

HB0274S03 compared with HB0274S02

~~text~~ shows text that was in HB0274S02 but was deleted in HB0274S03.

Inserted text shows text that was not in HB0274S02 but was inserted into HB0274S03.

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Representative Jennifer ~~{Dailey-Provost}~~Dailey-Provost proposes the following substitute bill:

RETAIL TOBACCO BUSINESS AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer ~~{Dailey-Provost}~~Dailey-Provost

Senate Sponsor: Evan J. Vickers

Cosponsors:	Karen Kwan	Paul Ray
Melissa G. Ballard	Derrin R. Owens	Andrew Stoddard
Suzanne Harrison	Lee B. Perry	Norman K. Thurston
Sandra Hollins	Stephanie Pitcher	Raymond P. Ward
Eric K. Hutchings	Val K. Potter	Mark A. Wheatley
Marsha Judkins	Marie H. Poulson	

LONG TITLE

General Description:

This bill amends provisions relating to the sale of certain tobacco products.

Highlighted Provisions:

This bill:

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- ▶ defines terms;
- ▶ creates requirements regarding the verification of age when selling an electronic cigarette product or seeking entry into certain restricted areas;
- ▶ prohibits an individual from using proof of age fraudulently or permitting the individual's proof of age to be used by another individual fraudulently to obtain an electronic cigarette product or gain entry into certain restricted areas;
- ▶ prohibits a manufacturer, wholesaler, or retailer from providing certain discounts or giveaways for ~~tobacco~~electronic cigarette products; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

26-62-102, as renumbered and amended by Laws of Utah 2018, Chapter 231

76-10-111, as last amended by Laws of Utah 2010, Chapter 114

~~{~~ ~~76-10-112~~, as enacted by Laws of Utah 1989, Chapter 193

~~77-39-101~~, as last amended by Laws of Utah 2018, Chapter 231

ENACTS:

26-62-206, Utah Code Annotated 1953

26-62-401, Utah Code Annotated 1953

26-62-402, Utah Code Annotated 1953

26-62-403, Utah Code Annotated 1953

26-62-404, Utah Code Annotated 1953

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

Section 1. Section **26-62-102** is amended to read:

26-62-102. Definitions.

As used in this chapter:

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

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- (a) as it relates to a municipality, in Section 10-8-41.6; and
- (b) as it relates to a county, in Section 17-50-333.

(2) "Electronic cigarette product" means the same as that term is defined in Section 59-14-802.

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

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

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

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

~~[(6)]~~ (7) "Permit" means a tobacco retail permit issued under this chapter.

~~[(7);8)~~ (a) "Proof of age" means:

(i) an identification card issued under Title 53, Chapter 3, Part 8, Identification Card Act;

(ii) an identification that:

(A) is substantially similar to an identification card issued under Title 53, Chapter 3, Part 8, Identification Card Act;

(B) is issued in accordance with the laws of a state other than Utah in which the identification is issued;

(C) includes date of birth; and

(D) has a picture affixed;

(iii) a valid driver license certificate that:

(A) includes date of birth;

(B) has a picture affixed; and

(C) is issued under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of the state in which it is issued;

(iv) a military identification card that:

(A) includes date of birth; and

(B) has a picture affixed; or

(v) a valid passport.

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(b) "Proof of age" does not include a driving privilege card issued in accordance with Section 53-3-207.

(9) "Qualified individual" means an individual who:

(a) for entry into a restricted area, is permitted to enter or be present at a retail tobacco specialty business under Subsection 76-10-105.1(4); or

(b) for obtaining an electronic cigarette product, may be provided an electronic cigarette product under Section 76-10-104.

~~(8)~~ (10) "Restricted area" means:

(a) any part of the premises of a retail tobacco specialty business; or

(b) any part of the floor space of a general tobacco retailer that is:

(i) physically separated from unrestricted parts of the general tobacco retailer; and

(ii) restricted to an individual who provides proof of age before entering.

~~(7)~~ ~~(9)~~ (11) "Retail tobacco specialty business" means the same as that term is defined:

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

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

~~(8)~~ ~~(10)~~ (12) "Tax commission license" means a license issued by the State Tax Commission under:

(a) Section 59-14-201 to sell cigarettes at retail;

(b) Section 59-14-301 to sell tobacco products at retail; or

(c) Section 59-14-803 to sell an electronic cigarette product.

