

HB0324S01 compared with HB0324

~~deleted text~~ shows text that was in HB0324 but was deleted in HB0324S01.

Inserted text shows text that was not in HB0324 but was inserted into HB0324S01.

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Representative Steve Eliason proposes the following substitute bill:

TOBACCO AGE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to an individual's age and tobacco, tobacco paraphernalia, or electronic smoking devices.

Highlighted Provisions:

This bill:

- ▶ tiers the minimum age for obtaining, possessing, using, providing, or furnishing of tobacco products, paraphernalia, and under certain circumstances, electronic smoking devices from 19 to 20 then to 21 years of age;
- ▶ preempts certain local government regulation relating to cigarettes, electronic cigarettes, or tobacco;
- ▶ provides exceptions for military members, their spouses, and dependents;
- ▶ addresses identification documents; and

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- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

- 10-8-47**, as last amended by Laws of Utah 2018, Chapter 189
- 26-62-205**, as enacted by Laws of Utah 2018, Chapter 231
- 26-62-304**, as renumbered and amended by Laws of Utah 2018, Chapter 231
- 26-62-305**, as renumbered and amended by Laws of Utah 2018, Chapter 231
- 51-9-203**, as last amended by Laws of Utah 2012, Chapter 242
- 53-3-207**, as last amended by Laws of Utah 2016, Chapter 350
- 53-3-806**, as last amended by Laws of Utah 2010, Chapter 276
- 59-14-703**, as enacted by Laws of Utah 2013, Chapter 148
- 76-10-103**, as enacted by Laws of Utah 1973, Chapter 196
- 76-10-104**, as last amended by Laws of Utah 2010, Chapter 114
- 76-10-104.1**, as last amended by Laws of Utah 2013, Chapter 278
- 76-10-105**, as last amended by Laws of Utah 2018, Chapter 415
- 76-10-105.1**, as last amended by Laws of Utah 2018, Chapter 231
- 77-39-101**, as last amended by Laws of Utah 2018, Chapter 231

ENACTS:

76-10-105.2, Utah Code Annotated 1953

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

Section 1. Section **10-8-47** is amended to read:

10-8-47. Intoxication -- Fights -- Disorderly conduct -- Assault and battery -- Petit larceny -- Riots and disorderly assemblies -- Firearms and fireworks -- False pretenses and embezzlement -- Sale of liquor, narcotics, or tobacco to minors -- Possession of controlled substances -- Treatment of alcoholics and narcotics or drug addicts.

(1) A municipal legislative body may:

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(a) prevent intoxication, fighting, quarreling, dog fights, cockfights, prize fights, bullfights, and all disorderly conduct and provide against and punish the offenses of assault and battery and petit larceny;

(b) restrain riots, routs, noises, disturbances, or disorderly assemblies in any street, house, or place in the city;

(c) regulate and prevent the discharge of firearms, rockets, powder, fireworks in accordance with Section 53-7-225, or any other dangerous or combustible material;

(d) provide against and prevent the offense of obtaining money or property under false pretenses and the offense of embezzling money or property in ~~[all]~~ the cases ~~[where]~~ when the money or property embezzled or obtained under false pretenses does not exceed in value the sum of \$500; ~~[and]~~

(e) prohibit the sale, giving away, or furnishing of narcotics~~;~~ or alcoholic beverages to ~~[a person]~~ an individual younger than 21 years of age~~;~~ or tobacco to any person younger than 19 years of age; and

(f) prohibit the sale, giving away, or furnishing of tobacco or e-cigarettes to an individual younger than:

(i) beginning July 1, 2020, and ending ~~December 31,~~ June 30, ~~2020,~~ 2021, 20 years of age; and

(ii) beginning ~~January,~~ July 1, ~~2020,~~ 2021, 21 years of age.

(2) A city may:

(a) by ordinance, prohibit the possession of controlled substances as defined in the Utah Controlled Substances Act or any other endangering or impairing substance, provided the conduct is not a class A misdemeanor or felony; and

(b) provide for treatment of alcoholics, narcotic addicts, and other ~~[persons]~~ individuals who are addicted to the use of drugs or intoxicants such that ~~[a person]~~ an individual substantially lacks the capacity to control the ~~[person's]~~ individual's use of the drugs or intoxicants, and judicial supervision may be imposed as a means of effecting ~~[their]~~ the individual's rehabilitation.

