6,
600 Section 17-50-333, or Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Nicotine
601 Product Retail Permit.

602 Section 16. Section **53-3-229** is amended to read:

603 **53-3-229. Prohibited uses of license certificate -- Penalty.**

604 (1) It is a class C misdemeanor for [~~a person~~] an individual to:

605 (a) lend or knowingly permit the use of a license certificate issued to the [~~person~~]
606 individual, by [~~a person~~] an individual not entitled to it;

607 (b) display or to represent as the [~~person's~~] individual's own a license certificate not
608 issued to the [~~person~~] individual;

609 (c) refuse to surrender to the division or a peace officer upon demand any license
610 certificate issued by the division;

611 (d) use a false name or give a false address in any application for a license or any
612 renewal or duplicate of the license certificate, or to knowingly make a false statement, or to
613 knowingly conceal a material fact or otherwise commit a fraud in the application;

614 (e) display a canceled, denied, revoked, suspended, or disqualified driver license
615 certificate as a valid driver license certificate;

616 (f) knowingly acquire, use, display, or transfer an item that purports to be an authentic
617 driver license certificate issued by a governmental entity if the item is not an authentic driver
618 license certificate issued by that governmental entity; or

619 (g) alter any information on an authentic driver license certificate so that it no longer

620 represents the information originally displayed.

621 (2) The provisions of Subsection (1)(e) do not prohibit the use of [~~a person's~~] an
622 individual's driver license certificate as a means of personal identification.

623 (3) It is a class A misdemeanor to knowingly:

624 (a) issue a driver license certificate with false or fraudulent information;

625 (b) issue a driver license certificate to a person younger than 21 years of age if the
626 driver license certificate is not distinguished as required for [~~a person~~] an individual younger
627 than 21 years of age under Section 53-3-207; or

628 (c) acquire, use, display, or transfer a false or altered driver license certificate to
629 procure:

630 (i) a cigarette;

631 (ii) an electronic cigarette product, as defined in Section 76-10-101;

632 (iii) tobacco; or

633 (iv) a tobacco product.

634 (4) [~~A person~~] An individual may not use, display, or transfer a false or altered driver
635 license certificate to procure alcoholic beverages, gain admittance to a place where alcoholic
636 beverages are sold or consumed, or obtain employment that may not be obtained by a minor in
637 violation of Section 32B-1-403.

638 (5) It is a third degree felony if [~~a person's~~] an individual's acquisition, use, display, or
639 transfer of a false or altered driver license certificate:

640 (a) aids or furthers the [~~person's~~] individual's efforts to fraudulently obtain goods or
641 services; or

642 (b) aids or furthers the [~~person's~~] individual's efforts to commit a violent felony.

643 Section 17. Section **53-3-810** is amended to read:

644 **53-3-810. Prohibited uses of identification card -- Penalties.**

645 (1) It is a class C misdemeanor to:

646 (a) lend or knowingly permit the use of an identification card issued to the [~~person~~]
647 individual, by [~~a person~~] an individual not entitled to it;

648 (b) display or to represent as the [~~person's~~] individual's own an identification card not
649 issued to the [~~person~~] individual;

650 (c) refuse to surrender to the division or a peace officer upon demand any identification

651 card issued by the division;

652 (d) use a false name or give a false address in any application for an identification card
653 or any renewal or duplicate of the identification card, or to knowingly make a false statement,
654 or to knowingly conceal a material fact in the application;

655 (e) display a revoked identification card as a valid identification card;

656 (f) knowingly acquire, use, display, or transfer an item that purports to be an authentic
657 identification card issued by a governmental entity if the item is not an authentic identification
658 card issued by that governmental entity; or

659 (g) alter any information contained on an authentic identification card so that it no
660 longer represents the information originally displayed.

661 (2) It is a class A misdemeanor to knowingly:

662 (a) issue an identification card with false or fraudulent information;

663 (b) issue an identification card to any ~~person~~ individual younger than 21 years of age
664 if the identification card is not distinguished as required for ~~a person~~ an individual younger
665 than 21 years of age under Section 53-3-806; or

666 (c) acquire, use, display, or transfer a false or altered identification card to procure:

667 (i) a cigarette;

668 (ii) an electronic cigarette product, as defined in Section 76-10-101;

669 (iii) tobacco; or

670 (iv) a tobacco product.

671 (3) ~~A person~~ An individual may not knowingly use, display, or transfer a false or
672 altered identification card to procure alcoholic beverages, gain admittance to a place where
673 alcoholic beverages are sold or consumed, or obtain employment that may not be obtained by a
674 minor in violation of Section 32B-1-403.

675 (4) It is a third degree felony if ~~a person's~~ an individual's acquisition, use, display, or
676 transfer of a false or altered identification card:

677 (a) aids or furthers the ~~person's~~ individual's efforts to fraudulently obtain goods or
678 services; or

679 (b) aids or furthers the ~~person's~~ individual's efforts to commit a violent felony.

680 Section 18. Section **53G-4-402** is amended to read:

681 **53G-4-402. Powers and duties generally.**

682 (1) A local school board shall:

683 (a) implement the core standards for Utah public schools using instructional materials
684 that best correlate to the core standards for Utah public schools and graduation requirements;

685 (b) administer tests, required by the state board, which measure the progress of each
686 student, and coordinate with the state superintendent and state board to assess results and create
687 plans to improve the student's progress, which shall be submitted to the state board for
688 approval;

689 (c) use progress-based assessments as part of a plan to identify schools, teachers, and
690 students that need remediation and determine the type and amount of federal, state, and local
691 resources to implement remediation;

692 (d) develop early warning systems for students or classes failing to make progress;

693 (e) work with the state board to establish a library of documented best practices,
694 consistent with state and federal regulations, for use by the local districts;

695 (f) implement training programs for school administrators, including basic
696 management training, best practices in instructional methods, budget training, staff
697 management, managing for learning results and continuous improvement, and how to help
698 every child achieve optimal learning in basic academic subjects; and

699 (g) ensure that the local school board meets the data collection and reporting standards
700 described in Section 53E-3-501.

701 (2) Local school boards shall spend Minimum School Program funds for programs and
702 activities for which the state board has established minimum standards or rules under Section
703 53E-3-501.

704 (3) (a) A local school board may purchase, sell, and make improvements on school
705 sites, buildings, and equipment and construct, erect, and furnish school buildings.

706 (b) School sites or buildings may only be conveyed or sold on local school board
707 resolution affirmed by at least two-thirds of the members.

708 (4) (a) A local school board may participate in the joint construction or operation of a
709 school attended by children residing within the district and children residing in other districts
710 either within or outside the state.

711 (b) Any agreement for the joint operation or construction of a school shall:

712 (i) be signed by the president of the local school board of each participating district;

713 (ii) include a mutually agreed upon pro rata cost; and

714 (iii) be filed with the state board.

715 (5) A local school board may establish, locate, and maintain elementary, secondary,
716 and applied technology schools.

717 (6) Except as provided in Section 53E-3-905, a local school board may enroll children
718 in school who are at least five years of age before September 2 of the year in which admission
719 is sought.

720 (7) A local school board may establish and support school libraries.

721 (8) A local school board may collect damages for the loss, injury, or destruction of
722 school property.

723 (9) A local school board may authorize guidance and counseling services for children
724 and their parents before, during, or following enrollment of the children in schools.

725 (10) (a) A local school board shall administer and implement federal educational
726 programs in accordance with Title 53E, Chapter 3, Part 8, Implementing Federal or National
727 Education Programs.

728 (b) Federal funds are not considered funds within the school district budget under
729 Chapter 7, Part 3, Budgets.

730 (11) (a) A local school board may organize school safety patrols and adopt policies
731 under which the patrols promote student safety.

732 (b) A student appointed to a safety patrol shall be at least 10 years old and have written
733 parental consent for the appointment.

734 (c) Safety patrol members may not direct vehicular traffic or be stationed in a portion
735 of a highway intended for vehicular traffic use.

736 (d) Liability may not attach to a school district, its employees, officers, or agents or to a
737 safety patrol member, a parent of a safety patrol member, or an authorized volunteer assisting
738 the program by virtue of the organization, maintenance, or operation of a school safety patrol.

739 (12) (a) A local school board may on its own behalf, or on behalf of an educational
740 institution for which the local school board is the direct governing body, accept private grants,
741 loans, gifts, endowments, devises, or bequests that are made for educational purposes.

742 (b) These contributions are not subject to appropriation by the Legislature.

743 (13) (a) A local school board may appoint and fix the compensation of a compliance

744 officer to issue citations for violations of Subsection 76-10-105(2)(b).

745 (b) A person may not be appointed to serve as a compliance officer without the
746 person's consent.

747 (c) A teacher or student may not be appointed as a compliance officer.

748 (14) A local school board shall adopt bylaws and policies for the local school board's
749 own procedures.

