

Senator Kirk A. Cullimore proposes the following substitute bill:

TOBACCO AND ELECTRONIC CIGARETTE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon Hawkins

Senate Sponsor: Kirk A. Cullimore

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 to include a business that appears to be a retail tobacco specialty business or sells a flavored electronic cigarette product;
- ▶ amends permit violations for tobacco retailers;
- ▶ creates requirements regarding verification of age for retail tobacco specialty businesses;
- ▶ modifies and places sunset provisions on dates from which laws are applicable to retail tobacco specialty businesses;
- ▶ authorizes regulation and testing of manufacturer sealed electronic substances;
- ▶ requires a tobacco retailer to maintain certain records;
- ▶ provides that a retail tobacco specialty shop may not be located within 1,000 feet of a school or community college;
- ▶ creates civil penalties for a retail tobacco specialty business that allows an



26 individual under 21 years old in certain circumstances to gain access to the premises of the
27 business or to purchase a tobacco product or an electronic cigarette product;

28 ▶ increases the minimum age for obtaining, possessing, using, providing, or
29 furnishing tobacco products and paraphernalia and electronic cigarette products to
30 21 years old;

31 ▶ prohibits a manufacturer, wholesaler, or retailer from providing certain discounts or
32 giveaways for electronic cigarette products and tobacco products;

33 ▶ prohibits a general tobacco retailer from selling, providing, or distributing a
34 flavored electronic cigarette product;

35 ▶ makes it a crime to fraudulently use or transfer proof of age to gain access to a retail
36 tobacco specialty business or to purchase a tobacco product or electronic cigarette
37 product;

38 ▶ makes it a crime for an employee of a retail tobacco specialty business to allow an
39 individual under 21 years old to purchase a tobacco product or an electronic
40 cigarette product;

41 ▶ preempts certain ordinances, rules, and regulations on tobacco products, electronic
42 cigarette products, and tobacco paraphernalia;

43 ▶ amends the number of times that a peace officer must conduct an investigation of a
44 retail shop for underage tobacco sales; and

45 ▶ makes technical and conforming changes.

46 **Money Appropriated in this Bill:**

47 None

48 **Other Special Clauses:**

49 This bill provides a special effective date.

50 **Utah Code Sections Affected:**

51 AMENDS:

52 **10-8-41.6**, as last amended by Laws of Utah 2018, Chapter 231

53 **10-8-47 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232

54 **17-50-333**, as last amended by Laws of Utah 2018, Chapter 231

55 **26-57-103**, as enacted by Laws of Utah 2015, Chapter 132

56 **26-62-102**, as renumbered and amended by Laws of Utah 2018, Chapter 231

57 **26-62-205 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
58 **26-62-304 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
59 **26-62-305 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
60 **51-9-203 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapters 136
61 and 232
62 **53-3-229**, as last amended by Laws of Utah 2010, Chapters 114 and 276
63 **53-3-810**, as last amended by Laws of Utah 2010, Chapters 114 and 276
64 **53G-8-209**, as last amended by Laws of Utah 2019, Chapter 293
65 **59-14-703 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
66 **63I-1-210**, as last amended by Laws of Utah 2018, Chapter 236
67 **63I-1-217**, as last amended by Laws of Utah 2018, Chapters 236 and 347
68 **76-8-311.3**, as last amended by Laws of Utah 2010, Chapter 114
69 **76-10-101**, as last amended by Laws of Utah 2015, Chapters 66, 132 and last amended
70 by Coordination Clause, Laws of Utah 2015, Chapter 132
71 **76-10-103 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
72 **76-10-104 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
73 **76-10-104.1 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
74 **76-10-105 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
75 **76-10-105.1 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
76 **76-10-111**, as last amended by Laws of Utah 2010, Chapter 114
77 **76-10-112**, as enacted by Laws of Utah 1989, Chapter 193
78 **77-39-101 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232

