

HB0023S02 compared with HB0023S01

~~{deleted text}~~ shows text that was in HB0023S01 but was deleted in HB0023S02.

inserted text shows text that was not in HB0023S01 but was inserted into HB0023S02.

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Representative Jon Hawkins proposes the following substitute bill:

TOBACCO AND ELECTRONIC CIGARETTE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon Hawkins

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to tobacco products and electronic cigarettes.

Highlighted Provisions:

This bill:

- ▶ defines terms related to electronic cigarettes and tobacco retailers;
- ▶ modifies the definition of a retail tobacco specialty business;

~~{~~ → amends a date from which certain laws are applicable to retail tobacco specialty businesses;

- ~~}~~ ▶ amends permit violations for tobacco retailers;
- ▶ creates requirements regarding verification of age for retail tobacco specialty businesses;
- ▶ makes it a crime to fraudulently use or transfer proof of age to gain access to a retail

HB0023S02 compared with HB0023S01

tobacco specialty business or to purchase a tobacco product or electronic cigarette product;

- ▶ creates civil penalties for a retail tobacco specialty business that allows an individual under 21 years old in certain circumstances to gain access to the premises of the business or to purchase a cigar, cigarette, electronic cigarette product, or tobacco in any form;
- ▶ increases the minimum age for obtaining, possessing, using, providing, or furnishing tobacco products and paraphernalia and electronic cigarette products to 21 years old;
- ▶ makes it a crime for an employee of a retail tobacco specialty business to allow an individual ~~{in certain circumstances to gain access to the premises of the business or}~~ under 21 years old to purchase a cigar, cigarette, electronic cigarette product, or tobacco in any form;
- ▶ amends the number of times that a peace officer must conduct an investigation of a retail shop for underage tobacco sales; and
- ▶ 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:

10-8-41.6, as last amended by Laws of Utah 2018, Chapter 231

10-8-47 (Effective 07/01/20), as last amended by Laws of Utah 2019, Chapter 232

17-50-333, as last amended by Laws of Utah 2018, Chapter 231

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

26-62-205 (Effective 07/01/20), as last amended by Laws of Utah 2019, Chapter 232

26-62-304 (Effective 07/01/20), as last amended by Laws of Utah 2019, Chapter 232

26-62-305 (Effective 07/01/20), as last amended by Laws of Utah 2019, Chapter 232

51-9-203 (Effective 07/01/20), as last amended by Laws of Utah 2019, Chapters 136

and 232

HB0023S02 compared with HB0023S01

53-3-229, as last amended by Laws of Utah 2010, Chapters 114 and 276

53-3-810, as last amended by Laws of Utah 2010, Chapters 114 and 276

53G-8-209, as last amended by Laws of Utah 2019, Chapter 293

59-14-703 (Effective 07/01/20), as last amended by Laws of Utah 2019, Chapter 232

76-8-311.3, as last amended by Laws of Utah 2010, Chapter 114

76-10-101, as last amended by Laws of Utah 2015, Chapters 66, 132 and last amended by Coordination Clause, Laws of Utah 2015, Chapter 132

76-10-103 (Effective 07/01/20), as last amended by Laws of Utah 2019, Chapter 232

76-10-104 (Effective 07/01/20), as last amended by Laws of Utah 2019, Chapter 232

76-10-104.1 (Effective 07/01/20), as last amended by Laws of Utah 2019, Chapter 232

76-10-105 (Effective 07/01/20), as last amended by Laws of Utah 2019, Chapter 232

76-10-105.1 (Effective 07/01/20), as last amended by Laws of Utah 2019, Chapter 232

77-39-101 (Effective 07/01/20), as last amended by Laws of Utah 2019, Chapter 232

ENACTS:

26-62-401, Utah Code Annotated 1953

26-62-402, Utah Code Annotated 1953

76-10-113, Utah Code Annotated 1953

76-10-114, Utah Code Annotated 1953

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

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

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

(1) As used in this section:

(a) "Community location" means:

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

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

(iii) a trade or technical school;

(iv) a church;

(v) a public library;

(vi) a public playground;

(vii) a public park;

HB0023S02 compared with HB0023S01

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

(ix) a public recreational facility;

(x) a public arcade; or

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

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

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

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

(e) "Retail tobacco specialty business" means a commercial establishment in which:

(i) the sale of tobacco products accounts for more than 35% of the total quarterly gross receipts for the establishment;

(ii) 20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products;

(iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of tobacco products; [or]

(iv) the commercial establishment holds itself out as a retail tobacco specialty business and causes a reasonable person to believe the commercial establishment is a retail tobacco specialty business; or

~~(iv)~~ (v) the retail space features a self-service display for tobacco products.

(f) "Self-service display" means the same as that term is defined in Section 76-10-105.1.