750 (15) (a) A local school board shall make and enforce policies necessary for the control
751 and management of the district schools.

752 (b) Local school board policies shall be in writing, filed, and referenced for public
753 access.

754 (16) A local school board may hold school on legal holidays other than Sundays.

755 (17) (a) A local school board shall establish for each school year a school traffic safety
756 committee to implement this Subsection (17).

757 (b) The committee shall be composed of one representative of:

758 (i) the schools within the district;

759 (ii) the Parent Teachers' Association of the schools within the district;

760 (iii) the municipality or county;

761 (iv) state or local law enforcement; and

762 (v) state or local traffic safety engineering.

763 (c) The committee shall:

764 (i) receive suggestions from school community councils, parents, teachers, and others
765 and recommend school traffic safety improvements, boundary changes to enhance safety, and
766 school traffic safety program measures;

767 (ii) review and submit annually to the Department of Transportation and affected
768 municipalities and counties a child access routing plan for each elementary, middle, and junior
769 high school within the district;

770 (iii) consult the Utah Safety Council and the Division of Family Health Services and
771 provide training to all school children in kindergarten through grade 6, within the district, on
772 school crossing safety and use; and

773 (iv) help ensure the district's compliance with rules made by the Department of
774 Transportation under Section 41-6a-303.

775 (d) The committee may establish subcommittees as needed to assist in accomplishing
776 its duties under Subsection (17)(c).

777 (18) (a) A local school board shall adopt and implement a comprehensive emergency
778 response plan to prevent and combat violence in the local school board's public schools, on
779 school grounds, on its school vehicles, and in connection with school-related activities or
780 events.

781 (b) The plan shall:

782 (i) include prevention, intervention, and response components;

783 (ii) be consistent with the student conduct and discipline policies required for school
784 districts under Chapter 11, Part 2, Miscellaneous Requirements;

785 (iii) require professional learning for all district and school building staff on what their
786 roles are in the emergency response plan;

787 (iv) provide for coordination with local law enforcement and other public safety
788 representatives in preventing, intervening, and responding to violence in the areas and activities
789 referred to in Subsection (18)(a); and

790 (v) include procedures to notify a student, to the extent practicable, who is off campus
791 at the time of a school violence emergency because the student is:

792 (A) participating in a school-related activity; or

793 (B) excused from school for a period of time during the regular school day to
794 participate in religious instruction at the request of the student's parent.

795 (c) The state board, through the state superintendent, shall develop comprehensive
796 emergency response plan models that local school boards may use, where appropriate, to
797 comply with Subsection (18)(a).

798 (d) A local school board shall, by July 1 of each year, certify to the state board that its
799 plan has been practiced at the school level and presented to and reviewed by its teachers,
800 administrators, students, and their parents and local law enforcement and public safety
801 representatives.

802 (19) (a) A local school board may adopt an emergency response plan for the treatment
803 of sports-related injuries that occur during school sports practices and events.

804 (b) The plan may be implemented by each secondary school in the district that has a
805 sports program for students.

- 806 (c) The plan may:
- 807 (i) include emergency personnel, emergency communication, and emergency
808 equipment components;
- 809 (ii) require professional learning on the emergency response plan for school personnel
810 who are involved in sports programs in the district's secondary schools; and
- 811 (iii) provide for coordination with individuals and agency representatives who:
- 812 (A) are not employees of the school district; and
- 813 (B) would be involved in providing emergency services to students injured while
814 participating in sports events.
- 815 (d) The local school board, in collaboration with the schools referred to in Subsection
816 (19)(b), may review the plan each year and make revisions when required to improve or
817 enhance the plan.
- 818 (e) The state board, through the state superintendent, shall provide local school boards
819 with an emergency plan response model that local school boards may use to comply with the
820 requirements of this Subsection (19).
- 821 (20) A local school board shall do all other things necessary for the maintenance,
822 prosperity, and success of the schools and the promotion of education.
- 823 (21) (a) Before closing a school or changing the boundaries of a school, a local school
824 board shall:
- 825 (i) at least 120 days before approving the school closure or school boundary change,
826 provide notice to the following that the local school board is considering the closure or
827 boundary change:
- 828 (A) parents of students enrolled in the school, using the same form of communication
829 the local school board regularly uses to communicate with parents;
- 830 (B) parents of students enrolled in other schools within the school district that may be
831 affected by the closure or boundary change, using the same form of communication the local
832 school board regularly uses to communicate with parents; and
- 833 (C) the governing council and the mayor of the municipality in which the school is
834 located;
- 835 (ii) provide an opportunity for public comment on the proposed school closure or
836 school boundary change during at least two public local school board meetings; and

837 (iii) hold a public hearing as defined in Section 10-9a-103 and provide public notice of
838 the public hearing as described in Subsection (21)(b).

839 (b) The notice of a public hearing required under Subsection (21)(a)(iii) shall:

840 (i) indicate the:

841 (A) school or schools under consideration for closure or boundary change; and

842 (B) the date, time, and location of the public hearing;

843 (ii) at least 10 days before the public hearing, be:

844 (A) published:

845 (I) in a newspaper of general circulation in the area; and

846 (II) on the Utah Public Notice Website created in Section 63F-1-701; and

847 (B) posted in at least three public locations within the municipality in which the school
848 is located on the school district's official website, and prominently at the school; and

849 (iii) at least 30 days before the public hearing described in Subsection (21)(a)(iii), be
850 provided as described in Subsections (21)(a)(i)(A), (B), and (C).

851 (22) A local school board may implement a facility energy efficiency program
852 established under Title 11, Chapter 44, Performance Efficiency Act.

853 (23) A local school board may establish or partner with a certified youth court
854 program, in accordance with Section 78A-6-1203, or establish or partner with a comparable
855 restorative justice program, in coordination with schools in that district. A school may refer a
856 student to youth court or a comparable restorative justice program in accordance with Section
857 53G-8-211.

858 Section 19. Section **53G-8-209** is amended to read:

859 **53G-8-209. Extracurricular activities -- Prohibited conduct -- Reporting of**
860 **violations -- Limitation of liability.**

861 (1) The Legislature recognizes that:

862 (a) participation in student government and extracurricular activities may confer
863 important educational and lifetime benefits upon students, and encourages school districts and
864 charter schools to provide a variety of opportunities for all students to participate in such
865 activities in meaningful ways;

866 (b) there is no constitutional right to participate in these types of activities, and does
867 not through this section or any other provision of law create such a right;

868 (c) students who participate in student government and extracurricular activities,
869 particularly competitive athletics, and the adult coaches, advisors, and assistants who direct
870 those activities, become role models for others in the school and community;

871 (d) these individuals often play major roles in establishing standards of acceptable
872 behavior in the school and community, and establishing and maintaining the reputation of the
873 school and the level of community confidence and support afforded the school; and

874 (e) it is of the utmost importance that those involved in student government, whether as
875 officers or advisors, and those involved in competitive athletics and related activities, whether
876 students or staff, comply with all applicable laws and standards of behavior and conduct
877 themselves at all times in a manner befitting their positions and responsibilities.

878 (2) (a) The state board may, and local school boards and charter school governing
879 boards shall, adopt rules or policies implementing this section that apply to both students and
880 staff.

881 (b) The rules or policies described in Subsection (2)(a) shall include prohibitions
882 against the following types of conduct in accordance with Section 53G-8-211, while in the
883 classroom, on school property, during school sponsored activities, or regardless of the location
884 or circumstance, affecting a person or property described in Subsections 53G-8-203(1)(e)(i)
885 through (iv):

886 (i) use of foul, abusive, or profane language while engaged in school related activities;

887 (ii) illicit use, possession, or distribution of controlled substances or drug
888 paraphernalia, and the use, possession, or distribution of an electronic cigarette product as
889 defined in Section 76-10-101, tobacco, or alcoholic beverages contrary to law; and

890 (iii) hazing, demeaning, or assaultive behavior, whether consensual or not, including
891 behavior involving physical violence, restraint, improper touching, or inappropriate exposure
892 of body parts not normally exposed in public settings, forced ingestion of any substance, or any
893 act which would constitute a crime against a person or public order under ~~[Utah]~~ state law.

894 (3) (a) School employees who reasonably believe that a violation of this section may
895 have occurred shall immediately report that belief to the school principal, district
896 superintendent, or chief administrative officer of a charter school.

897 (b) Principals who receive a report under Subsection (3)(a) shall submit a report of the
898 alleged incident, and actions taken in response, to the district superintendent or the

899 superintendent's designee within 10 working days after receipt of the report.

900 (c) Failure of a person holding a professional certificate to report as required under this
901 Subsection (3) constitutes an unprofessional practice.

902 (4) Limitations of liability set forth under Section 53G-8-405 apply to this section.