Section 2. Section **26-62-205** is amended to read:

26-62-205. Permit requirements for a retail tobacco specialty business.

A retail tobacco specialty business shall:

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(1) except as provided in Subsection 76-10-105.1(4), prohibit any individual [~~under 19 years of age~~] from entering the business if the individual is:

(a) beginning July 1, 2020, and ending ~~December 31~~ June 30, ~~2020~~ 2021, under 20 years of age; and

(b) beginning ~~January~~ July 1, ~~2020~~ 2021, under 21 years of age; and

(2) prominently display at the retail tobacco specialty business a sign on the public entrance of the business that communicates the prohibition in Subsection 76-10-105.1(4).

Section 3. Section **26-62-304** is amended to read:

26-62-304. Hearing -- Evidence of criminal conviction.

(1) At a civil hearing conducted under Section 26-62-302, evidence of the final criminal conviction of a tobacco retailer or employee for violation of Section 76-10-104 at the same location and within the same time period as the location and time period alleged in the civil hearing for violation of this chapter for sale of tobacco products to [~~a person~~] an individual under [~~the age of 19~~] the following ages is prima facie evidence of a violation of this chapter[.]:

(a) beginning July 1, 2020, and ending ~~December 31~~ June 30, ~~2020~~ 2021, under 20 years of age; and

(b) beginning ~~January~~ July 1, ~~2020~~ 2021, under 21 years of age.

(2) If the tobacco retailer is convicted of violating Section 76-10-104, the enforcing agency:

(a) may not assess an additional monetary penalty under this chapter for the same offense for which the conviction was obtained; and

(b) may revoke or suspend a permit in accordance with Section 26-62-305.

Section 4. Section **26-62-305** is amended to read:

26-62-305. Penalties.

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

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

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

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

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

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

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

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

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

(b) in addition to a monetary penalty imposed under Subsection (2), suspend the permit if the violation is due to a sale of tobacco products to ~~[a person]~~ an individual under ~~[19 years of age]~~:

(i) beginning July 1, 2020, and ending ~~December 31, 2020~~ ~~June 30, 2020~~ June 30, 2021, 20 years of age; and

(ii) beginning ~~January 1, 2020~~ July 1, 2021, 21 years of age; and

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

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

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

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

(b) A person whose permit:

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

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

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

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

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

Section 5. Section **51-9-203** is amended to read:

51-9-203. Requirements for tobacco programs.

(1) To be eligible to receive funding under this part for a tobacco prevention, reduction, cessation, or control program, an organization, whether private, governmental, or quasi-governmental, shall:

(a) submit a request to the Department of Health containing the following information:

(i) for media campaigns to prevent or reduce smoking, the request shall demonstrate sound management and periodic evaluation of the campaign's relevance to the intended audience, particularly in campaigns directed toward youth, including audience awareness of the campaign and recollection of the main message;

(ii) for school-based education programs to prevent and reduce youth smoking, the request shall describe how the program will be effective in preventing and reducing youth smoking;

(iii) for community-based programs to prevent and reduce smoking, the request shall demonstrate that the proposed program:

(A) has a comprehensive strategy with a clear mission and goals;

(B) provides for committed, caring, and professional leadership; and

(C) if directed toward youth:

(I) offers youth-centered activities in youth accessible facilities;

(II) is culturally sensitive, inclusive, and diverse;

(III) involves youth in the planning, delivery, and evaluation of services that affect them; and

(IV) offers a positive focus that is inclusive of all youth; and

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(iv) for enforcement, control, and compliance program, the request shall demonstrate that the proposed program can reasonably be expected to reduce the extent to which tobacco products are available to individuals under ~~[the age of 19]~~ the following ages:

(A) beginning July 1, 2020, and ending ~~{December 31}~~ June 30, ~~{2020}~~ 2021, 20 years of age; and

(B) beginning ~~{January}~~ July 1, ~~{2020}~~ 2021, 21 years of age;

(b) agree, by contract, to file an annual written report with the Department of Health~~[-~~
~~The report shall contain]~~ that contains the following:

(i) the amount funded;

(ii) the amount expended;

(iii) a description of the program or campaign and the number of adults and youth who participated;

(iv) specific elements of the program or campaign meeting the applicable criteria set forth in Subsection (1)(a); and

(v) a statement concerning the success and effectiveness of the program or campaign;

(c) agree, by contract, to not use any funds received under this part directly or indirectly, to:

(i) engage in any lobbying or political activity, including the support of, or opposition to, candidates, ballot questions, referenda, or similar activities; or

(ii) engage in litigation with any tobacco manufacturer, retailer, or distributor, except to enforce:

(A) the provisions of the Master Settlement Agreement;

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

(C) Title 26, Chapter ~~[42, Civil Penalties for Tobacco Sales to Underage Persons]~~ 62, ~~{Tobacco Retail Permit}~~ Part 3, Enforcement; and

(D) Title 77, Chapter 39, Sale of Tobacco or Alcohol to Under Age Persons; and

(d) agree, by contract, to repay the funds provided under this part if the organization:

(i) fails to file a timely report as required by Subsection (1)(b); or

(ii) uses any portion of the funds in violation of Subsection (1)(c).

(2) The Department of Health shall review and evaluate the success and effectiveness of any program or campaign that receives funding pursuant to a request submitted under

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Subsection (1). The review and evaluation:

- (a) shall include a comparison of annual smoking trends;
- (b) may be conducted by an independent evaluator; and
- (c) may be paid for by funds appropriated from the account for that purpose.

(3) The Department of Health shall annually report to the Social Services

Appropriations Subcommittee on the reviews conducted pursuant to Subsection (2).

(4) An organization that fails to comply with the contract requirements set forth in

Subsection (1) shall:

- (a) repay the state as provided in Subsection (1)(d); and
- (b) be disqualified from receiving funds under this part in any subsequent fiscal year.
- (5) The attorney general shall be responsible for recovering funds that are required to

be repaid to the state under this section.

(6) Nothing in this section may be construed as applying to funds that are not appropriated under this part.

Section 6. Section **53-3-207** is amended to read:

53-3-207. License certificates or driving privilege cards issued to drivers by class of motor vehicle -- Contents -- Release of anatomical gift information -- Temporary licenses or driving privilege cards -- Minors' licenses, cards, and permits -- Violation.

(1) As used in this section:

(a) "Driving privilege" means the privilege granted under this chapter to drive a motor vehicle.

(b) "Governmental entity" means the state [~~and its political subdivisions as defined in this Subsection (1)~~] or a political subdivision of the state.

(c) "Political subdivision" means any county, city, town, school district, public transit district, community reinvestment agency, special improvement or taxing district, local district, special service district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, or other governmental subdivision or public corporation.

(d) "State" means this state, and includes any office, department, agency, authority, commission, board, institution, hospital, college, university, children's justice center, or other instrumentality of the state.

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(2) (a) The division shall issue to every ~~[person]~~ individual privileged to drive a motor vehicle, a regular license certificate, a limited-term license certificate, or a driving privilege card indicating the type or class of motor vehicle the ~~[person]~~ individual may drive.

(b) ~~A person~~ An individual may not drive a class of motor vehicle unless granted the privilege in that class.

(3) (a) Every regular license certificate, limited-term license certificate, or driving privilege card shall bear:

- (i) the distinguishing number assigned to the ~~[person]~~ individual by the division;
- (ii) the name, birth date, and Utah residence address of the ~~[person]~~ individual;
- (iii) a brief description of the ~~[person]~~ individual for the purpose of identification;
- (iv) any restrictions imposed on the license under Section 53-3-208;
- (v) a photograph of the ~~[person]~~ individual;
- (vi) a photograph or other facsimile of the person's signature;
- (vii) an indication whether the ~~[person]~~ individual intends to make an anatomical gift under Title 26, Chapter 28, Revised Uniform Anatomical Gift Act, unless the driving privilege is extended under Subsection 53-3-214(3); and

(viii) except as provided in Subsection (3)(b), if the ~~[person]~~ individual states that the ~~[person]~~ individual is a veteran of the United States military on the application for a driver license in accordance with Section 53-3-205 and provides verification that the ~~[person]~~ individual was granted an honorable or general discharge from the United States Armed Forces, an indication that the ~~[person]~~ individual is a United States military veteran for a regular license certificate or limited-term license certificate issued on or after July 1, 2011.

(b) A regular license certificate or limited-term license certificate issued to ~~[any person]~~ an individual younger than 21 years on a portrait-style format as required in Subsection (5)(b)(~~†~~) is not required to include an indication that the ~~[person]~~ individual is a United States military veteran under Subsection (3)(a)(viii).

(c) A new license certificate issued by the division may not bear the ~~[person's Social Security]~~ individual's social security number.