79 ENACTS:

80 **26-62-206**, Utah Code Annotated 1953
81 **26-62-401**, Utah Code Annotated 1953
82 **26-62-402**, Utah Code Annotated 1953
83 **76-10-113**, Utah Code Annotated 1953
84 **76-10-114**, Utah Code Annotated 1953
85 **76-10-115**, Utah Code Annotated 1953
86 **76-10-116**, Utah Code Annotated 1953

87

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

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

90 **10-8-41.6. Regulation of retail tobacco specialty business.**

91 (1) As used in this section:

92 (a) "Community location" means:

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

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

95 (iii) a trade or technical school;

96 (iv) a church;

97 (v) a public library;

98 (vi) a public playground;

99 (vii) a public park;

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

101 (ix) a public recreational facility;

102 (x) a public arcade; or

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

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

105 (c) "Electronic cigarette product" means the same as that term is defined in Section

106 [76-10-101](#).

107 (d) "Flavored electronic cigarette product" means the same as that term is defined in

108 Section [76-10-101](#).

109 [~~(c)~~] (e) "Local health department" means the same as that term is defined in Section

110 [26A-1-102](#).

111 [~~(d)~~] (f) "Permittee" means a person licensed under this section to conduct business as

112 a retail tobacco specialty business.

113 [~~(e)~~] (g) "Retail tobacco specialty business" means a commercial establishment in

114 which:

115 (i) the sale of tobacco products and electronic cigarette products accounts for more

116 than 35% of the total quarterly gross receipts for the establishment;

117 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or

118 storage of tobacco products or electronic cigarette products;

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

121 (iv) the commercial establishment:

122 (A) holds itself out as a retail tobacco specialty business; and

123 (B) causes a reasonable person to believe the commercial establishment is a retail
 124 tobacco specialty business;

125 (v) any flavored electronic cigarette product is sold; or

126 ~~[(iv)]~~ (vi) the retail space features a self-service display for tobacco products or
 127 electronic cigarette products.

128 ~~[(f)]~~ (h) "Self-service display" means the same as that term is defined in Section
 129 76-10-105.1.

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

131 (i) the same as that term is defined in Section 76-10-101; or

132 (ii) tobacco paraphernalia as defined in Section 76-10-101.

133 ~~[(i) any cigar, cigarette, or electronic cigarette, as those terms are defined in Section~~
 134 ~~76-10-101;]~~

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

136 ~~[(A) chewing tobacco; or]~~

137 ~~[(B) any substitute for a tobacco product, including flavoring or additives to tobacco;~~
 138 ~~and]~~

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

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

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

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

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

150 business is located within:

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

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

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

- 164 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
165 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in
166 which the retail tobacco specialty business is located; and
- 167 (ii) a valid license to sell tobacco products from the State Tax Commission.

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

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

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

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

- 178 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,
179 Part 16, Pattern of Unlawful Activity Act;
- 180 (ii) if a licensee violates ~~[the regulations]~~ federal law or federal regulations restricting

181 the sale and distribution of [~~cigarettes and smokeless tobacco~~] tobacco products or electronic
 182 cigarette products to protect children and adolescents [~~issued by the United States Food and~~
 183 ~~Drug Administration, 21 C.F.R. Part 1140~~];

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

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

187 (7) (a) [~~In accordance with Subsection (7)(b)~~] Except as provided in Subsection (8), a
 188 retail tobacco specialty business that has a business license and is operating in a municipality in
 189 accordance with all applicable laws except for the requirement in Subsection (4), on or before
 190 December 31, [2015] 2018, is exempt from Subsection (4).

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

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

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

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

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

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

202 (B) zoning ordinances;

203 (C) building codes; and

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

206 (8) Beginning August 15, 2022, a retail tobacco specialty business that has a business
 207 license and is operating in a municipality may not be located within 1,000 feet of any school or
 208 a community college described in Subsection [53B-16-101\(1\)\(b\)\(iii\)](#).

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

210 **10-8-47 (Effective 07/01/20). Intoxication -- Fights -- Disorderly conduct --**

211 **Assault and battery -- Petit larceny -- Riots and disorderly assemblies -- Firearms and**

212 fireworks -- False pretenses and embezzlement -- Sale of liquor, narcotics, or tobacco to
213 minors -- Possession of controlled substances -- Treatment of alcoholics and narcotics or
214 drug addicts.