903 Section 20. Section **59-14-102** is amended to read:

904 **59-14-102. Definitions.**

905 As used in this chapter:

906 (1) (a) Except as provided in Subsection (1)(c), "alternative nicotine product" means a
907 product, other than a cigarette, a counterfeit cigarette, an electronic cigarette product, a
908 nontherapeutic nicotine product, or a tobacco product, that:

909 (i) contains nicotine;

910 (ii) is intended for human consumption;

911 (iii) is not purchased with a prescription from a licensed physician; and

912 (iv) is not approved by the United States Food and Drug Administration as nicotine
913 replacement therapy.

914 (b) "Alternative nicotine product" includes:

915 (i) pure nicotine;

916 (ii) snortable nicotine;

917 (iii) dissolvable salts, orbs, pellets, sticks, or strips; and

918 (iv) nicotine-laced food and beverage.

919 (c) "Alternative nicotine product" does not include a fruit, a vegetable, or a tea that
920 contains naturally occurring nicotine.

921 [~~(1)~~] (2) "Cigarette" means a roll for smoking made wholly or in part of tobacco:

922 (a) regardless of:

923 (i) the size of the roll;

924 (ii) the shape of the roll; or

925 (iii) whether the tobacco is [~~(A)~~] flavored [~~(B)~~], adulterated [~~(C)~~], or mixed with
926 any other ingredient; and

927 (b) if the wrapper or cover of the roll is made of paper or any other substance or
928 material except tobacco.

929 [~~(2)~~] (3) "Cigarette rolling machine" means a device or machine that has the capability

930 to produce at least 150 cigarettes in less than 30 minutes.

931 ~~[(3)]~~ (4) "Cigarette rolling machine operator" means a person who:

932 (a) (i) controls, leases, owns, possesses, or otherwise has available for use a cigarette
933 rolling machine; and

934 (ii) makes the cigarette rolling machine available for use by another person to produce
935 a cigarette; or

936 (b) offers for sale, at retail, a cigarette produced from the cigarette rolling machine.

937 ~~[(4)]~~ (5) "Consumer" means a person that is not required:

938 (a) under Section 59-14-201 to obtain a license under Section 59-14-202; ~~[or]~~

939 (b) under Section 59-14-301 to obtain a license under Section 59-14-202~~[-];~~ or

940 (c) to obtain a license under Section 59-14-803.

941 ~~[(5)]~~ (6) "Counterfeit cigarette" means:

942 (a) a cigarette that has a false manufacturing label; or

943 (b) a package of cigarettes bearing a counterfeit tax stamp.

944 (7) (a) "Electronic cigarette" means:

945 (i) an electronic device used to deliver or capable of delivering vapor containing
946 nicotine or another substance to an individual's respiratory system;

947 (ii) a component of the device described in Subsection (7)(a)(i); or

948 (iii) an accessory sold in the same package as the device described in Subsection
949 (7)(a)(i).

950 (b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section
951 26-38-2.

952 (8) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette
953 substance, or a prefilled electronic cigarette.

954 (9) "Electronic cigarette substance" means any substance, including liquid containing
955 nicotine, used or intended for use in an electronic cigarette.

956 ~~[(6)]~~ (10) "Importer" means a person ~~[who]~~ that imports into the United States, either
957 directly or indirectly, a finished cigarette for sale or distribution.

958 ~~[(7)]~~ (11) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity,
959 or any other person doing business as a distributor or retailer of cigarettes on tribal lands
960 located in the state.

- 961 ~~[(8)]~~ (12) "Little cigar" means a roll for smoking that:
- 962 (a) is made wholly or in part of tobacco;
- 963 (b) ~~[that]~~ uses an integrated cellulose acetate filter or other similar filter; and
- 964 (c) ~~[that]~~ is wrapped in a substance:
- 965 (i) containing tobacco; and
- 966 (ii) that is not exclusively natural leaf tobacco.
- 967 ~~[(9)]~~ (13) (a) Except as provided in Subsection ~~[(9)]~~ (13)(b), "manufacturer" means a
- 968 person ~~[who]~~ that:
- 969 (i) manufactures, fabricates, assembles, processes, or labels a finished cigarette[-]; or
- 970 (ii) makes, modifies, mixes, manufactures, fabricates, assembles, processes, labels,
- 971 repackages, relabels, or imports an electronic cigarette product or a nicotine product.
- 972 (b) "Manufacturer" does not include a cigarette rolling machine operator.
- 973 ~~[(10)]~~ (14) "Moist snuff" means tobacco that:
- 974 (a) is finely~~[-(i)-]~~ cut~~[-(ii)-]~~, ground~~[-or-(iii)-]~~, or powdered;
- 975 (b) has at least 45% moisture content, as determined by the commission by rule made
- 976 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 977 (c) is not intended to be:
- 978 (i) smoked; or
- 979 (ii) placed in the nasal cavity; and
- 980 (d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or
- 981 distributed in single-use units, including:
- 982 (i) tablets;
- 983 (ii) lozenges;
- 984 (iii) strips;
- 985 (iv) sticks; or
- 986 (v) packages containing multiple single-use units.
- 987 (15) "Nicotine" means a poisonous, nitrogen containing chemical that is made
- 988 synthetically or derived from tobacco or other plants.
- 989 (16) "Nicotine product" means an alternative nicotine product or a nontherapeutic
- 990 nicotine product.
- 991 (17) (a) "Nontherapeutic nicotine device" means a device that:

- 992 (i) has a pressurized canister that is used to administer nicotine to the user through
993 inhalation or intranasally;
- 994 (ii) is not purchased with a prescription from a licensed physician; and
995 (iii) is not approved by the United States Food and Drug Administration as nicotine
996 replacement therapy.
- 997 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or
998 nontherapeutic nicotine nasal spray.
- 999 (18) "Nontherapeutic nicotine device substance" means a substance that:
- 1000 (a) contains nicotine;
1001 (b) is sold in a cartridge for use in a nontherapeutic nicotine device;
1002 (c) is not purchased with a prescription from a licensed physician; and
1003 (d) is not approved by the United States Food and Drug Administration as nicotine
1004 replacement therapy.
- 1005 (19) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device, a
1006 nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device.
- 1007 (20) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled
1008 with an electronic cigarette substance.
- 1009 (21) "Prefilled nontherapeutic nicotine device" means a nontherapeutic nicotine device
1010 that is sold prefilled with a nontherapeutic nicotine device substance.
- 1011 ~~(11)~~ (22) "Retailer" means a person that:
- 1012 (a) sells or distributes a cigarette, an electronic cigarette product, or a nicotine product
1013 to a consumer in the state; or
- 1014 (b) intends to sell or distribute a cigarette, an electronic cigarette product, or a nicotine
1015 product to a consumer in the state.
- 1016 ~~(12)~~ (23) "Stamp" means the indicia required to be placed on a cigarette package that
1017 evidences payment of the tax on cigarettes required by Section 59-14-205.
- 1018 ~~(13)~~ (24) (a) "Tobacco product" means a product made of, or containing, tobacco.
- 1019 (b) "Tobacco product" includes:
- 1020 (i) a cigarette produced from a cigarette rolling machine;
1021 (ii) a little cigar; or
1022 (iii) moist snuff.

1023 (c) "Tobacco product" does not include a cigarette.

1024 [~~(14)~~] (25) "Tribal lands" means land held by the United States in trust for a federally
1025 recognized Indian tribe.

1026 Section 21. Section **59-14-302** is amended to read:

1027 **59-14-302. Tax basis -- Rates.**

1028 (1) As used in this section:

1029 (a) "Manufacturer's sales price" means the amount the manufacturer of a tobacco
1030 product charges after subtracting a discount.

1031 (b) "Manufacturer's sales price" includes an original Utah destination freight charge,
1032 regardless of:

1033 (i) whether the tobacco product is shipped f.o.b. origin or f.o.b. destination; or
1034 (ii) who pays the original Utah destination freight charge.

1035 (2) There is levied a tax upon the sale, use, or storage of tobacco products in the state.

1036 (3) (a) Subject to Subsection (3)(b), the tax levied under Subsection (2) shall be paid
1037 by the manufacturer, jobber, distributor, wholesaler, retailer, user, or consumer.

1038 (b) The tax levied under Subsection (2) on a cigarette produced from a cigarette rolling
1039 machine shall be paid by the cigarette rolling machine operator.

1040 (4) For tobacco products except for moist snuff, a little cigar, or a cigarette produced
1041 from a cigarette rolling machine, the [~~rate~~] amount of the tax under this section is .86
1042 multiplied by the manufacturer's sales price.

1043 (5) (a) Subject to Subsection (5)(b), the tax under this section on moist snuff is
1044 imposed:

1045 (i) at a rate of \$1.83 per ounce; and
1046 (ii) on the basis of the net weight of the moist snuff as listed by the manufacturer.