(g) "Tobacco product" means:

(i) any cigar, cigarette, or electronic cigarette product, as those terms are defined in Section 76-10-101;

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

(A) chewing tobacco; or

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

and

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

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

HB0023S02 compared with HB0023S01

powers of the state~~], and through delegation,~~ by the state or by delegation of the state's police powers to other governmental entities.

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

(b) A municipality may only issue a retail tobacco specialty business license to a person if the person complies with the provisions of Subsections (4) and (5).

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

- (i) 1,000 feet of a community location;
- (ii) 600 feet of another retail tobacco specialty business; or
- (iii) 600 feet from property used or zoned for:
 - (A) agriculture use; or
 - (B) residential use.

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

(5) (a) Except as provided in Subsection (5)(b), beginning July 1, 2018, a municipality may not issue or renew a license for a person to conduct business as a retail tobacco specialty business until the person provides the municipality with proof that the retail tobacco specialty business has:

(i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in which the retail tobacco specialty business is located; and

(ii) a valid license to sell tobacco products from the State Tax Commission.

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

(6) (a) Nothing in this section:

HB0023S02 compared with HB0023S01

(i) requires a municipality to issue a retail tobacco specialty business license; or
(ii) prohibits a municipality from adopting more restrictive requirements on a person seeking a license or renewal of a license to conduct business as a retail tobacco specialty business.

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

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

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

(iii) upon the recommendation of the department or a local health department under Title 26, Chapter 62, Tobacco Retail Permit; or

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

(7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has a business license and is operating in a municipality in accordance with all applicable laws except for the requirement in Subsection (4), on or before December 31, ~~2015~~ 2018, is exempt from Subsection (4).

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

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

(ii) the retail tobacco specialty business does not close for business or otherwise suspend the sale of tobacco products for more than 60 consecutive days;

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

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

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

(B) zoning ordinances;

HB0023S02 compared with HB0023S01

(C) building codes; and

(D) the requirements of a retail tobacco specialty business license issued before December 31, ~~2015~~ 2018.

Section 2. Section **10-8-47 (Effective 07/01/20)** is amended to read:

10-8-47 (Effective 07/01/20). 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:

(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 the cases when the money or property embezzled or obtained under false pretenses does not exceed in value the sum of \$500;

(e) prohibit the sale, giving away, or furnishing of narcotics or alcoholic beverages to an individual younger than 21 years old; or

(f) prohibit the sale, giving away, or furnishing of ~~[tobacco or e-cigarettes]~~ a tobacco product, as defined in Section 10-8-41.6, to an individual younger than ~~[(i) beginning July 1, 2020, and ending June 30, 2021, 20 years old, and (ii) beginning July 1, 2021,]~~ 21 years old.

(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 individuals who are

HB0023S02 compared with HB0023S01

addicted to the use of drugs or intoxicants such that an individual substantially lacks the capacity to control the individual's use of the drugs or intoxicants, and judicial supervision may be imposed as a means of effecting the individual's rehabilitation.

Section 3. Section **17-50-333** is amended to read:

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

(1) As used in this section:

(a) "Community location" means:

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

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

(iii) a trade or technical school;

(iv) a church;

(v) a public library;

(vi) a public playground;

(vii) a public park;

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

(ix) a public recreational facility;

(x) a public arcade; or

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

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

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

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

(e) "Retail tobacco specialty business" means a commercial establishment in which:

(i) the sale of tobacco products accounts for more than 35% of the total quarterly gross receipts for the establishment;

(ii) 20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products;

(iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of tobacco products; ~~or~~

(iv) the commercial establishment holds itself out as a retail tobacco specialty business

HB0023S02 compared with HB0023S01

and causes a reasonable person to believe the commercial establishment is a retail tobacco specialty business; or

~~(iv)~~ (v) the retail space features a self-service display for tobacco products.

(f) "Self-service display" means the same as that term is defined in Section 76-10-105.1.

(g) "Tobacco product" means:

(i) any cigar, cigarette, or electronic cigarette product as those terms are defined in Section 76-10-101;

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

(A) chewing tobacco; or

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

and

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

(2) The regulation of a retail tobacco specialty business is an exercise of the police powers of the state ~~], and through delegation,~~ by the state or by the delegation of the states's police power to other governmental entities.

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

(b) A county may only issue a retail tobacco specialty business license to a person if the person complies with the provisions of Subsections (4) and (5).

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

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

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

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

(A) agriculture use; or

(B) residential use.

(b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in a straight line from the nearest entrance of the retail tobacco specialty business to the nearest

HB0023S02 compared with HB0023S01

property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard to intervening structures or zoning districts.

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

(i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in which the retail tobacco specialty business is located; and

(ii) a valid license to sell tobacco products from the State Tax Commission.