215 (1) A municipal legislative body may:

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

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

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

223 (d) provide against and prevent the offense of obtaining money or property under false
224 pretenses and the offense of embezzling money or property in the cases when the money or
225 property embezzled or obtained under false pretenses does not exceed in value the sum of
226 \$500;

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

229 (f) prohibit the sale, giving away, or furnishing of [~~tobacco or e-cigarettes~~] a tobacco
230 product or an electronic cigarette product, as those terms are defined in Section [76-10-101](#), to
231 an individual younger than[~~:(i) beginning July 1, 2020, and ending June 30, 2021, 20 years~~
232 ~~old; and (ii) beginning July 1, 2021,;~~] 21 years old.

233 (2) A city may:

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

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

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

242 **17-50-333. Regulation of retail tobacco specialty business.**

- 243 (1) As used in this section:
- 244 (a) "Community location" means:
- 245 (i) a public or private kindergarten, elementary, middle, junior high, or high school;
- 246 (ii) a licensed child-care facility or preschool;
- 247 (iii) a trade or technical school;
- 248 (iv) a church;
- 249 (v) a public library;
- 250 (vi) a public playground;
- 251 (vii) a public park;
- 252 (viii) a youth center or other space used primarily for youth oriented activities;
- 253 (ix) a public recreational facility;
- 254 (x) a public arcade; or
- 255 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
- 256 (b) "Department" means the Department of Health, created in Section [26-1-4](#).
- 257 (c) "Electronic cigarette product" means the same as that term is defined in Section
- 258 [76-10-101](#).
- 259 (d) "Flavored electronic cigarette product" means the same as that term is defined in
- 260 Section [76-10-101](#).
- 261 [~~(c)~~] (d) "Licensee" means a person licensed under this section to conduct business as a
- 262 retail tobacco specialty business.
- 263 [~~(d)~~] (e) "Local health department" means the same as that term is defined in Section
- 264 [26A-1-102](#).
- 265 [~~(e)~~] (f) "Retail tobacco specialty business" means a commercial establishment in
- 266 which:
- 267 (i) the sale of tobacco products and electronic cigarette products accounts for more
- 268 than 35% of the total quarterly gross receipts for the establishment;
- 269 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
- 270 storage of tobacco products or electronic cigarette products;
- 271 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
- 272 tobacco products or electronic cigarette products; [~~or~~]
- 273 (iv) the commercial establishment:

274 (A) holds itself out as a retail tobacco specialty business; and
 275 (B) causes a reasonable person to believe the commercial establishment is a retail
 276 tobacco specialty business;
 277 (v) any flavored electronic cigarette product is sold; or
 278 ~~[(iv)]~~ (vi) the retail space features a self-service display for tobacco products or
 279 electronic cigarette products.

280 ~~[(f)]~~ (g) "Self-service display" means the same as that term is defined in Section
 281 76-10-105.1.

282 ~~[(g)]~~ (h) "Tobacco product" means:

283 (i) the same as that term is defined in Section 76-10-101; or

284 (ii) tobacco paraphernalia as defined in Section 76-10-101.

285 ~~[(i) any cigar, cigarette, or electronic cigarette as those terms are defined in Section~~
 286 ~~76-10-101;]~~

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

288 ~~[(A) chewing tobacco; or]~~

289 ~~[(B) any substitute for a tobacco product, including flavoring or additives to tobacco;~~
 290 ~~and]~~

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

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

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

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

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

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

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

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

306 (A) agriculture use; or

307 (B) residential use.

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

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

316 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
317 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in
318 which the retail tobacco specialty business is located; and

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

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

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

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

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

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

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

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

335 (iii) upon the recommendation of the department or a local health department under

336 Title 26, Chapter 62, Tobacco Retail Permit; or

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

338 (7) (a) ~~[In accordance with Subsection (7)(b)]~~ Except as provided in Subsection (8), a
339 retail tobacco specialty business that has a business license and is operating in a county in
340 accordance with all applicable laws except for the requirement in Subsection (4), on or before
341 December 31, ~~[2015]~~ 2018, is exempt from Subsection (4).