~~(9)~~ ~~(11)~~ (13) "Tobacco product" means:

(a) a cigar~~;~~ or cigarette~~;~~ ~~or electronic cigarette~~ as those terms are defined in Section 76-10-101;

(b) an electronic cigarette product;

~~(b)~~ (c) a tobacco product as that term is defined in Section 59-14-102, including:

(i) chewing tobacco; or

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

~~(c)~~ (d) tobacco paraphernalia as that term is defined in Section 76-10-104.1.

~~(10)~~ ~~(12)~~ (14) "Tobacco retailer" means a person that is required to obtain a tax commission license.

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Section 2. Section **26-62-206** is enacted to read:

26-62-206. Permit requirements for the sale of an electronic cigarette product.

(1) If a tobacco retailer sells an electronic cigarette product, the tobacco retailer shall maintain a video recording system that:

(a) tracks the inventory and sale of any electronic cigarette product offered for sale by the tobacco retailer;

(b) stores a video record for at least 30 days; and

(c) is made available to an enforcing agency or peace officer at the request of the enforcing agency or peace officer.

(2) A general tobacco retailer that sells an electronic cigarette product shall display and store ~~an~~the electronic cigarette product in a manner that is not accessible to an individual ~~described in Subsection 26-62-401(2)(b)~~ who is not a qualified individual, including:

(a) behind a retail counter that is not accessible to customers of the general tobacco retailer;

(b) in a locked case that cannot be accessed without assistance from an employee; or

(c) in a part of the store that:

(i) is physically separated from unrestricted parts of the general tobacco retailer; and

(ii) is only made accessible to an individual who provides proof of age prior to entering.

Section 3. Section **26-62-401** is enacted to read:

Part 4. Proof of ~~age requirements~~Age Requirements

26-62-401. Verification of proof of age.

(1) A tobacco retailer shall require that an employee verify proof of age as provided in this section.

(2) (a) If an employee does not verify proof of age under this section, the employee may not permit an individual to:

(i) except as provided in Subsection (2)(b), enter a restricted area; or

(ii) obtain an electronic cigarette product.

(b) In accordance with Subsection 76-10-105.1(4), an individual who is ~~younger than 19 years of age~~not a qualified individual may be permitted to enter a restricted area if the individual is:

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- (i) accompanied by a parent or legal guardian who provides proof of age;
 - (ii) present at the tobacco ~~{shop}~~retailer for a bona fide commercial purpose other than to purchase a cigarette, tobacco, or an electronic cigarette; or
 - (iii) 18 years of age or older and an active duty member of the United States Armed Forces, as demonstrated by a valid, government-issued military identification card.
- (3) To comply with Subsections (1) and (2), an employee shall:
- (a) request the individual present proof of age; and
 - (b) (i) verify the validity of the proof of age electronically under the verification program created in Subsection (~~{4}~~);
- ~~(4)}6); or~~
- (ii) if the employee attempts to verify the validity of the proof of age under Subsection (3)(b)(i) and the proof of age cannot be verified electronically, document the individual's proof of age in accordance with Subsection (4)(b).
- (4) If, after an employee attempts to verify an individual's proof of age under Subsection (6), the employee cannot electronically verify the individual's proof of age, an employee complies with Subsections (1) and (2) if:
- (a) for a tobacco retailer that maintains a video recording system described in Subsection (5), the employee manually inputs the individual's date of birth; or
 - (b) for a tobacco retailer that does not maintain a video recording system described in Subsection (5), the employee obtains a statement of age from the individual that includes:
 - (i) the individual's name
 - (ii) the individual's date of birth;
 - (iii) a description of the type of document presented to the employee as proof of age;
 - (iv) the date that the statement of age is signed;
 - (v) the signature of the employee; and
 - (vi) the signature of the individual.
- (5) A video recording system described in Subsection (4) shall:
- (a) record a clear video of the inventory of any electronic cigarette product offered for sale by the tobacco retailer;
 - (b) record a clear video of the sale of any electronic cigarette product where the employee and the customer are clearly visible;

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(c) store a video record for at least 20 days; and

(d) be made available to an enforcing agency or peace officer at the request of the enforcing agency or peace officer.