(d) (i) The regular license certificate, limited-term license certificate, or driving privilege card shall be of an impervious material, resistant to wear, damage, and alteration.

(ii) Except as provided under Subsection (4)(b), the size, form, and color of the regular

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license certificate, limited-term license certificate, or driving privilege card shall be as prescribed by the commissioner.

(iii) The commissioner may also prescribe the issuance of a special type of limited regular license certificate, limited-term license certificate, or driving privilege card under Subsection 53-3-220(4).

(4) (a) (i) The division, upon determining after an examination that an applicant is mentally and physically qualified to be granted a driving privilege, may issue to an applicant a receipt for the fee if the applicant is eligible for a regular license certificate or limited-term license certificate.

(ii) (A) The division shall issue a temporary regular license certificate or temporary limited-term license certificate allowing the [person] individual to drive a motor vehicle while the division is completing its investigation to determine whether the [person] individual is entitled to be granted a driving privilege.

(B) A temporary regular license certificate or a temporary limited-term license certificate issued under this Subsection (4) shall be recognized and have the same rights and privileges as a regular license certificate or a limited-term license certificate.

(b) The temporary regular license certificate or temporary limited-term license certificate shall be in the [person's] individual's immediate possession while driving a motor vehicle, and it is invalid when the [person's] individual's regular license certificate or limited-term license certificate has been issued or when, for good cause, the privilege has been refused.

(c) The division shall indicate on the temporary regular license certificate or temporary limited-term license certificate a date after which it is not valid as a temporary license.

(d) (i) Except as provided in Subsection (4)(d)(ii), the division may not issue a temporary driving privilege card or other temporary permit to an applicant for a driving privilege card.

(ii) The division may issue a learner permit issued in accordance with Section 53-3-210.5 to an applicant for a driving privilege card.

(5) (a) The division shall distinguish learner permits, temporary permits, regular license certificates, limited-term license certificates, and driving privilege cards issued to any [person] individual younger than 21 years of age by use of plainly printed information or the

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use of a color or other means not used for other regular license certificates, limited-term license certificates, or driving privilege cards.

(b) The division shall distinguish a regular license certificate, limited-term license certificate, or driving privilege card issued to ~~[any person: (i)]~~ an individual younger than 21 years of age by use of a portrait-style format not used for other regular license certificates, limited-term license certificates, or driving privilege cards and by plainly printing the date the regular license certificate, limited-term license certificate, or driving privilege card holder is 21 years of age~~[, which is the legal age for purchasing an alcoholic beverage or alcoholic product under Section 32B-4-403; and]~~

~~[(ii) younger than 19 years of age, by plainly printing the date the regular license certificate, limited-term license certificate, or driving privilege card holder is 19 years of age; which is the legal age for purchasing tobacco products under Section 76-10-104].~~

(6) The division shall distinguish a limited-term license certificate by clearly indicating on the document:

- (a) that it is temporary; and
- (b) its expiration date.

(7) (a) The division shall only issue a driving privilege card to ~~[a person]~~ an individual whose privilege was obtained without providing evidence of lawful presence in the United States as required under Subsection 53-3-205(8).

(b) The division shall distinguish a driving privilege card from a license certificate by:

- (i) use of a format, color, font, or other means; and
- (ii) clearly displaying on the front of the driving privilege card a phrase substantially similar to "FOR DRIVING PRIVILEGES ONLY -- NOT VALID FOR IDENTIFICATION".

(8) The provisions of Subsection (5)(b) do not apply to a learner permit, temporary permit, temporary regular license certificate, temporary limited-term license certificate, or any other temporary permit.

(9) The division shall issue temporary license certificates of the same nature, except as to duration, as the license certificates that they temporarily replace, as are necessary to implement applicable provisions of this section and Section 53-3-223.

(10) (a) A governmental entity may not accept a driving privilege card as proof of personal identification.

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(b) A driving privilege card may not be used as a document providing proof of [a person's] an individual's age for any government required purpose.

(11) A person who violates Subsection (2)(b) is guilty of an infraction.

(12) Unless otherwise provided, the provisions, requirements, classes, endorsements, fees, restrictions, and sanctions under this code apply to a:

(a) driving privilege in the same way as a license or limited-term license issued under this chapter; and

(b) limited-term license certificate or driving privilege card in the same way as a regular license certificate issued under this chapter.

Section 7. Section **53-3-806** is amended to read:

53-3-806. Portrait-style format -- Minor's card distinguishable.