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

(6) (a) Nothing in this section:

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

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

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

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

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

(iii) upon the recommendation of the department or a local health department under Title 26, Chapter 62, Tobacco Retail Permit; or

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

(7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has a business license and is operating in a county in accordance with all applicable laws except for the requirement in Subsection (4), on or before December 31, ~~{2015}~~ {2018}, is exempt

HB0023S02 compared with HB0023S01

from Subsection (4).

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

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

(ii) the retail tobacco specialty business does not close for business or otherwise suspend the sale of tobacco products for more than 60 consecutive days;

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

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

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

(B) zoning ordinances;

(C) building codes; and

(D) the requirements of a retail tobacco specialty business license issued before December 31, ~~2015~~ 2018.

Section 4. 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:

(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) "Employee" means an employee of a tobacco retailer.

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

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

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

(6) "Owner" means a person holding a 20% ownership interest in the business that is required to obtain an permit under this chapter.

HB0023S02 compared with HB0023S01

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

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

(i) a valid identification card issued under Title 53, Chapter 3, Part 8, Identification

Card Act;

(ii) a valid 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 is issued under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of the state in which the valid driver license is issued;

(iv) a valid United States military identification card that:

(A) includes date of birth; and

(B) has a picture affixed; or

(v) a valid passport.

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

~~[(7)]~~ ~~[(8);9)~~ "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)]~~ ~~[(9);10)~~ "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)]~~ ~~[(10);11)~~ "Tobacco product" means:

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

HB0023S02 compared with HB0023S01

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

~~[(10)]~~ ~~(~~11~~)~~ (12) "Tobacco retailer" means a person that is required to obtain a tax commission license.

Section 5. Section **26-62-205 (Effective 07/01/20)** is amended to read:

26-62-205 (Effective 07/01/20). Permit requirements for a retail tobacco specialty business.

A retail tobacco specialty business shall:

(1) electronically verify proof of age for any individual that enters the premises of the business in accordance with Part 4, Proof of Age Requirements;

~~[(1)]~~ (2) except as provided in Subsection 76-10-105.1(4), prohibit any individual from entering the business if the individual is ~~[(a) beginning July 1, 2020, and ending June 30, 2021, under 20 years old; and (b) beginning July 1, 2021,]~~ under 21 years old; and

~~[(2)]~~ (3) prominently display at the retail tobacco specialty business a sign on the public entrance of the business that communicates:

(a) the prohibition on the presence of an individual under 21 years old in a retail tobacco specialty business in Subsection 76-10-105.1(4); and

(b) the prohibition on the sale of tobacco products to an individual under 21 years old as described in Sections 76-10-104, 76-10-104.1, 76-10-105.1, and 76-10-113.

Section 6. Section **26-62-304 (Effective 07/01/20)** is amended to read:

26-62-304 (Effective 07/01/20). 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]~~ for ~~76-10-114~~ 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 an individual under ~~[the following ages]~~ 21 years old is prima facie evidence of a violation of this chapter~~[-]~~.

~~[(a) beginning July 1, 2020, and ending June 30, 2021, under 20 years old; and]~~

~~[(b) beginning July 1, 2021, under 21 years old.]~~

HB0023S02 compared with HB0023S01

(2) If the tobacco retailer is convicted of violating Section ~~[76-10-104]~~ ~~for~~ 76-10-114, 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 or 26-62-402.

Section 7. Section **26-62-305 (Effective 07/01/20)** is amended to read:

26-62-305 (Effective 07/01/20). 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 by an enforcing agency or investigation ~~[, only one violation shall count toward the penalties described in this section. (2)~~

~~(a) The administrative penalty for]~~ by a law enforcement agency under Section 77-39-101, the enforcing agency shall treat the multiple violations as one single violation under Subsections (2), (3), and (4).

(2) ~~fff~~ Except as provided in Subsection (3) and Section 26-62-402, if a violation is found in an inspection by an enforcing agency or an investigation by a law enforcement agency under Section 77-39-101, the enforcing agency ~~{may}~~ shall:

(a) on a first violation at a retail location ~~[is]~~, impose a penalty of ~~[not]~~ no more than \$500~~[-]~~;

(b) ~~[The administrative penalty for]~~ on a second violation at the same retail location that occurs within one year of a previous violation ~~[is]~~, impose a penalty of ~~[not]~~ no more than \$750~~[-]~~;

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

(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]~~ no more than \$1,000~~[-]~~; ~~for~~ and

~~[(3) The department or a local health department may:]~~

HB0023S02 compared with HB0023S01

~~[(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 an individual under:]~~

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

~~[(ii) beginning July 1, 2021, 21 years old; 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.]~~

(d) on a fourth or subsequent violation within two years of three previous violations:

(i) impose a penalty of no more than \$1,000;

(ii) revoke a permit of the retailer; and

(iii) if applicable, recommend to a ~~}{municipal}~~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.