1047 (b) If the net weight of moist snuff is in a quantity that is a fractional part of one ounce,
1048 a proportionate amount of the tax described in Subsection (5)(a) is imposed:

1049 (i) on that fractional part of one ounce; and
1050 (ii) in accordance with rules made by the commission in accordance with Title 63G,
1051 Chapter 3, Utah Administrative Rulemaking Act.

1052 (6) (a) A little cigar is taxed at the same tax rates as a cigarette is taxed under
1053 Subsection 59-14-204(2).

1054 (b) (i) Subject to Subsection (6)(b)(ii), a cigarette produced from a cigarette rolling
1055 machine is taxed at the same tax rates as a cigarette is taxed under Subsection 59-14-204(2).

1056 (ii) A tax under this Subsection (6)(b) is imposed on the date the cigarette is produced
1057 from the cigarette rolling machine.

1058 (7) (a) Moisture content of a tobacco product is determined at the time of packaging.

1059 (b) A manufacturer who distributes a tobacco product in, or into, Utah, shall:

1060 (i) for a period of three years after the last day on which the manufacturer distributes
1061 the tobacco product in, or into, Utah, keep valid scientific evidence of the moisture content of
1062 the tobacco product available for review by the commission, upon demand; and

1063 (ii) provide a document, to the person described in Subsection (3) to whom the
1064 manufacturer distributes the tobacco product, that certifies the moisture content of the tobacco
1065 product, as verified by the scientific evidence described in Subsection (7)(b)(i).

1066 (c) A manufacturer who fails to comply with the requirements of Subsection (7)(b) is
1067 liable for the nonpayment or underpayment of taxes on the tobacco product by a person who
1068 relies, in good faith, on the document described in Subsection (7)(b)(ii).

1069 (d) A person described in Subsection (3) who is required to pay tax on a tobacco
1070 product:

1071 (i) shall, for a period of three years after the last day on which the person pays the tax
1072 on the tobacco product, keep the document described in Subsection (7)(b)(ii) available for
1073 review by the commission, upon demand; and

1074 (ii) is not liable for nonpayment or underpayment of taxes on the tobacco product due
1075 to the person's good faith reliance on the document described in Subsection (7)(b)(ii).

1076 Section 22. Section **59-14-801** is amended to read:

1077 **Part 8. Electronic Cigarette and Nicotine Product Licensing and Taxation Act.**

1078 **59-14-801. Title.**

1079 This part is known as the "Electronic Cigarette and Nicotine Product Licensing and
1080 Taxation Act."

1081 Section 23. Section **59-14-802** is amended to read:

1082 **59-14-802. Definitions.**

1083 As used in this part:

1084 [~~(1) "Cigarette" means the same as that term is defined in Section 59-14-102.]~~

1085 ~~[(2)(a) "Electronic cigarette" means:]~~
 1086 ~~[(i) an electronic device used to deliver or capable of delivering vapor containing~~
 1087 ~~nicotine to an individual's respiratory system;]~~
 1088 ~~[(ii) a component of the device described in Subsection (2)(a)(i); or]~~
 1089 ~~[(iii) an accessory sold in the same package as the device described in Subsection~~
 1090 ~~(2)(a)(i).]~~
 1091 ~~[(b) "Electronic cigarette" includes an e-cigarette as defined in Section 26-38-2.]~~
 1092 ~~[(3) "Electronic cigarette product" means an electronic cigarette or an electronic~~
 1093 ~~cigarette substance.]~~
 1094 ~~[(4) "Electronic cigarette substance" means any substance, including liquid containing~~
 1095 ~~nicotine, used or intended for use in an electronic cigarette.]~~
 1096 ~~[(5)]~~ (1) "Licensee" means a person that holds a valid license to sell an electronic
 1097 cigarette ~~[products]~~ product or a nicotine product.
 1098 ~~[(6) "License to sell an electronic cigarette product" means a license issued by the~~
 1099 ~~commission under Subsection 59-14-803(3).]~~
 1100 (2) (a) "Manufacturer's sales price" means the amount that the manufacturer of an
 1101 electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine product, a
 1102 nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device charges
 1103 after subtracting a discount.
 1104 (b) "Manufacturer's sales price" includes an original Utah destination freight charge,
 1105 regardless of:
 1106 (i) whether the electronic cigarette substance, prefilled electronic cigarette, alternative
 1107 nicotine product, nontherapeutic nicotine device substance, or prefilled nontherapeutic nicotine
 1108 device is shipped f.o.b. origin or f.o.b. destination; or
 1109 (ii) who pays the original Utah destination freight charge.
 1110 Section 24. Section **59-14-803** is amended to read:
 1111 **59-14-803. License to sell electronic cigarette product or nicotine product.**
 1112 (1) ~~[Except as provided in Subsection (2), a]~~ A person may not sell, offer to sell, or
 1113 distribute an electronic cigarette product ~~[in Utah]~~ or a nicotine product in this state without
 1114 first:
 1115 (a) except as provided in Subsection (2), obtaining a license from the commission

1116 under this section to sell an electronic cigarette product [~~from the commission under this~~
1117 ~~section.~~] or a nicotine product; and

1118 (b) complying with any bonding requirement described in Subsection (5).

1119 (2) A person that holds a valid license to sell cigarettes under Section 59-14-201[;] or a
1120 person that holds a valid license to sell tobacco products under Section 59-14-301[;] may,
1121 without obtaining a separate license [~~to sell an electronic cigarette product under this part,~~] in
1122 accordance with this section, sell, offer to sell, or distribute an electronic cigarette product [~~in~~
1123 ~~Utah in accordance with this part~~] or a nicotine product in this state.

1124 (3) The commission shall issue a license to sell an electronic cigarette product or a
1125 nicotine product to a person that submits an application, on a form created by the commission,
1126 that includes:

1127 (a) the person's name;

1128 (b) the address of the facility where the person will sell an electronic cigarette product
1129 or a nicotine product; and

1130 (c) any other information the commission requires to implement this chapter.

1131 (4) A license described in Subsection (3) is:

1132 (a) valid only at one fixed business address;

1133 (b) valid for three years;

1134 (c) valid only for a physical location; and

1135 (d) renewable if a licensee meets the criteria for licensing described in Subsection (3).

1136 (5) (a) The commission shall require a manufacturer, jobber, distributor, wholesaler, or
1137 retailer that is responsible under this part for the collection of tax on an electronic cigarette
1138 substance, a prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic
1139 nicotine device substance, or a prefilled nontherapeutic nicotine device to post a bond.

1140 (b) The manufacturer, jobber, distributor, wholesaler, or retailer may post the bond
1141 required by Subsection (5)(a) in combination with any bond required by Section 59-14-201 or
1142 59-14-301.

1143 (c) Subject to Subsection (5)(d), the commission shall determine the form and amount
1144 of the bond.

1145 (d) The minimum amount of the bond shall be:

1146 (i) except as provided in Subsection (5)(d)(ii) or (iii), \$500;

1147 (ii) if the manufacturer, jobber, distributor, wholesaler, or retailer posts the bond
 1148 required by Subsection (5)(a) in combination with a bond required by either Section 59-14-201
 1149 or 59-14-301, \$1,000; or

1150 (iii) if the manufacturer, jobber, distributor, wholesaler, or retailer posts the bond
 1151 required by Subsection (5)(a) in combination with a bond required by both Sections 59-14-201
 1152 and 59-14-301, \$1,500.

1153 ~~[(5)]~~ (6) The commission may make rules in accordance with Title 63G, Chapter 3,
 1154 Utah Administrative Rulemaking Act, to establish the additional information described in
 1155 Subsection (3)(c) that a person ~~[must]~~ shall provide in the application described in Subsection
 1156 (3).

1157 ~~[(6)]~~ (7) It is a class B misdemeanor for a person to violate Subsection (1).

1158 ~~[(7)]~~ (8) The commission may not charge a fee for a license under this section.

1159 Section 25. Section **59-14-804** is enacted to read:

1160 **59-14-804. Taxation of electronic cigarette substance, prefilled electronic**
 1161 **cigarette, alternative nicotine product, nontherapeutic nicotine device substance, and**
 1162 **prefilled nontherapeutic nicotine device.**

1163 (1) (a) There is levied a tax upon the following:

1164 (i) an electronic cigarette substance; and

1165 (ii) a prefilled electronic cigarette.

1166 (b) Beginning on July 1, 2021, there is levied a tax upon the following:

1167 (i) an alternative nicotine product;

1168 (ii) a nontherapeutic nicotine device substance; and

1169 (iii) a prefilled nontherapeutic nicotine device.

1170 (2) The amount of tax levied under Subsection (1) is .86 multiplied by the

1171 manufacturer's sales price.

1172 (3) (a) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user shall
 1173 pay the tax levied under Subsection (1) at the time that an electronic cigarette substance, a
 1174 prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic nicotine device
 1175 substance, or a prefilled nontherapeutic nicotine device is first received in the state.