(6) The department shall implement an electronic verification program that adopts the specifications and security measures established under Subsection 32B-1-407(5) by the Alcoholic Beverage Control Commission created in Section 32B-2-201.

(7) At the request of a tobacco retailer, the department shall provide to the tobacco retailer a form for a statement of age described in Subsection (4)(b).

(~~5~~8) (a) A tobacco retailer may not disclose information obtained under this section except as provided under this chapter.

(b) Information obtained under this section shall be:

(i) kept for at least ~~30 days~~ one year; and

(ii) is subject to inspection upon request by a peace officer or the representative of an enforcement agency.

Section 4. Section **26-62-402** is enacted to read:

26-62-402. Presentation of proof of age upon request.

(1) If an individual does not present proof of age at the request of ~~a person~~ an individual listed in Subsection (3), a tobacco retailer may not permit the individual to:

(a) obtain an electronic cigarette product; or

(b) except as provided in Subsection (2), enter a restricted area.

(2) An individual may enter a restricted area without presenting proof of age if the individual is:

(a) accompanied by a parent or legal guardian who presents proof of age or a statement of age; or

(b) present at the tobacco ~~shop~~ retailer for a bona fide commercial purpose other than to purchase a cigarette, tobacco, or an electronic cigarette.

(3) To determine whether ~~the~~ an individual ~~described in Subsection (1) is 19 years of age~~ is a qualified individual, the following may request ~~an~~ the individual ~~described in Subsection (1)~~ to present proof of age:

(a) an employee;

(b) a peace officer; or

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(c) the representative of an enforcement agency.

Section 5. Section **26-62-403** is enacted to read:

26-62-403. Unlawful transfer or use of proof of age -- False information.

(1) (a) It is unlawful for an individual to transfer that individual's proof of age to another individual to aid that individual:

(i) in procuring a tobacco product; or

(ii) in gaining admittance to a restricted area.

(b) An individual who violates Subsection (1)(a) is guilty of a class B misdemeanor.

(2) (a) It is unlawful for an individual to use a proof of age containing false information with the intent to:

(i) procure a tobacco product; or

(ii) gain admittance to a restricted area.

(b) An individual who violates this Subsection (2) is guilty of a class A misdemeanor.

Section 6. Section **26-62-404** is enacted to read:

26-62-404. Penalty.

(1) Unless otherwise provided in this chapter, a person who violates this part is guilty of:

(a) for the first offense within a one-year period, an infraction punishable by a fine of \$100;

(b) for the second offense that occurs within one year of a previous violation, an infraction punishable by a fine of \$200;

(c) for the third offense that occurs within one year after two or more previous violations, an infraction punishable by a fine of \$300; and

(d) for the fourth or subsequent offense that occurs within one year after three or more previous offenses, a class B misdemeanor.

(2) A person is not subject to a penalty for a violation of this part if it is proved to the enforcing agency or the court hearing the matter that the person charged with the violation acted in good faith.

Section 7. Section **76-10-111** is amended to read:

76-10-111. Restrictions on sale of smokeless tobacco or electronic cigarettes -- Exceptions.

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(1) The Legislature finds that:

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

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

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

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

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

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

(ii) ~~except as provided in Subsection (2)(b), sell, offer for sale, or furnish any~~
~~smokeless tobacco, chewing tobacco, or~~ electronic cigarette at less than 90% of the cost of the product to the manufacturer, wholesaler, or retailer; or

(iii) give, distribute, sell, offer for sale, or furnish any ~~smokeless tobacco, chewing tobacco, or~~ electronic cigarette for free or at a lower price because the purchaser makes another purchase.

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

(i) a manufacturer coupon:

(A) that is surrendered to the tobacco retailer at the time of sale; and

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

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

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

(c) Any person who violates this section is guilty of a class C misdemeanor for the first offense, and is guilty of a class B misdemeanor for any subsequent offense.

(3) ~~[(a)]~~ Smokeless tobacco, chewing tobacco, or an electronic cigarette may be

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distributed to adults without charge at professional conventions where the general public is excluded.