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

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

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

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

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

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

353 (B) zoning ordinances;

354 (C) building codes; and

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

357 (8) Beginning August 15, 2022, a retail tobacco specialty business that has a business
358 license and is operating in a county may not be located within 1,000 feet of any school or a
359 community college described in Subsection [53B-16-101\(1\)\(b\)\(iii\)](#).

360 Section 4. Section **26-57-103** is amended to read:

361 **26-57-103. Electronic cigarette products -- Labeling -- Manufacturing and**
362 **quality control standards -- Advertising.**

363 (1) The department shall, in consultation with a local health department, as defined in
364 Section [26A-1-102](#), and with input from members of the public, establish~~[, no later than~~
365 ~~January 1, 2016,]~~ by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
366 Rulemaking Act, the standards for electronic cigarette substance:

- 367 (a) labeling;
368 (b) nicotine content;
369 (c) packaging; and
370 (d) product quality.

371 ~~[(2) The standards established by the department under Subsection (1) do not apply to a~~
372 ~~manufacturer sealed electronic cigarette substance.]~~

373 (2) On or before January 1, 2021, the department shall, in consultation with a local
374 health department, as defined in Section 26A-1-102, and with input from members of the
375 public, establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
376 Rulemaking Act, the standards for manufacturer sealed electronic cigarette substance:

- 377 (a) labeling;
378 (b) nicotine content;
379 (c) packaging; and
380 (d) product quality.

381 (3) (a) [Beginning on July 1, 2016, a] A person may not sell an electronic cigarette
382 substance unless the electronic cigarette substance complies with the standards established by
383 the department under Subsection (1).

384 (b) Beginning on July 1, 2021, a person may not sell a manufacturer sealed electronic
385 cigarette substance unless the manufacturer sealed electronic cigarette substance complies with
386 the standards established by the department under Subsection (2).

387 (4) (a) [Beginning on July 1, 2016, a] A local health department may not enact a rule or
388 regulation regarding electronic cigarette substance labeling, nicotine content, packaging, or
389 product quality that is not identical to the standards established by the department under
390 ~~[Subsection (1)]~~ Subsections (1) and (2).

391 (b) Except as provided in Subsection (4)(c), a local health department may enact a rule
392 or regulation regarding electronic cigarette substance manufacturing.

393 (c) A local health department may not enact a rule or regulation regarding a
394 manufacturer sealed electronic cigarette substance.

395 (5) [Beginning on July 1, 2016, a] A person may not advertise an electronic cigarette
396 product:

- 397 (a) as a tobacco cessation device;

398 (b) if the person is not licensed to sell an electronic cigarette product under Section
399 [59-14-803](#); or

400 (c) during a period of time when the person's license to sell an electronic cigarette
401 product under Section [59-14-803](#) has been suspended or revoked.

402 Section 5. Section **26-62-102** is amended to read:

403 **26-62-102. Definitions.**

404 As used in this chapter:

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

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

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

408 (2) "Electronic cigarette product" means the same as that term is defined in Section
409 [76-10-101](#).

410 [~~2~~] (3) "Employee" means an employee of a tobacco retailer.

411 [~~3~~] (4) "Enforcing agency" means the state Department of Health, or any local health
412 department enforcing the provisions of this chapter.

413 [~~4~~] (5) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco
414 specialty business.

415 [~~5~~] (6) "Local health department" means the same as that term is defined in Section
416 [26A-1-102](#).

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

419 [~~6~~] (8) "Permit" means a tobacco retail permit issued under this chapter.

420 (9) (a) "Proof of age" means:

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

423 (ii) a valid identification that:

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

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

428 (C) includes date of birth; and

429 (D) has a picture affixed;
 430 (iii) a valid driver license certificate that is issued under Title 53, Chapter 3, Uniform
 431 Driver License Act, or in accordance with the laws of the state in which the valid driver license
 432 is issued;

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

434 (A) includes date of birth; and

435 (B) has a picture affixed; or

436 (v) a valid passport.