(1) The division shall use a portrait-style format for all identification cards, similar to the format used for license certificates issued to [a person] an individual younger than 21 years of age under Section 53-3-207.

(2) The identification card issued to [a person] an individual younger than 21 years of age shall be distinguished by use of plainly printed information or by the use of a color or other means not used for the identification card issued to [a person] an individual 21 years of age or older.

(3) The division shall distinguish an identification card issued to [~~any person: (a)~~] an individual younger than 21 years of age by plainly printing the date the identification card holder is 21 years of age[, which is the legal age for purchasing an alcoholic beverage or alcoholic product under Section 32B-4-403; and].

~~[(b) younger than 19 years of age by plainly printing the date the identification card holder is 19 years of age, which is the legal age for purchasing tobacco products under Section 76-10-104.]~~

(4) The division shall distinguish a limited-term identification card by clearly indicating on the card:

(a) that it is temporary; and

(b) its expiration date.

Section 8. Section **59-14-703** is amended to read:

59-14-703. Certification of cigarette rolling machine operators -- Renewal of

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certification -- Requirements for certification or renewal of certification -- Denial.

(1) A cigarette rolling machine operator may not perform the following without first obtaining certification from the commission as provided in this part:

- (a) locate a cigarette rolling machine within this state;
- (b) make or offer to make a cigarette rolling machine available for use within this state;

or

(c) offer a cigarette for sale within this state if the cigarette is produced by:

- (i) the cigarette rolling machine operator; or
- (ii) another person at the location of the cigarette rolling machine operator's cigarette rolling machine.

(2) A cigarette rolling machine operator shall renew its certification as provided in this section.

(3) The commission shall prescribe a form for certifying a cigarette rolling machine operator under this part.

(4) (a) A cigarette rolling machine operator shall apply to the commission for certification before the cigarette rolling machine operator performs an act described in Subsection (1) within the state for the first time.

(b) A cigarette rolling machine operator shall apply to the commission for a renewal of certification on or before the earlier of:

- (i) December 31 of each year; or
- (ii) the day on which there is a change in any of the information the cigarette rolling machine operator provides on the form described in Subsection (3).

(5) To obtain certification or renewal of certification under this section from the commission, a cigarette rolling machine operator shall:

- (a) identify:
 - (i) the cigarette rolling machine operator's name and address;
 - (ii) the location, make, and brand of the cigarette rolling machine operator's cigarette rolling machine; and

(iii) each person from whom the cigarette rolling machine operator will purchase or be provided tobacco products that the cigarette rolling machine operator will use to produce cigarettes; and

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(b) certify, under penalty of perjury, that:

(i) the tobacco to be used in the cigarette rolling machine operator's cigarette rolling machine, regardless of the tobacco's label or description, shall be only of a:

(A) brand family listed on the commission's directory listing required by Section 59-14-603; and

(B) tobacco product manufacturer listed on the commission's directory listing required by Section 59-14-603;

(ii) the cigarette rolling machine operator shall prohibit another person who uses the cigarette rolling machine operator's cigarette rolling machine from using tobacco, a wrapper, or a cover except for tobacco, a wrapper, or a cover purchased by or provided to the cigarette rolling machine operator from a person identified in accordance with Subsection (5)(a)(iii);

(iii) the cigarette rolling machine operator holds a current license issued in accordance with this chapter;

(iv) the cigarettes produced from the cigarette rolling machine shall comply with Title 53, Chapter 7, Part 4, The Reduced Cigarette Ignition Propensity and Firefighter Protection Act;

(v) the cigarette rolling machine shall be located in a separate and defined area where the cigarette rolling machine operator ensures that ~~[a person]~~ an individual younger than ~~[19 years of]~~ the age specified in Subsection (6) may not be:

(A) present at any time; or

(B) permitted to enter at any time; and

(vi) the cigarette rolling machine operator may not barter, distribute, exchange, offer, or sell cigarettes produced from a cigarette rolling machine in a quantity of less than 20 cigarettes per retail transaction.

(6) For purposes of Subsection (5), an individual is younger than:

(a) beginning July 1, 2020, and ending ~~{December 31}~~ June 30, ~~{2020}~~ 2021, 20 years of age; and

(b) beginning ~~{January}~~ July 1, ~~{2020}~~ 2021, 21 years of age.