(3) If a violation is found in an investigation of a general tobacco retailer by a law enforcement agency under Section 77-39-101 for the sale of a tobacco product to an individual under 21 years old and the violation is committed by the owner of the general tobacco retailer, the enforcing agency shall:

(a) on a first violation, impose a fine of no more than ~~}{\$1}~~\$2,000 on the general tobacco retailer; and

(b) on the second violation for the same general tobacco retailer within one year of the first violation:

(i) impose a fine not exceeding ~~}{\$1}~~\$5,500; and

(ii) revoke the permit for the general tobacco retailer.

(4) If a violation is found in an investigation of a retail tobacco specialty business by a law enforcement agency under Section 77-39-101 for the sale of a tobacco product to an individual under 21 years old, the enforcing agency shall apply the provisions of Section 26-62-402.

~~[(4)]~~ (5) (a) Except when a transfer described in Subsection ~~[(5)]~~ (6) 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 (2)

HB0023S02 compared with HB0023S01

or (3) or Section 26-62-402; 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 (2) or (3) or Section 26-62-402.

(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

(ii) is revoked under this section or Section 26-62-402 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)]~~ (6) Violations of this chapter, Section 10-8-41.6, ~~[or]~~ Section 17-50-333, or Section 26-62-402 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 8. Section ~~26-62-401~~ is enacted to read:

Part 4. Proof of Age Requirements

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

(1) As used in this section ~~{,}~~:

(a) "~~{employee}~~Employee" means an employee of a retail tobacco specialty business.

(b) "Electronic verification program" means a technology used by a retail tobacco specialty business to confirm proof of age for an individual.

(2) A retail tobacco specialty business shall require that an employee verify proof of age as provided in this section.

(3) To comply with Subsection (2), an employee shall:

(a) request the individual present proof of age; and

(b) verify the validity of the proof of age electronically ~~{under the verification program created}~~ in accordance with Subsection (4).

HB0023S02 compared with HB0023S01

(4) ~~{The department}~~A retail tobacco specialty business shall ~~{implement}~~use an electronic verification program ~~{that adopts the specifications and security measures established under Subsection 32B-1-407(5)}~~to assist the business in complying with the requirements of this section.

(5) (a) A retail tobacco specialty business may not disclose information obtained under this section except as provided under this part.

(b) Information obtained under this section:

(i) shall be kept for at least 30 days; and

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

(6) (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 (6)(b), enter a retail tobacco specialty business; or

(ii) purchase a tobacco product.

(b) In accordance with Subsection 76-10-105.1(4), an individual who is under 21 years old may be permitted to enter a retail tobacco specialty business if:

(i) the individual is accompanied by a parent or legal guardian who provides proof of age; or

(ii) the individual is present at the retail tobacco specialty shop for a bona fide commercial purpose other than to purchase a tobacco product.

(7) To determine whether the individual described in Subsection (2) is 21 years old or older, the following may request an individual described in Subsection (2) to present proof of age:

(a) an employee;

(b) a peace officer; or

(c) a representative of an enforcing agency.

Section 9. Section ~~26-62-402~~ is enacted to read:

26-62-402. Penalties.

(1) ~~{ff}~~Except as provided in Subsection (2), if a violation of this part is found in an investigation of a retail tobacco specialty business by a law enforcement agency under Section 77-39-101, the enforcing agency shall:

HB0023S02 compared with HB0023S01

(a) on a first violation, impose a penalty of no more than \$500 on the retail tobacco specialty business;

(b) on a second violation for the same retail tobacco specialty business that occurs within one year of a previous violation, impose a penalty of no more than \$750;

(c) on a third violation for the same retail tobacco specialty business that occurs within two years of the two previous violations, impose:

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

(ii) a penalty of no more than \$1,000; and

(d) on a fourth or subsequent violation within two years of the three previous violations:

(i) impose a penalty of no more than \$1,000;

(ii) revoke the permit of the retail tobacco specialty business; and

(iii) 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.

(2) If a violation of this part is committed by the owner and is found in an investigation of a retail tobacco specialty business by a law enforcement agency under Section 77-39-101, the enforcing agency shall:

(a) on a first violation, impose a fine not exceeding ~~5~~2,000; and

(b) on a second violation at the same retail tobacco specialty business within one year of the first violation:

(i) impose a fine not exceeding ~~15~~5,000 ~~;~~;

(ii) revoke the retail tobacco specialty business's permit; and

(iii) ~~if applicable,~~ recommend to ~~the~~a municipality or county that the retail tobacco specialty license issued under Section 10-8-61.6 ~~;~~ or 17-50-333 to the retail tobacco specialty business be suspended or revoked.

~~(2)~~3) If multiple violations are found in a single investigation by a law enforcement agency under Section 77-39-101, the enforcing agency shall treat the multiple violations as a single violation.