1176 (b) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user may not
 1177 resell an electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine

1178 product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine
1179 device to another distributor, another retailer, or a consumer before paying the tax levied under
1180 Subsection (1).

1181 (4) (a) The manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user
1182 shall remit the taxes collected in accordance with this section to the commission.

1183 (b) The commission shall deposit, for each fiscal year:

1184 (i) the first \$3,000,000 remitted in accordance with this section into the Electronic
1185 Cigarette Substance and Nicotine Product Tax Restricted Account, created in Section
1186 59-14-807; and

1187 (ii) the balance of remittances received in accordance with this section into the General
1188 Fund.

1189 Section 26. Section **59-14-805** is enacted to read:

1190 **59-14-805. Remittance of tax -- Returns -- Invoice required -- Filing requirement--**
1191 **Exception -- Penalty -- Overpayment.**

1192 (1) (a) The manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user
1193 that collects the tax imposed on an electronic cigarette substance, a prefilled electronic
1194 cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance, or a
1195 prefilled nontherapeutic nicotine device shall remit to the commission, in an electronic format
1196 approved by the commission:

1197 (i) the tax collected in the previous calendar quarter; and

1198 (ii) the quarterly tax return.

1199 (b) The tax collected and the return are due on or before the last day of April, July,
1200 October, and January.

1201 (2) (a) A manufacturer, jobber, distributor, wholesaler, retailer, or any other person
1202 selling an electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine
1203 product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine
1204 device to a person other than the ultimate consumer shall furnish the purchaser with an
1205 itemized invoice showing:

1206 (i) the seller's name and address;

1207 (ii) the name and address of the purchaser;

1208 (iii) the date of sale;

- 1209 (iv) the name and price of the product; and
1210 (v) the discount, if any.
- 1211 (b) The invoice shall show whether the price includes the tax.
- 1212 (c) The seller and the purchaser shall retain copies of the invoice and make the invoice
1213 available for inspection at the request of the commission or the commission's agent for a period
1214 of three years following the sale.
- 1215 (3) (a) A consumer that purchases an untaxed electronic cigarette substance, prefilled
1216 electronic cigarette, alternative nicotine product, nontherapeutic nicotine device substance, or
1217 prefilled nontherapeutic nicotine device for use or other consumption shall:
- 1218 (i) file with the commission, on forms prescribed by the commission, a statement
1219 showing the quantity and description of the item subject to tax under this part; and
- 1220 (ii) pay the tax imposed by this part on that item.
- 1221 (b) The consumer shall file the statement described in Subsection (3)(a) and pay the tax
1222 due on or before the last day of the month immediately following the month during which the
1223 consumer purchased an untaxed electronic cigarette substance, prefilled electronic cigarette,
1224 alternative nicotine device substance, nontherapeutic nicotine product, or prefilled
1225 nontherapeutic nicotine device.
- 1226 (c) A consumer shall maintain records necessary to determine the amount of tax the
1227 consumer is liable to pay under this part for a period of three years following the date on which
1228 the statement required by this section was filed.
- 1229 (4) A tourist who imports an untaxed electronic cigarette substance, a prefilled
1230 electronic cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance,
1231 or a prefilled nontherapeutic nicotine device into the state does not need to file the statement
1232 described in Subsection (3) or pay the tax if the item is for the tourist's own use or consumption
1233 while in this state.
- 1234 (5) In addition to the tax required by this part, a person shall pay a penalty as provided
1235 in Section 59-1-401, plus interest at the rate and in the manner prescribed in Section 59-1-402,
1236 if a person subject to this section fails to:
- 1237 (a) pay the tax prescribed by this part;
1238 (b) pay the tax on time; or
1239 (c) file a return required by this part.

1240 (6) An overpayment of a tax imposed by this part shall accrue interest at the rate and in
1241 the manner prescribed in Section 59-1-402.

1242 Section 27. Section **59-14-806** is enacted to read:

1243 **59-14-806. Refund of taxes paid -- Exemption for exported electronic cigarettes**
1244 **and nicotine products.**

1245 (1) When an electronic cigarette substance, a prefilled electronic cigarette, an
1246 alternative nicotine product, a nontherapeutic nicotine device substance, or a prefilled
1247 nontherapeutic nicotine device taxed under this chapter is sold and shipped to a regular dealer
1248 in those articles in another state, the seller in this state shall be entitled to a refund of the actual
1249 amount of the taxes paid, upon condition that the seller in this state:

1250 (a) is a licensed dealer;

1251 (b) signs an affidavit that the electronic cigarette substance, the prefilled electronic
1252 cigarette, the alternative nicotine product, the nontherapeutic nicotine device substance, or the
1253 prefilled nontherapeutic nicotine device was sold and shipped to a regular dealer in those
1254 articles in another state;

1255 (c) furnishes, from the purchaser, a written acknowledgment that the purchaser has
1256 received the electronic cigarette substance, the prefilled electronic cigarette, the alternative
1257 nicotine product, the nontherapeutic nicotine device substance, or the prefilled nontherapeutic
1258 nicotine device; and

1259 (d) reports the name and address of the purchaser.

1260 (2) A wholesaler or distributor in this state that exports an electronic cigarette
1261 substance, a prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic
1262 nicotine device substance, or a prefilled nontherapeutic nicotine device to a regular dealer in
1263 those articles in another state shall be exempt from the payment of any tax under this chapter
1264 upon furnishing proof of the sale and exportation as the commission may require.

1265 Section 28. Section **59-14-807** is enacted to read:

1266 **59-14-807. Electronic Cigarette Substance and Nicotine Product Tax Restricted**
1267 **Account.**

1268 (1) There is created within the General Fund a restricted account known as the
1269 "Electronic Cigarette Substance and Nicotine Product Tax Restricted Account."

1270 (2) The Electronic Cigarette Substance and Nicotine Product Tax Restricted Account

1271 consists of:

1272 (a) for each fiscal year, the first \$3,000,000 collected from the tax imposed by Section
1273 59-14-804; and

1274 (b) amounts appropriated by the Legislature.

1275 (3) (a) For each fiscal year, beginning with fiscal year 2021, and subject to
1276 appropriation by the Legislature, the Division of Finance shall distribute from the Electronic
1277 Cigarette Substance and Nicotine Product Tax Restricted Account:

1278 (i) \$1,000,000 to the Department of Human Services; and

1279 (ii) the balance of the account to the local health departments as directed by the
1280 Department of Health, which shall determine the allocation for each local health department
1281 using the formula created in accordance with Section 26A-1-116.

1282 (b) The Department of Human Services shall use the money received in accordance
1283 with Subsection (3)(a)(i) to provide substance abuse treatment.

1284 (c) The local health departments shall use the money received in accordance with
1285 Subsection (3)(a)(ii) for:

1286 (i) the development and implementation of evidence-based tobacco, electronic
1287 cigarette, and nicotine product cessation programs for individuals under the age of 19;

1288 (ii) enforcing:

1289 (A) the regulation provisions described in Section 26-57-103;

1290 (B) the labeling requirement described in Section 26-57-104; and

1291 (C) the penalty provisions described in Section 26-62-305; and

1292 (iii) developing and providing tobacco, electronic cigarette, and nicotine product use
1293 prevention education to individuals under the age of 19.

1294 Section 29. Section **76-8-311.3** is amended to read:

1295 **76-8-311.3. Items prohibited in correctional and mental health facilities --**
1296 **Penalties.**

1297 (1) As used in this section:

1298 (a) "Contraband" means any item not specifically prohibited for possession by
1299 offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

1300 (b) "Controlled substance" means any substance defined as a controlled substance
1301 under Title 58, Chapter 37, Utah Controlled Substances Act.

1302 (c) "Correctional facility" means:

1303 (i) any facility operated by or contracting with the Department of Corrections to house
1304 offenders in either a secure or nonsecure setting;

1305 (ii) any facility operated by a municipality or a county to house or detain criminal
1306 offenders;

1307 (iii) any juvenile detention facility; and

1308 (iv) any building or grounds appurtenant to the facility or lands granted to the state,
1309 municipality, or county for use as a correctional facility.

1310 (d) "Electronic cigarette" [~~is as~~] means an electronic cigarette product as that term is
1311 defined in Section 76-10-101.

1312 (e) "Medicine" means any prescription drug as defined in Title 58, Chapter 17b,
1313 Pharmacy Practice Act, but does not include any controlled substances as defined in Title 58,
1314 Chapter 37, Utah Controlled Substances Act.

1315 (f) "Mental health facility" [~~is as~~] means the same as that term is defined in Section
1316 62A-15-602.

1317 (g) "Offender" means a person in custody at a correctional facility.

1318 (h) "Secure area" [~~is as~~] means the same as that term is defined in Section 76-8-311.1.