~~[(6)]~~ (7) If the commission determines that a cigarette rolling machine operator meets the requirements for certification or renewal of certification under this section, the commission shall grant the certification or renewal of certification.

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~~(7)~~ (8) If the commission determines that a cigarette rolling machine operator does not meet the requirements for certification or renewal of certification under this section, the commission shall:

- (a) deny the certification or renewal of certification; and
- (b) provide the cigarette rolling machine operator the grounds for denial of the certification or renewal of certification in writing.

Section 9. Section **76-10-103** is amended to read:

76-10-103. Permitting minors to use tobacco in place of business.

It is a class C misdemeanor for the proprietor of any place of business to knowingly permit ~~persons~~ an individual under ~~age 19~~ the following ages to frequent a place of business while ~~they are~~ the individual is using tobacco~~[-]~~:

(1) beginning July 1, 2020, and ending ~~December 31~~ June 30, ~~2020~~ 2021, under 20 years of age; and

(2) beginning ~~January~~ July 1, ~~2020~~ 2021, under 21 years of age.

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

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

(1) ~~[Any]~~ A person violates this section who knowingly, intentionally, recklessly, or with criminal negligence provides ~~any~~ a cigar, cigarette, electronic cigarette, or tobacco in any form, to ~~any person under 19 years of age~~ an individual under the following ages, is guilty of a class C misdemeanor on the first offense, a class B misdemeanor on the second offense, and a ~~class A misdemeanor~~ felony of the third degree on subsequent offenses~~[-]~~:

(a) beginning July 1, 2020, and ending ~~December 31~~ June 30, ~~2020~~ 2021, 20 years of age; and

(b) beginning ~~January~~ July 1, ~~2020~~ 2021, 21 years of age.

(2) ~~[For purposes of]~~ As used in this section "provides":

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

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Section 11. Section **76-10-104.1** is amended to read:

76-10-104.1. Providing tobacco paraphernalia to minors -- Penalties.

(1) For purposes of this section:

(a) "Provides":

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

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

(b) "Tobacco paraphernalia":

(i) means [~~any~~] equipment, product, or material of any kind [~~which~~] that is used, intended for use, or designed for use to package, repackage, store, contain, conceal, ingest, inhale, or otherwise introduce a cigar, cigarette, or tobacco in any form into the human body, including:

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

(B) water pipes;

(C) carburetion tubes and devices;

(D) smoking and carburetion masks;

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

(F) chamber pipes;

(G) carburetor pipes;

(H) electric pipes;

(I) air-driven pipes;

(J) chillums;

(K) bongs; and

(L) ice pipes or chillers; and

(ii) does not include matches or lighters.

(2) (a) It is unlawful for a person to knowingly, intentionally, recklessly, or with criminal negligence provide [~~any~~] tobacco paraphernalia to [~~any person~~] an individual under

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[19 years of age.]:

(i) beginning July 1, 2020, and ending ~~December 31~~ June 30, ~~2020~~ 2021, 20 years of age; and

(ii) beginning ~~January~~ July 1, ~~2020~~ 2021, 21 years of age.

(b) A person who violates this section is guilty of a class C misdemeanor on the first offense and a class B misdemeanor on subsequent offenses.

Section 12. Section 76-10-105 is amended to read:

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

(1) [Any 18 year old person] (a) An individual who is 18 years or older, but younger than the age specified in Subsection (1)(b), and buys or attempts to buy, accepts, or has in the [person's] individual's possession any cigar, cigarette, electronic cigarette, or tobacco in any form is guilty of [~~a class C misdemeanor~~] an infraction and subject to:

~~(a)~~ (i) a minimum fine or penalty of [~~\$60~~] \$100; and

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

(b) For purposes of Subsection (1)(a), the individual is younger than:

(i) beginning July 1, 2020, and ending ~~December 31~~ June 30, ~~2020~~ 2021, 20 years of age; and

(ii) beginning ~~January~~ July 1, ~~2020~~ 2021, 21 years of age.

(2) [Any person] An individual under the age of 18 who buys or attempts to buy, accepts, or has in the [person's] individual's possession any cigar, cigarette, electronic cigarette, or tobacco in any form is subject to the jurisdiction of the juvenile court and subject to Section 78A-6-602, unless the violation is committed on school property. If a violation under this section is adjudicated under Section 78A-6-117, the minor may be subject to the following:

(a) a fine or penalty, in accordance with Section 78A-6-117; and

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

(3) A compliance officer appointed by a board of education under Section 53G-4-402 may not issue a citation for a violation of this section committed on school property. A cited violation committed on school property shall be addressed in accordance with Section

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53G-8-211.