~~(3) A retail tobacco specialty business is not subject to the penalties under this section if the enforcing agency finds:~~

HB0023S02 compared with HB0023S01

~~(a) an employee who is not the owner of the business is responsible for the violation of the requirements of this part;~~

~~(b) the employee intentionally violated the requirements; and~~

~~(c) the retail tobacco specialty business acted in good faith to comply with the requirements.~~

‡ Section 10. Section **51-9-203 (Effective 07/01/20)** is amended to read:

51-9-203 (Effective 07/01/20). 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

(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] cigars, cigarettes, and electronic ~~cigarettes~~ cigarette products, or tobacco in any

HB0023S02 compared with HB0023S01

form as those terms are defined in Section 76-10-101, are available to individuals under [the following ages: (A) ~~beginning July 1, 2020, and ending June 30, 2021, 20 years old, and (B) beginning July 1, 2021,~~] 21 years old;

(b) agree, by contract, to file an annual written report with the Department of Health 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 62, 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 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.

HB0023S02 compared with HB0023S01

(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 11. Section **53-3-229** is amended to read:

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

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

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

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

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

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

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

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

(g) alter any information on an authentic driver license certificate so that it no longer represents the information originally displayed.

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

HB0023S02 compared with HB0023S01

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

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

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

(c) acquire, use, display, or transfer a false or altered driver license certificate to procure~~[:]~~ a cigar, a cigarette, an electronic cigarette product, or tobacco in any form, as those terms are defined in Section 76-10-101.

~~[(i) a cigarette;]~~

~~[(ii) an electronic cigarette, as defined in Section 76-10-101;]~~

~~[(iii) tobacco; or]~~

~~[(iv) a tobacco product.]~~

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

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

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

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

Section 12. Section **53-3-810** is amended to read:

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

(1) It is a class C misdemeanor to:

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

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

(c) refuse to surrender to the division or a peace officer upon demand any identification card issued by the division;

(d) use a false name or give a false address in any application for an identification card

HB0023S02 compared with HB0023S01

or any renewal or duplicate of the identification card, or to knowingly make a false statement, or to knowingly conceal a material fact in the application;

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

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

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

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

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

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

(c) acquire, use, display, or transfer a false or altered identification card to procure~~[:]~~ a cigar, a cigarette, an electronic cigarette product, or tobacco in any form, as those terms are defined in Section 76-10-101.

~~[(i) a cigarette;]~~

~~[(ii) an electronic cigarette, as defined in Section 76-10-101;]~~

~~[(iii) tobacco; or]~~

~~[(iv) a tobacco product.]~~

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

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

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

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

Section 13. Section **53G-8-209** is amended to read:

53G-8-209. Extracurricular activities -- Prohibited conduct -- Reporting of

HB0023S02 compared with HB0023S01

violations -- Limitation of liability.

(1) The Legislature recognizes that:

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

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

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

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

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

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

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

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

(ii) (A) the illicit use, possession, or distribution of controlled substances or drug paraphernalia~~[-and]~~;

(B) the use, possession, or distribution of [~~an electronic cigarette as defined in Section~~

HB0023S02 compared with HB0023S01

~~76-10-101, tobacco, or alcoholic beverages contrary to law]~~ a cigar, a cigarette, an electronic cigarette product, or tobacco in any form, as those terms are defined in Section 76-10-101, or an alcoholic beverage that is contrary to law; and

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

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

(b) Principals who receive a report under Subsection (3)(a) shall submit a report of the alleged incident, and actions taken in response, to the district superintendent or the superintendent's designee within 10 working days after receipt of the report.

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

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

Section 14. Section **59-14-703 (Effective 07/01/20)** is amended to read:

59-14-703 (Effective 07/01/20). Certification of cigarette rolling machine operators -- Renewal of 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.

HB0023S02 compared with HB0023S01

(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

(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

HB0023S02 compared with HB0023S01

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 an individual younger than [~~the age specified in Subsection (6)~~] 21 years old 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 June 30, 2021, 20 years old; and]~~

~~[(b) beginning July 1, 2021, 21 years old.]~~

~~[(7) (6) 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.~~

~~[(8) (7) 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 15. Section **76-8-311.3** is amended to read:

76-8-311.3. Items prohibited in correctional and mental health facilities --

Penalties.

(1) As used in this section:

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

(b) "Controlled substance" means any substance defined as a controlled substance

HB0023S02 compared with HB0023S01

under Title 58, Chapter 37, Utah Controlled Substances Act.

(c) "Correctional facility" means:

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

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

(iii) any juvenile detention facility; and

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

(d) "Electronic cigarette[~~is as~~] product" means the same as that term is defined in Section 76-10-101.

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

(f) "Mental health facility" is as defined in Section 62A-15-602.