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

439 ~~[(7)]~~ (10) "Retail tobacco specialty business" means the same as that term is defined:

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

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

442 ~~[(8)]~~ (11) "Tax commission license" means a license issued by the State Tax
 443 Commission under:

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

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

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

447 ~~[(9)]~~ (12) "Tobacco product" means:

448 (a) the same as that term is defined in Section 76-10-101; or

449 (b) tobacco paraphernalia as defined in Section 76-10-101.

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

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

453 ~~[(i) chewing tobacco; or]~~

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

455 ~~or]~~

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

457 ~~[(10)]~~ (13) "Tobacco retailer" means a person that is required to obtain a tax
 458 commission license.

459 Section 6. Section 26-62-205 (Effective 07/01/20) is amended to read:

460 **26-62-205 (Effective 07/01/20). Permit requirements for a retail tobacco specialty**
461 **business.**

462 A retail tobacco specialty business shall:

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

465 ~~[(1)]~~ (2) except as provided in Subsection 76-10-105.1(4), prohibit any individual from
466 entering the business if the individual is~~[(a) beginning July 1, 2020, and ending June 30,~~
467 ~~2021, under 20 years old; and (b) beginning July 1, 2021,]~~ under 21 years old; and

468 ~~[(2)]~~ (3) prominently display at the retail tobacco specialty business a sign on the
469 public entrance of the business that communicates:

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

472 (b) the prohibition on the sale of tobacco products and electronic cigarette products to
473 an individual under 21 years old as described in Sections 76-10-104, 76-10-104.1, 76-10-105.1,
474 and 76-10-114.

475 Section 7. Section **26-62-206** is enacted to read:

476 **26-62-206. Permit requirements for the sale of tobacco products and electronic**
477 **cigarette products.**

478 (1) A tobacco retailer shall:

479 (a) provide the customer with an itemized receipt for each sale of a tobacco product or
480 an electronic cigarette product that separately identifies:

481 (i) the name of the tobacco product or the electronic cigarette product;

482 (ii) the amount charged for each tobacco product or electronic cigarette product; and

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

484 (b) maintain an itemized transaction log for each sale of a tobacco product or an
485 electronic cigarette product that separately identifies:

486 (i) the name of the tobacco product or the electronic cigarette product;

487 (ii) the amount charged for each tobacco product or electronic cigarette product; and

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

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

490 (a) maintained for at least one year after the date of each transaction in the itemized

491 transaction log; and

492 (b) made available to an enforcing agency or a peace officer at the request of the
493 enforcing agency or the peace officer that is no less restrictive than the provisions in this part.

494 Section 8. Section **26-62-304 (Effective 07/01/20)** is amended to read:

495 **26-62-304 (Effective 07/01/20). Hearing -- Evidence of criminal conviction.**

496 (1) At a civil hearing conducted under Section 26-62-302, evidence of the final
497 criminal conviction of a tobacco retailer or employee for violation of Section [~~76-10-104~~]
498 76-10-114 at the same location and within the same time period as the location and time period
499 alleged in the civil hearing for violation of this chapter for sale of tobacco products to an
500 individual under [~~the following ages~~] 21 years old is prima facie evidence of a violation of this
501 chapter[;].

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

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

504 (2) If the tobacco retailer is convicted of violating Section [~~76-10-104~~] 76-10-114, the
505 enforcing agency:

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

508 (b) may revoke or suspend a permit in accordance with Section 26-62-305 or
509 26-62-402.

510 Section 9. Section **26-62-305 (Effective 07/01/20)** is amended to read:

511 **26-62-305 (Effective 07/01/20). Penalties.**

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

516 (b) If multiple violations are found in a single inspection by an enforcing agency or
517 investigation[~~, only one violation shall count toward the penalties described in this section.~~ (2)
518 ~~(a) The administrative penalty for]~~ by a law enforcement agency under Section 77-39-101, the
519 enforcing agency shall treat the multiple violations as one single violation under Subsections
520 (2), (3), and (4).