Section 13. Section **76-10-105.1** is amended to read:

76-10-105.1. Requirement of direct, face-to-face sale of cigarettes, tobacco, and electronic cigarettes -- Minors not allowed in tobacco specialty shop -- Penalties.

(1) As used in this section:

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

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

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

(A) vending machine; or

(B) self-service display.

(c) "Retailer" means a person who:

(i) sells a cigarette, tobacco, or an electronic cigarette to an individual for personal consumption; or

(ii) operates a facility with a vending machine that sells a cigarette, tobacco, or an electronic cigarette.

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

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

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

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

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

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

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

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

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

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(i) that is distinct and separate from the rest of the facility; and
(ii) where the retailer only allows an individual who complies with Subsection (4) to be present; or

(c) a sale at a tobacco specialty shop.

(4) (a) An individual who is less than ~~[19 years old]~~ the age specified in Subsection (4)(b) may not enter or be present at a tobacco specialty shop unless the individual is:

~~[(a)]~~ (i) accompanied by a parent or legal guardian;

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

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

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

(i) beginning July 1, 2020, and ending ~~{December 31}~~ June 30, {2020}2021, 20 years of age; and

(ii) beginning ~~{January}~~ July 1, {2020}2021, 21 years of age.

(5) A parent or legal guardian who accompanies, under Subsection (4)(a)(i), an individual into an area described in Subsection (3)(b), or into a tobacco specialty shop, may not allow the individual to purchase a cigarette, tobacco, or an electronic cigarette.

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

(a) class C misdemeanor on the first offense;

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

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

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

(8) (a) ~~[Any]~~ An ordinance, regulation, or rule adopted by the governing body of a political subdivision of the state or by a state agency that affects the sale, wholesale distribution placement, purchase, marketing, or display of cigarettes, tobacco, or electronic cigarettes, including flavors, that is not essentially identical to ~~[the provisions of]~~ this section and Section 76-10-102 is superseded.

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

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~~{Section 14}~~ (9) (a) This part does not apply to the sale, supply, gift, furnishment, or possession of a cigar, cigarette, electronic cigarette, tobacco, or tobacco paraphernalia to an individual who is 18 years old or older and is:

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

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

(b) A valid, government-issued military identification card is required to verify proof of age under Subsection (9)(a).

Section 14. Section 76-10-105.2 is enacted to read:

76-10-105.2. Ordinances, rules, and regulations on minimum age.

A governing body of a political subdivision of the state or a state agency may not adopt an ordinance, regulation, or rule that affects the minimum age of sale, supply, purchase, gift, furnishment, or possession of a cigar, cigarette, electronic cigarette, tobacco, or tobacco paraphernalia.

Section 15. Section 77-39-101 is amended to read:

77-39-101. Investigation of sales of alcohol, tobacco, and electronic smoking devices to underage individuals.

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

~~—— (a) "Electronic smoking device" means a device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.~~

~~—— (b) "Electronic smoking device" includes a component, part, or accessory of a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device.~~

~~—— (c) "Electronic smoking device" does not include a drug, device, or combination product authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act. }~~

(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~~] specified in Subsection (2)(e) 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~~{}~~ smoking device.

(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~~{}~~ smoking device.

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

(e) For purposes of Subsection (2)(a)(ii), the individual is younger than:

(i) beginning July 1, 2020, and ending ~~{December 31}~~ June 30, {2020}2021, 20 years of age; and

(ii) beginning ~~{January}~~ July 1, {2020}2021, 21 years of age.

(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~~{}~~ smoking device.

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(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 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~~ ~~{ }smoking device~~ 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 times for the attempted purchase of:

(I) a cigar;

(II) a cigarette;

(III) tobacco in any form; or

(IV) an electronic ~~{}cigarette~~ ~~{ }smoking device~~; and

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

(b) ~~[Nothing in this section shall]~~ This section does not 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~~ ~~{ }smoking device~~ 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:

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- (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;
- (v) the name and address of the retail establishment; and
- (vi) the date and time of the attempted purchase.

Section ~~{15}~~16. **Effective date.**

(1) Except as provided in Subsection (2), Section 76-10-105.2 takes effect on May 14, 2019.

(2) This bill takes effect on July 1, 2020.