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

(h) "Secure area" is as defined in Section 76-8-311.1.

(i) "Tobacco product" means a cigar, cigarette, or tobacco in any form, as those terms are defined in Section 76-10-101.

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

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

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

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

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

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

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

HB0023S02 compared with HB0023S01

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

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

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

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

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

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

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

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

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

(i) spirituous or fermented liquor;

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

(iii) poison in any quantity.

(b) [~~A person~~] An individual is guilty of a third degree felony who knowingly violates

HB0023S02 compared with HB0023S01

correctional or mental health facility policy or rule by providing or selling to any offender at a correctional facility or detainee within a secure area of a mental health facility any:

- (i) spirituous or fermented liquor;
- (ii) medicine, whether or not lawfully prescribed for the offender; or
- (iii) poison in any quantity.

(c) An inmate is guilty of a third degree felony who, in violation of correctional or mental health facility policy or rule, possesses at a correctional facility or in a secure area of a mental health facility any:

- (i) spirituous or fermented liquor;
- (ii) medicine, other than medicine provided by the facility's health care providers in compliance with facility policy; or
- (iii) poison in any quantity.

(d) [~~A person~~] An individual is guilty of a class A misdemeanor who, with the intent to directly or indirectly provide or sell any tobacco product or electronic cigarette product to an offender, directly or indirectly:

- (i) transports, delivers, or distributes any tobacco product or electronic cigarette product to an offender or on the grounds of any correctional facility;
- (ii) solicits, requests, commands, coerces, encourages, or intentionally aids another person to transport any tobacco product or electronic cigarette product to an offender or on any correctional facility, if the person is acting with the mental state required for the commission of an offense; or
- (iii) facilitates, arranges, or causes the transport of any tobacco product or electronic cigarette product in violation of this section to an offender or on the grounds of any correctional facility.

(e) [~~A person~~] An individual is guilty of a class A misdemeanor who, without the permission of the authority operating the correctional or mental health facility, fails to declare or knowingly possesses at a correctional facility or in a secure area of a mental health facility any:

- (i) spirituous or fermented liquor;
- (ii) medicine; or
- (iii) poison in any quantity.

HB0023S02 compared with HB0023S01

(f) [~~A person~~] An individual is guilty of a class B misdemeanor who, without the permission of the authority operating the correctional facility, knowingly engages in any activity that would facilitate the possession of any contraband by an offender in a correctional facility. The provisions of Subsection (5)(d) regarding any tobacco product or electronic cigarette product take precedence over this Subsection (5)(f).

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

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

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

Section 16. Section **76-10-101** is amended to read:

76-10-101. Definitions.

As used in this part:

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

(2) [~~"Cigarette"~~] Except as provided in Section 76-10-105.1, "cigarette" means a product that contains nicotine, is intended to be burned under ordinary conditions of use, and consists of:

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

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

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

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

(i) any electronic oral device:

HB0023S02 compared with HB0023S01

(A) that provides an aerosol or a vapor of nicotine or other substance; and

(B) which simulates smoking through the device's use, or through inhalation, of the device;

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

(iii) an accessory sold in the same package as the device described in Subsection (3)(a)(i).

(b) "Electronic cigarette" includes an oral device that is:

(i) composed of a heating element, battery, or electronic circuit; and

(ii) marketed, manufactured, distributed, or sold as:

(A) an e-cigarette;

(B) an e-cigar;

(C) an e-pipe; or

(D) any other product name or descriptor, if the function of the product meets the definition of Subsection (3)(a).

(4) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette substance, or a prefilled electronic cigarette.

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

~~[(4)]~~ (6) "Place of business" includes:

(a) a shop;

(b) a store;

(c) a factory;

(d) a public garage;

(e) an office;

(f) a theater;

(g) a recreation hall;

(h) a dance hall;

(i) a poolroom;

(j) a café;

(k) a cafeteria;

(l) a cabaret;

HB0023S02 compared with HB0023S01

- (m) a restaurant;
- (n) a hotel;
- (o) a lodging house;
- (p) a streetcar;
- (q) a bus;
- (r) an interurban or railway passenger coach;
- (s) a waiting room; and
- (t) any other place of business.

(7) "Tobacco retailer" means:

(a) a general tobacco retailer as that term is defined in Section 26-62-102; and

(b) a retail tobacco specialty business.

(~~7~~8) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled with an electronic cigarette substance.

~~(5)~~ (~~8~~9) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other lighted smoking equipment.

(~~9~~10) "Retail tobacco specialty business" means the same as that term is defined in Section 26-62-102.

Section 17. Section **76-10-103 (Effective 07/01/20)** is amended to read:

76-10-103 (Effective 07/01/20). Permitting minors to use a cigar, cigarette, an electronic cigarette product, or tobacco in place of business.