1319 (2) Notwithstanding Section 76-10-500, a correctional or mental health facility may
1320 provide by rule that no firearm, ammunition, dangerous weapon, implement of escape,
1321 explosive, controlled substance, spirituous or fermented liquor, medicine, or poison in any
1322 quantity may be:

1323 (a) transported to or upon a correctional or mental health facility;

1324 (b) sold or given away at any correctional or mental health facility;

1325 (c) given to or used by any offender at a correctional or mental health facility; or

1326 (d) knowingly or intentionally possessed at a correctional or mental health facility.

1327 (3) It is a defense to any prosecution under this section if the accused in committing the
1328 act made criminal by this section with respect to:

1329 (a) a correctional facility operated by the Department of Corrections, acted in
1330 conformity with departmental rule or policy;

1331 (b) a correctional facility operated by a municipality, acted in conformity with the
1332 policy of the municipality;

1333 (c) a correctional facility operated by a county, acted in conformity with the policy of
1334 the county; or

1335 (d) a mental health facility, acted in conformity with the policy of the mental health
1336 facility.

1337 (4) (a) Any [~~person~~] individual who transports to or upon a correctional facility, or into
1338 a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or
1339 implement of escape with intent to provide or sell it to any offender, is guilty of a second
1340 degree felony.

1341 (b) Any [~~person~~] individual who provides or sells to any offender at a correctional
1342 facility, or any detainee at a secure area of a mental health facility, any firearm, ammunition,
1343 dangerous weapon, or implement of escape is guilty of a second degree felony.

1344 (c) Any offender who possesses at a correctional facility, or any detainee who
1345 possesses at a secure area of a mental health facility, any firearm, ammunition, dangerous
1346 weapon, or implement of escape is guilty of a second degree felony.

1347 (d) Any [~~person~~] individual who, without the permission of the authority operating the
1348 correctional facility or the secure area of a mental health facility, knowingly possesses at a
1349 correctional facility or a secure area of a mental health facility any firearm, ammunition,
1350 dangerous weapon, or implement of escape is guilty of a third degree felony.

1351 (e) Any [~~person~~] individual violates Section 76-10-306 who knowingly or intentionally
1352 transports, possesses, distributes, or sells any explosive in a correctional facility or mental
1353 health facility.

1354 (5) (a) [~~A person~~] An individual is guilty of a third degree felony who, without the
1355 permission of the authority operating the correctional facility or secure area of a mental health
1356 facility, knowingly transports to or upon a correctional facility or into a secure area of a mental
1357 health facility any:

1358 (i) spirituous or fermented liquor;

1359 (ii) medicine, whether or not lawfully prescribed for the offender; or

1360 (iii) poison in any quantity.

1361 (b) [~~A person~~] An individual is guilty of a third degree felony who knowingly violates
1362 correctional or mental health facility policy or rule by providing or selling to any offender at a
1363 correctional facility or detainee within a secure area of a mental health facility any:

- 1364 (i) spirituous or fermented liquor;
- 1365 (ii) medicine, whether or not lawfully prescribed for the offender; or
- 1366 (iii) poison in any quantity.
- 1367 (c) An inmate is guilty of a third degree felony who, in violation of correctional or
- 1368 mental health facility policy or rule, possesses at a correctional facility or in a secure area of a
- 1369 mental health facility any:
- 1370 (i) spirituous or fermented liquor;
- 1371 (ii) medicine, other than medicine provided by the facility's health care providers in
- 1372 compliance with facility policy; or
- 1373 (iii) poison in any quantity.
- 1374 (d) ~~[A person]~~ An individual is guilty of a class A misdemeanor who, with the intent to
- 1375 directly or indirectly provide or sell any tobacco product or electronic cigarette to an offender,
- 1376 directly or indirectly:
- 1377 (i) transports, delivers, or distributes any tobacco product or electronic cigarette to an
- 1378 offender or on the grounds of any correctional facility;
- 1379 (ii) solicits, requests, commands, coerces, encourages, or intentionally aids another
- 1380 person to transport any tobacco product or electronic cigarette to an offender or on any
- 1381 correctional facility, if the person is acting with the mental state required for the commission of
- 1382 an offense; or
- 1383 (iii) facilitates, arranges, or causes the transport of any tobacco product or electronic
- 1384 cigarette in violation of this section to an offender or on the grounds of any correctional
- 1385 facility.
- 1386 (e) ~~[A person]~~ An individual is guilty of a class A misdemeanor who, without the
- 1387 permission of the authority operating the correctional or mental health facility, fails to declare
- 1388 or knowingly possesses at a correctional facility or in a secure area of a mental health facility
- 1389 any:
- 1390 (i) spirituous or fermented liquor;
- 1391 (ii) medicine; or
- 1392 (iii) poison in any quantity.
- 1393 (f) (i) ~~[A person]~~ Except as provided in Subsection (5)(f)(ii), an individual is guilty of a
- 1394 class B misdemeanor who, without the permission of the authority operating the correctional

1395 facility, knowingly engages in any activity that would facilitate the possession of any
1396 contraband by an offender in a correctional facility.

1397 (ii) The provisions of Subsection (5)(d) regarding any tobacco product or electronic
1398 cigarette take precedence over this Subsection (5)(f).

1399 (g) Exemptions may be granted for worship for Native American inmates pursuant to
1400 Section 64-13-40.

1401 (6) The possession, distribution, or use of a controlled substance at a correctional
1402 facility or in a secure area of a mental health facility shall be prosecuted in accordance with
1403 Title 58, Chapter 37, Utah Controlled Substances Act.

1404 (7) The department shall make rules under Title 63G, Chapter 3, Utah Administrative
1405 Rulemaking Act, to establish guidelines for providing written notice to visitors that providing
1406 any tobacco product or electronic cigarette to offenders is a class A misdemeanor.

1407 Section 30. Section **76-10-101** is amended to read:

1408 **76-10-101. Definitions.**

1409 As used in this part:

1410 (1) "Cigar" means a product that contains nicotine, is intended to be burned under
1411 ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in
1412 any substance containing tobacco, other than any roll of tobacco that is a cigarette as described
1413 in Subsection (2).

1414 (2) "Cigarette" means a product that contains nicotine, is intended to be burned under
1415 ordinary conditions of use, and consists of:

1416 (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

1417 (b) any roll of tobacco wrapped in any substance containing tobacco which, because of
1418 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to
1419 be offered to, or purchased by, consumers as a cigarette described in Subsection (2)(a).

1420 [~~(3) "Electronic cigarette" means an electronic cigarette product, as defined in Section~~
1421 ~~59-14-802.]~~

1422 (3) (a) "Electronic cigarette" means:

1423 (i) an electronic device used to deliver or capable of delivering vapor containing
1424 nicotine to an individual's respiratory system;

1425 (ii) a component of the device described in Subsection (3)(a)(i); or

- 1426 (iii) an accessory sold in the same package as the device described in Subsection
1427 (3)(a)(i).
- 1428 (b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section
1429 26-38-2.
- 1430 (4) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette
1431 substance, or a prefilled electronic cigarette.
- 1432 (5) "Electronic cigarette substance" means any substance, including liquid containing
1433 nicotine, used or intended for use in an electronic cigarette.
- 1434 (6) "Nicotine product" means the same as that term is defined in Section 59-14-102.
- 1435 (7) (a) "Nontherapeutic nicotine device" means a device that:
- 1436 (i) has a pressurized canister that is used to administer nicotine to the user through
1437 inhalation or intranasally;
- 1438 (ii) is not purchased with a prescription from a licensed physician; and
- 1439 (iii) is not approved by the United States Food and Drug Administration as nicotine
1440 replacement therapy.
- 1441 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or a
1442 nontherapeutic nicotine nasal spray.
- 1443 (8) "Nontherapeutic nicotine device substance" means a substance that:
- 1444 (a) contains nicotine;
- 1445 (b) is sold in a cartridge for use in a nontherapeutic nicotine device;
- 1446 (c) is not purchased with a prescription from a licensed physician; and
- 1447 (d) is not approved by the United States Food and Drug Administration as nicotine
1448 replacement therapy.
- 1449 ~~(4)~~ (9) "Place of business" includes:
- 1450 (a) a shop;
- 1451 (b) a store;
- 1452 (c) a factory;
- 1453 (d) a public garage;
- 1454 (e) an office;
- 1455 (f) a theater;
- 1456 (g) a recreation hall;

- 1457 (h) a dance hall;
 1458 (i) a poolroom;
 1459 (j) a café;
 1460 (k) a cafeteria;
 1461 (l) a cabaret;
 1462 (m) a restaurant;
 1463 (n) a hotel;
 1464 (o) a lodging house;
 1465 (p) a streetcar;
 1466 (q) a bus;
 1467 (r) an interurban or railway passenger coach;
 1468 (s) a waiting room; and
 1469 (t) any other place of business.

1470 (10) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled
 1471 with an electronic cigarette substance.

1472 ~~[(5)]~~ (11) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other
 1473 lighted smoking equipment.