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

~~{ Section 8. Section 76-10-112 is amended to read:~~

~~76-10-112. Prohibition of distribution of cigarettes or other tobacco products--~~

~~Exceptions:~~

~~(1) As used in this section, "tobacco product" means the same as that term is defined in Section 26-62-102.~~

~~[(1)] (2) (a) Except as provided in Subsection (2), it is unlawful for a manufacturer, wholesaler, or retailer to:~~

~~(i) give or distribute cigarettes or other tobacco products in this state without charge[.];~~

~~(ii) sell, offer for sale, or furnish cigarettes or other tobacco products at less than 90% of the cost of the product to the manufacturer, wholesaler, or retailer; or~~

~~(iii) give, distribute, sell, offer for sale, or furnish cigarettes or other tobacco products for free or at a lower price because the purchaser makes another purchase.~~

~~(b) Any person who violates this subsection is guilty of a class C misdemeanor for the first offense and a class B misdemeanor for any subsequent offense.~~

~~[(2)] (3) Cigarettes and other tobacco products may be distributed to adults without charge at professional conventions where the general public is excluded.~~

~~[(3) The prohibition described in Subsection (1) does not apply to retailers, manufacturers, or distributors who give cigarettes or other tobacco products to persons of legal age upon their purchase of cigarettes or other tobacco products.]~~

~~Section 9. Section 77-39-101 is amended to read:~~

~~77-39-101. Investigation of sales of alcohol, tobacco, and electronic cigarettes to underage persons:~~

~~(1) As used in this section, "electronic cigarette" is as defined in Section 76-10-101.~~

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

~~(i) Section 32B-4-403 by requesting an individual under the age of 21 years to enter~~

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~~into and attempt to purchase or make a purchase of alcohol from a retail establishment; or~~

~~—— (ii) Section 76-10-104 by requesting an individual under the age of 19 years to enter into and attempt to purchase or make a purchase from a retail establishment of:~~

~~—— (A) a cigar;~~

~~—— (B) a cigarette;~~

~~—— (C) tobacco in any form; or~~

~~—— (D) an electronic cigarette.~~

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

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

~~—— (i) alcohol; or~~

~~—— (ii) (A) a cigar;~~

~~—— (B) a cigarette;~~

~~—— (C) tobacco in any form; or~~

~~—— (D) an electronic cigarette.~~

~~—— (d) If a citation or information is issued, it shall be issued within seven days of the purchase.~~

~~—— (3) (a) If an individual under the age of 18 years old is requested to attempt a purchase, a written consent of that individual's parent or guardian shall be obtained prior to that individual participating in any attempted purchase.~~

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

~~—— (i) be a trained volunteer; or~~

~~—— (ii) receive payment, but may not be paid based on the number of successful purchases of alcohol, tobacco, or an electronic cigarette.~~

~~—— (4) The individual requested by the peace officer to attempt a purchase and anyone accompanying the individual attempting a purchase may not during the attempted purchase misrepresent the age of the individual by false or misleading identification documentation in attempting the purchase.~~

~~—— (5) An individual requested to attempt to purchase or make a purchase pursuant to this~~

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~~section is immune from prosecution, suit, or civil liability for the purchase of, attempted purchase of, or possession of alcohol, a cigar, a cigarette, tobacco in any form, or an electronic cigarette if a peace officer directs, supervises, and monitors the individual.~~

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

~~—— (i) on a random basis; and~~

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

~~—— (A) [two] ten times for the attempted purchase of:~~

~~—— (I) a cigar;~~

~~—— (II) a cigarette;~~

~~—— (III) tobacco in any form; or~~

~~—— (IV) an electronic cigarette; and~~

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

~~—— (b) Nothing in this section shall prohibit an investigation or an attempt to purchase tobacco under this section if:~~

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

~~—— (ii) the supervising peace officer makes a written record of the grounds for the reasonable suspicion:~~

~~—— (7) (a) The peace officer exercising direction, supervision, and monitoring of the attempted purchase shall make a report of the attempted purchase, whether or not a purchase was made:~~

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

~~—— (i) the name of the supervising peace officer;~~

~~—— (ii) the name of the individual attempting the purchase;~~

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

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

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

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

‡ Section ~~{10}~~8. **Effective date.**

This bill takes effect on ~~{July}~~January 1, 2020.