It is a class C misdemeanor for the proprietor of any place of business to knowingly permit an individual under ~~[the following ages]~~ 21 years old to frequent a place of business while the individual is using ~~[tobacco:]~~ a cigar, a cigarette, an electronic cigarette product, or tobacco in any form.

~~[(1) beginning July 1, 2020, and ending June 30, 2021, under 20 years old; and]~~

~~[(2) beginning July 1, 2021, under 21 years old.]~~

Section 18. Section **76-10-104 (Effective 07/01/20)** is amended to read:

76-10-104 (Effective 07/01/20). Providing a cigar, cigarette, electronic cigarette, or tobacco to a minor -- Penalties.

~~[(1) A person violates this section who knowingly, intentionally, recklessly, or with criminal negligence provides a cigar, cigarette, electronic cigarette, or tobacco in any form, to~~

HB0023S02 compared with HB0023S01

~~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 on subsequent offenses:]~~

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

~~[(b) beginning July 1, 2021, 21 years old.]~~

~~[(2)]~~ (1) 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.

(2) An individual who knowingly, intentionally, recklessly, or with criminal negligence provides a cigar, a cigarette, an electronic cigarette product, or tobacco in any form to an individual who is under 21 years old, is guilty of:

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

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

(c) a class A misdemeanor on any subsequent offense.

(3) This section does not apply to conduct of an employee of a ~~retail~~ tobacco ~~specialty business~~ retailer that is a violation of Section 76-10-114.

Section 19. Section 76-10-104.1 (Effective 07/01/20) is amended to read:

76-10-104.1 (Effective 07/01/20). Providing tobacco paraphernalia to minors --

Penalties.

(1) ~~[For purposes of this section]~~ As used in 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 equipment, product, or material of any kind that is used, intended for use, or

HB0023S02 compared with HB0023S01

designed for use to package, repackage, store, contain, conceal, ingest, inhale, or otherwise introduce a cigar, a cigarette, an electronic cigarette product, 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~~] an individual to knowingly, intentionally, recklessly, or with criminal negligence provide tobacco paraphernalia to an individual under[: (i) ~~beginning July 1, 2020, and ending June 30, 2021, 20 years old, and (ii) beginning July 1, 2021,~~] 21 years old.

- (b) [~~A person~~] An individual who violates this section is guilty of:
 - (i) a class C misdemeanor on the first offense; and
 - (ii) a class B misdemeanor on any subsequent [~~offenses~~] offense.

Section 20. Section **76-10-105 (Effective 07/01/20)** is amended to read:

76-10-105 (Effective 07/01/20). Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.

(1) [~~(a)~~] An individual who is 18 years old or older, but younger than [~~the age specified in Subsection (1)(b)] 21 years old, and who buys or attempts to buy, accepts, or has in the~~

HB0023S02 compared with HB0023S01

individual's possession any cigar, cigarette, electronic cigarette product, or tobacco in any form is:

(a) guilty of an infraction; and

(b) subject to:

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

(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 June 30, 2021, 20 years old; and]~~

~~[(ii) beginning July 1, 2021, 21 years old.]~~

(2) (a) An individual who is under [the age of] 18 years old and who buys or attempts to buy, accepts, or has in the individual's possession any cigar, cigarette, electronic cigarette product, 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.

(b) If a violation under this section is adjudicated under Section 78A-6-117, the minor may be subject to the following:

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

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

(3) (a) 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.

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

~~[(4)(a) This section does not apply to the purchase or possession of a cigar, cigarette, electronic cigarette, tobacco, or tobacco paraphernalia by an individual who is 18 years 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~~

HB0023S02 compared with HB0023S01

of age under Subsection (4)(a).]

Section 21. Section 76-10-105.1 (Effective 07/01/20) is amended to read:

76-10-105.1 (Effective 07/01/20). Requirement of direct, face-to-face sale of cigarettes, tobacco, and electronic cigarettes -- Minors not allowed in retail tobacco specialty ~~shop~~business -- 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 product to an individual for personal consumption; or

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

(d) "Self-service display" means a display of a cigarette, tobacco, or an electronic cigarette product 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 product 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

HB0023S02 compared with HB0023S01

retailer's facility:

- (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 retail tobacco specialty [shop] business.

(4) [(a)] An individual who [~~is less than the age specified in Subsection (4)(b)~~] is under 21 years old may not enter or be present at a [~~tobacco specialty shop~~] retail tobacco specialty business unless the individual is:

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

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

[(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 June 30, 2021, 20 years old; and]

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

(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~~] retail tobacco specialty business, may not allow the individual to purchase a cigarette, tobacco, or an electronic cigarette product.

- (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 {f} third and all~~] any subsequent offenses.