1474 Section 31. Section **76-10-104 (Effective 07/01/20)** is amended to read:

1475 **76-10-104 (Effective 07/01/20). Providing a cigar, a cigarette, an electronic**
 1476 **cigarette product, a nicotine product, or tobacco to a minor -- Penalties.**

1477 (1) ~~[A person violates this section who]~~ An individual is guilty of a class C
 1478 misdemeanor on the first offense, a class B misdemeanor on the second offense, and a class A
 1479 misdemeanor on subsequent offenses if the individual knowingly, intentionally, recklessly, or
 1480 with criminal negligence provides a cigar, a cigarette, an electronic cigarette product, a nicotine
 1481 product, or tobacco in any form[;] to an individual under the following ages[; is guilty of a class
 1482 ~~C misdemeanor on the first offense, a class B misdemeanor on the second offense, and a class~~
 1483 ~~A misdemeanor on subsequent offenses];~~

1484 (a) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and

1485 (b) beginning July 1, 2021, 21 years old.

1486 (2) As used in this section "provides":

1487 (a) includes selling, giving, furnishing, sending, or causing to be sent; and

1488 (b) does not include the acts of the United States Postal Service or other common
1489 carrier when engaged in the business of transporting and delivering packages for others or the
1490 acts of a person, whether compensated or not, who transports or delivers a package for another
1491 person without any reason to know of the package's content.

1492 Section 32. Section **76-10-104.1 (Effective 07/01/20)** is amended to read:

1493 **76-10-104.1 (Effective 07/01/20). Providing tobacco paraphernalia to a minor --**
1494 **Penalties.**

1495 (1) For purposes of this section:

1496 (a) "Provides":

1497 (i) includes selling, giving, furnishing, sending, or causing to be sent; and

1498 (ii) does not include the acts of the United States Postal Service or other common
1499 carrier when engaged in the business of transporting and delivering packages for others or the
1500 acts of a person, whether compensated or not, who transports or delivers a package for another
1501 person without any reason to know of the package's content.

1502 (b) (i) "Tobacco paraphernalia"~~[-(i)]~~ means equipment, product, or material of any
1503 kind that is used, intended for use, or designed for use to package, repackage, store, contain,
1504 conceal, ingest, inhale, or otherwise introduce a cigar, a cigarette, an electronic cigarette
1505 substance, a nontherapeutic nicotine device substance, or tobacco in any form into the human
1506 body~~[-including:]~~.

1507 (ii) "Tobacco paraphernalia" includes:

1508 (A) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
1509 screens, permanent screens, hashish heads, or punctured metal bowls;

1510 (B) water pipes;

1511 (C) carburetion tubes and devices;

1512 (D) smoking and carburetion masks;

1513 (E) roach clips, meaning objects used to hold burning material, such as a cigarette, that
1514 has become too small or too short to be held in the hand;

1515 (F) chamber pipes;

1516 (G) carburetor pipes;

1517 (H) electric pipes;

1518 (I) air-driven pipes;

- 1519 (J) chillums;
- 1520 (K) bongs; and
- 1521 (L) ice pipes or chillers~~;~~ and].
- 1522 ~~[(ii)] (iii) "Tobacco paraphernalia" does not include matches or lighters.~~
- 1523 (2) (a) It is unlawful for ~~[a person]~~ an individual to knowingly, intentionally,
- 1524 recklessly, or with criminal negligence provide tobacco paraphernalia to an individual under:
- 1525 (i) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and
- 1526 (ii) beginning July 1, 2021, 21 years old.
- 1527 (b) ~~[A person]~~ An individual who violates this section is guilty of a class C
- 1528 misdemeanor on the first offense and a class B misdemeanor on subsequent offenses.
- 1529 Section 33. Section **76-10-105 (Effective 07/01/20)** is amended to read:
- 1530 **76-10-105 (Effective 07/01/20). Buying or possessing a cigar, a cigarette, an**
- 1531 **electronic cigarette product, a nicotine product, or tobacco by a minor -- Penalty --**
- 1532 **Compliance officer authority -- Juvenile court jurisdiction.**
- 1533 (1) (a) An individual who is 18 years or older, but younger than the age specified in
- 1534 Subsection (1)(b), and buys or attempts to buy, accepts, or has in the individual's possession
- 1535 any cigar, cigarette, electronic cigarette product, nicotine product, or tobacco in any form is
- 1536 guilty of an infraction and subject to:
- 1537 (i) a minimum fine or penalty of \$60; and
- 1538 (ii) participation in a court-approved tobacco education or cessation program, which
- 1539 may include a participation fee.
- 1540 (b) For purposes of Subsection (1)(a), the individual is younger than:
- 1541 (i) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and
- 1542 (ii) beginning July 1, 2021, 21 years old.
- 1543 (2) (a) An individual under the age of 18 who buys or attempts to buy, accepts, or has
- 1544 in the individual's possession any cigar, cigarette, electronic cigarette product, nicotine product,
- 1545 or tobacco in any form is subject to the jurisdiction of the juvenile court and subject to Section
- 1546 78A-6-602, unless the violation is committed on school property.
- 1547 (b) If a violation under this section is adjudicated under Section 78A-6-117, the minor
- 1548 may be subject to the following:
- 1549 ~~[(a)]~~ (i) a fine or penalty, in accordance with Section 78A-6-117; and

1550 ~~(b)~~ (ii) participation in a court-approved tobacco education program, which may
1551 include a participation fee.

1552 (3) (a) A compliance officer appointed by a board of education under Section
1553 53G-4-402 may not issue a citation for a violation of this section committed on school
1554 property.

1555 (b) A cited violation committed on school property shall be addressed in accordance
1556 with Section 53G-8-211.

1557 (4) (a) This section does not apply to the purchase or possession of a cigar, cigarette,
1558 electronic cigarette, tobacco, or tobacco paraphernalia by an individual who is 18 years or older
1559 and is:

1560 (i) on active duty in the United States Armed Forces; or

1561 (ii) a spouse or dependent of an individual who is on active duty in the United States
1562 Armed Forces.

1563 (b) A valid, government-issued military identification card is required to verify proof
1564 of age under Subsection (4)(a).

1565 Section 34. Section **76-10-105.1 (Effective 07/01/20)** is amended to read:

1566 **76-10-105.1 (Effective 07/01/20). Requirement of direct, face-to-face sale of a**
1567 **cigarette, tobacco, an electronic cigarette product, or a nicotine product -- Minors not**
1568 **allowed in tobacco specialty shop -- Penalties.**

1569 (1) As used in this section:

1570 (a) "Cigarette" means the same as that term is defined in Section 59-14-102.

1571 (b) (i) "Face-to-face exchange" means a transaction made in person between an
1572 individual and a retailer or retailer's employee.

1573 (ii) "Face-to-face exchange" does not include a sale through a:

1574 (A) vending machine; or

1575 (B) self-service display.

1576 (c) "Retailer" means a person who:

1577 (i) sells a cigarette, tobacco, ~~or~~ an electronic cigarette product, or a nicotine product
1578 to an individual for personal consumption; or

1579 (ii) operates a facility with a vending machine that sells a cigarette, tobacco, ~~or~~ an
1580 electronic cigarette product, or a nicotine product.

1581 (d) "Self-service display" means a display of a cigarette, tobacco, [or] an electronic
1582 cigarette product, or a nicotine product to which the public has access without the intervention
1583 of a retailer or retailer's employee.

1584 (e) "Tobacco" means any product, except a cigarette, made of or containing tobacco.

1585 (f) "Tobacco specialty shop" means a "retail tobacco specialty business" as that term is
1586 defined:

1587 (i) as it relates to a municipality, in Section 10-8-41.6; and

1588 (ii) as it relates to a county, in Section 17-50-333.

1589 (2) Except as provided in Subsection (3), a retailer may sell a cigarette, tobacco, [or] an
1590 electronic cigarette product, or a nicotine product only in a face-to-face exchange.

1591 (3) The face-to-face sale requirement in Subsection (2) does not apply to:

1592 (a) a mail-order, telephone, or Internet sale made in compliance with Section
1593 59-14-509;

1594 (b) a sale from a vending machine or self-service display that is located in an area of a
1595 retailer's facility:

1596 (i) that is distinct and separate from the rest of the facility; and

1597 (ii) where the retailer only allows an individual who complies with Subsection (4) to be
1598 present; or

1599 (c) a sale at a tobacco specialty shop.

1600 (4) (a) An individual who is less than the age specified in Subsection (4)(b) may not
1601 enter or be present at a tobacco specialty shop unless the individual is:

1602 (i) accompanied by a parent or legal guardian;

1603 (ii) present at the tobacco shop for a bona fide commercial purpose other than to
1604 purchase a cigarette, tobacco, [or] an electronic cigarette product, or a nicotine product; or

1605 (iii) 18 years old or older and an active duty member of the United States Armed
1606 Forces, as demonstrated by a valid, government-issued military identification card.