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

(8) (a) 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, minimum age of sale, placement, or display of cigarettes, tobacco, or electronic [~~cigarettes~~] cigarette products that is not essentially identical to this section and Section 76-10-102 is superseded.

HB0023S02 compared with HB0023S01

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

Section 22. Section **76-10-113** is enacted to read:

76-10-113. Unlawful transfer or use of proof of age.

(1) As used in this section:

(a) "Proof of age" means:

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

(ii) a valid 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 is issued under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of the state in which the valid driver license is issued;

(iv) a valid United States military identification card that:

(A) includes date of birth; and

(B) has a picture affixed; or

(v) a valid passport.

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

(2) An individual who knowingly and intentionally transfers that individual's proof of age to another individual to aid that individual in purchasing a cigar, a cigarette, an electronic cigarette product, or tobacco in any form, or in gaining admittance to any part of the premises of a retail tobacco specialty business, is guilty of a class B misdemeanor.

(3) An individual who knowingly and intentionally uses proof of age containing false information with the intent to purchase a cigar, a cigarette, an electronic cigarette product, or tobacco in any form, or ~~fin~~to gain admittance to any part of the premises of a retail tobacco

HB0023S02 compared with HB0023S01

specialty business, is guilty of a class A misdemeanor.

Section 23. Section 76-10-114 is enacted to read:

76-10-114. Unlawful ~~entrance to a retail tobacco specialty shop and purchase~~ sale of a tobacco product or electronic cigarette product.

(1) As used in this section:

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

(b) "Employee" means an employee or an owner of a ~~retail~~ tobacco ~~specialty business~~ retailer.

(2) ~~Except as provided in Subsection (4), it~~ It is unlawful for an employee to knowingly or intentionally ~~:~~

~~(a) sell or give a cigar, a cigarette, an electronic cigarette product, or tobacco in any form in the course of business to an individual who is under 21 years old; or~~

~~(b) allow an individual who is under 21 years old to enter a retail tobacco specialty shop in the course of business.~~

(3) An employee who violates this section is:

(a) on a first violation ~~:~~

~~(i) guilty of a class B misdemeanor; and~~

~~(ii)~~ subject to:

~~(A) i~~ a fine not exceeding \$1,000; ~~:~~

~~(B) a sentence of imprisonment for a term not exceeding six months; or~~

~~(C) ii~~ compensatory service;

(b) on any subsequent violation:

(i) guilty of a class ~~A~~ C misdemeanor; and

(ii) subject to:

(A) a fine not exceeding \$2, ~~500~~;

~~(B) a sentence of imprisonment for a term not exceeding one year in jail; or~~

~~(C) 000; or~~

~~(B)~~ compensatory service.

~~(4) (a) It is not unlawful for an employee to allow an individual who is under 21 years old to enter the premises of a retail tobacco specialty business if:~~

HB0023S02 compared with HB0023S01

~~(i) the individual is accompanied by a parent or legal guardian who provides proof of age; or~~

~~(ii) the individual is present at the retail tobacco specialty shop for a bona fide commercial purpose other than to purchase a cigar, a cigarette, an electronic cigarette product, or tobacco in any form.~~

‡ Section 24. Section **77-39-101 (Effective 07/01/20)** is amended to read:

77-39-101 (Effective 07/01/20). Investigation of sales of alcohol, tobacco, and electronic cigarettes to underage individuals.

(1) As used in this section, [~~"electronic cigarette" is as~~] "electronic cigarette product" means the same as that term is 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 21 years old to enter into and attempt to purchase or make a purchase of alcohol from a retail establishment; or

(ii) Section [~~76-10-104~~] ~~for~~ 76-10-114 by requesting an individual under [~~the age specified in Subsection (2)(c)~~] 21 years old 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 product.

(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 product.

HB0023S02 compared with HB0023S01

(d) If a citation or information is issued, [it] the citation or information 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 June 30, 2021, 20 years old; and]~~

~~[(ii) beginning July 1, 2021, 21 years old.]~~

(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 product.

(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 product 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[?] within a 12-month period:

~~[(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:]~~

~~[(f) a cigar;]~~

~~[(H) a cigarette;]~~

~~[(HH) tobacco in any form; or]~~

~~[(FV) an electronic cigarette; and]~~

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

HB0023S02 compared with HB0023S01

(i) on a random basis at any one retail establishment location, not more often than four times for the attempted purchase of alcohol; and

(~~iii~~ii) a minimum of two times at a retail establishment that sells cigars, cigarettes, tobacco in any form, or electronic cigarette products, for the attempted purchase of:

(A) a cigar;

(B) a cigarette;

(C) tobacco in any form; or

(D) an electronic cigarette product.

(b) 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 product to an individual under the age established by Section 32B-4-403 or ~~[76-10-104]~~ 76-10-114; 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;

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

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

Section 25. **Effective date.**

This bill takes effect on July 1, 2020.