1607 (b) For purposes of Subsection (4)(a), the individual is younger than:

1608 (i) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and

1609 (ii) beginning July 1, 2021, 21 years old.

1610 (5) A parent or legal guardian who accompanies, under Subsection (4)(a)(i), an
1611 individual into an area described in Subsection (3)(b), or into a tobacco specialty shop, may not

1612 allow the individual to purchase a cigarette, tobacco, [or] an electronic cigarette product, or a
 1613 nicotine product.

1614 (6) A violation of Subsection (2) or (4) is a:

1615 (a) class C misdemeanor on the first offense;

1616 (b) class B misdemeanor on the second offense; and

1617 (c) class A misdemeanor on the third and all subsequent offenses.

1618 (7) An individual who violates Subsection (5) is guilty of providing tobacco to a minor
 1619 under Section 76-10-104.

1620 (8) (a) An ordinance, regulation, or rule adopted by the governing body of a political
 1621 subdivision of the state or by a state agency that affects the sale, minimum age of sale,
 1622 placement, or display of [~~cigarettes~~] a cigarette, tobacco, [or] an electronic [~~cigarettes~~
 1623 cigarette product, or a nicotine product that is not essentially identical to this section and
 1624 Section 76-10-102 is superseded.

1625 (b) Subsection (8)(a) does not apply to the adoption or enforcement of a land use
 1626 ordinance by a municipal or county government.

1627 Section 35. Section **76-10-111** is amended to read:

1628 **76-10-111. Restrictions on sale of smokeless tobacco or electronic cigarette**
 1629 **products -- Exceptions.**

1630 (1) The Legislature finds that:

1631 (a) smokeless tobacco, or chewing tobacco, is harmful to the health of individuals who
 1632 use those products because research indicates that they may cause mouth or oral cancers;

1633 (b) the use of smokeless tobacco among juveniles in this state is increasing rapidly;

1634 (c) the use of electronic [~~cigarettes~~] cigarette products may lead to unhealthy behavior
 1635 such as the use of tobacco products; and

1636 (d) it is necessary to restrict the gift of the products described in this Subsection (1) in
 1637 the interest of the health of the citizens of this state.

1638 (2) (a) Except as provided in Subsection (3), it is unlawful for a manufacturer,
 1639 wholesaler, and retailer to:

1640 (i) give or distribute without charge any smokeless tobacco, chewing tobacco, or
 1641 electronic cigarette product in this state[-];

1642 (ii) sell, offer for sale, or furnish any electronic cigarette product at less than 90% of

1643 the cost of the product to the manufacturer, wholesaler, or retailer; or
 1644 (iii) give, distribute, sell, offer for sale, or furnish any electronic cigarette product for
 1645 free or at a lower price because the recipient of the electronic cigarette product makes another
 1646 purchase.

1647 (b) The price that a manufacturer, wholesaler, or retailer may charge under Subsection
 1648 (2)(a)(ii) does not include a discount for:

1649 (i) a physical manufacturer coupon:

1650 (A) that is surrendered to the wholesaler or retailer at the time of sale; and

1651 (B) for which the manufacturer will reimburse the wholesaler or the retailer for the full
 1652 amount of the discount described in the manufacturer coupon and provided to the purchaser;

1653 (ii) a rebate that will be paid to the manufacturer, the wholesaler, or the retailer for the
 1654 full amount of the rebate provided to the purchaser; or

1655 (iii) a promotional fund that will be paid to the manufacturer, the wholesaler, or the
 1656 retailer for the full amount of the promotional fund provided to the purchaser.

1657 (c) Any [person] individual who violates this section is guilty of:

1658 (i) a class C misdemeanor for the first offense[~~, and is guilty of~~]; or

1659 (ii) a class B misdemeanor for any subsequent offense.

1660 (3) [~~(a)~~] Smokeless tobacco, chewing tobacco, or an electronic cigarette product may
 1661 be distributed to adults without charge at professional conventions where the general public is
 1662 excluded.

1663 ~~[(b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who gives~~
 1664 ~~smokeless tobacco, chewing tobacco, or an electronic cigarette to a person of legal age upon~~
 1665 ~~the person's purchase of another tobacco product or electronic cigarette.]~~

1666 Section 36. Section **77-39-101 (Effective 07/01/20)** is amended to read:

1667 **77-39-101 (Effective 07/01/20). Investigation of sales of alcohol, tobacco, and**
 1668 **electronic cigarette products to underage individuals.**

1669 (1) As used in this section, "electronic cigarette" [~~is as~~] means an electronic cigarette
 1670 product as that term is defined in Section 76-10-101.

1671 (2) (a) A peace officer, as defined by Title 53, Chapter 13, Peace Officer
 1672 Classifications, may investigate the possible violation of:

1673 (i) Section 32B-4-403 by requesting an individual under 21 years old to enter into and

- 1674 attempt to purchase or make a purchase of alcohol from a retail establishment; or
1675 (ii) Section 76-10-104 by requesting an individual under the age specified in
1676 Subsection (2)(e) to enter into and attempt to purchase or make a purchase from a retail
1677 establishment of:
- 1678 (A) a cigar;
 - 1679 (B) a cigarette;
 - 1680 (C) tobacco in any form; or
 - 1681 (D) an electronic cigarette.
- 1682 (b) A peace officer who is present at the site of a proposed purchase shall direct,
1683 supervise, and monitor the individual requested to make the purchase.
- 1684 (c) Immediately following a purchase or attempted purchase or as soon as practical the
1685 supervising peace officer shall inform the cashier and the proprietor or manager of the retail
1686 establishment that the attempted purchaser was under the legal age to purchase:
- 1687 (i) alcohol; or
 - 1688 (ii) (A) a cigar;
 - 1689 (B) a cigarette;
 - 1690 (C) tobacco in any form; or
 - 1691 (D) an electronic cigarette.
- 1692 (d) If a citation or information is issued, it shall be issued within seven days of the
1693 purchase.
- 1694 (e) For purposes of Subsection (2)(a)(ii), the individual is younger than:
- 1695 (i) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and
 - 1696 (ii) beginning July 1, 2021, 21 years old.
- 1697 (3) (a) If an individual under the age of 18 years old is requested to attempt a purchase,
1698 a written consent of that individual's parent or guardian shall be obtained prior to that
1699 individual participating in any attempted purchase.
- 1700 (b) An individual requested by the peace officer to attempt a purchase may:
- 1701 (i) be a trained volunteer; or
 - 1702 (ii) receive payment, but may not be paid based on the number of successful purchases
1703 of alcohol, tobacco, or an electronic cigarette.
- 1704 (4) The individual requested by the peace officer to attempt a purchase and anyone

1705 accompanying the individual attempting a purchase may not during the attempted purchase
1706 misrepresent the age of the individual by false or misleading identification documentation in
1707 attempting the purchase.

1708 (5) An individual requested to attempt to purchase or make a purchase pursuant to this
1709 section is immune from prosecution, suit, or civil liability for the purchase of, attempted
1710 purchase of, or possession of alcohol, a cigar, a cigarette, tobacco in any form, or an electronic
1711 cigarette if a peace officer directs, supervises, and monitors the individual.

1712 (6) (a) Except as provided in Subsection (6)(b), a purchase attempted under this section
1713 shall be conducted:

1714 (i) on a random basis; and

1715 (ii) within a 12-month period at any one retail establishment location not more often
1716 than:

1717 (A) two times for the attempted purchase of:

1718 (I) a cigar;

1719 (II) a cigarette;

1720 (III) tobacco in any form; or

1721 (IV) an electronic cigarette; and

1722 (B) four times for the attempted purchase of alcohol.

1723 (b) This section does not prohibit an investigation or an attempt to purchase tobacco
1724 under this section if:

1725 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a
1726 cigar, a cigarette, tobacco in any form, or an electronic cigarette to an individual under the age
1727 established by Section 32B-4-403 or 76-10-104; and

1728 (ii) the supervising peace officer makes a written record of the grounds for the
1729 reasonable suspicion.

1730 (7) (a) The peace officer exercising direction, supervision, and monitoring of the
1731 attempted purchase shall make a report of the attempted purchase, whether or not a purchase
1732 was made.

1733 (b) The report required by this Subsection (7) shall include:

1734 (i) the name of the supervising peace officer;

1735 (ii) the name of the individual attempting the purchase;

- 1736 (iii) a photograph of the individual attempting the purchase showing how that
- 1737 individual appeared at the time of the attempted purchase;
- 1738 (iv) the name and description of the cashier or proprietor from whom the individual
- 1739 attempted the purchase;
- 1740 (v) the name and address of the retail establishment; and
- 1741 (vi) the date and time of the attempted purchase.

1742 **Section 37. Effective date.**

1743 This bill takes effect on July 1, 2020.