521 (2) Except as provided in Subsection (3) and Section 26-62-402, if a violation is found

522 in an inspection by an enforcing agency or an investigation by a law enforcement agency under
523 Section 77-39-101, the enforcing agency shall:

524 (a) on a first violation at a retail location [is], impose a penalty of [not] no more than
525 \$500[-];

526 (b) [The administrative penalty for] on a second violation at the same retail location
527 that occurs within one year of a previous violation [is], impose a penalty of [not] no more than
528 \$750[-];

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

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

533 (ii) a penalty of [not] no more than \$1,000[-]; and

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

535 [~~(a) revoke a permit if a fourth violation occurs within two years of three previous~~
536 violations;]

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

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

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

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

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

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

545 (ii) revoke a permit of the retailer; and

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

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

552 (a) on a first violation, impose a fine of no more than \$2,000 on the general tobacco

553 retailer; and

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

556 (i) impose a fine not exceeding \$5,000; and

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

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

562 ~~[(4)]~~ (5) (a) Except when a transfer described in Subsection ~~[(5)]~~ (6) occurs, a local
563 health department may not issue a permit to:

564 (i) a tobacco retailer for whom a permit is suspended or revoked under Subsection (2)
565 or (3) or Section 26-62-402; or

566 (ii) a tobacco retailer that has the same proprietor, director, corporate officer, partner,
567 or other holder of significant interest as another tobacco retailer for whom a permit is
568 suspended or revoked under Subsection (2) or (3) or Section 26-62-402.

569 (b) A person whose permit:

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

573 (ii) is revoked under this section or Section 26-62-402 may not apply for a new permit
574 for any tobacco retailer for a period of 24 months after the day on which an enforcing agency
575 revokes the permit.

576 ~~[(5)]~~ (6) Violations of this chapter, Section 10-8-41.6, ~~[or]~~ Section 17-50-333, or
577 Section 26-62-402 that occur at a tobacco retailer location shall stay on the record for that
578 tobacco retailer location unless:

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

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

583 Section 10. Section **26-62-401** is enacted to read:

584 **Part 4. Proof of Age Requirements**

585 **26-62-401. Verification of proof of age.**

586 (1) As used in this section:

587 (a) "Employee" means an employee of a retail tobacco specialty business.

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

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

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

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

594 (b) verify the validity of the proof of age electronically in accordance with Subsection
595 (4).

596 (4) A retail tobacco specialty business shall use an electronic verification program to
597 assist the business in complying with the requirements of this section.

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

600 (b) Information obtained under this section:

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

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

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

606 (i) except as provided in Subsection (6)(b), enter a retail tobacco specialty business; or

607 (ii) purchase a tobacco product or an electronic cigarette product.

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

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

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

614 (7) To determine whether the individual described in Subsection (2) is 21 years old or

615 older, the following may request an individual described in Subsection (2) to present proof of
616 age:

- 617 (a) an employee;
- 618 (b) a peace officer; or
- 619 (c) a representative of an enforcing agency.

620 Section 11. Section **26-62-402** is enacted to read:

621 **26-62-402. Penalties.**

622 (1) Except as provided in Subsection (2), if a violation of this part is found in an
623 investigation of a retail tobacco specialty business by a law enforcement agency under Section
624 77-39-101, the enforcing agency shall:

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

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

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

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

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

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

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

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

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

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

643 (a) on a first violation, impose a fine not exceeding \$2,000; and

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

646 (i) impose a fine not exceeding \$5,000;
647 (ii) revoke the retail tobacco specialty business's permit; and
648 (iii) recommend to a municipality or county that the retail tobacco specialty license
649 issued under Section [10-8-61.6](#) or [17-50-333](#) to the retail tobacco specialty business be
650 suspended or revoked.

651 (3) If multiple violations are found in a single investigation by a law enforcement
652 agency under Section [77-39-101](#), the enforcing agency shall treat the multiple violations as a
653 single violation.

654 Section 12. Section **51-9-203 (Effective 07/01/20)** is amended to read:

655 **51-9-203 (Effective 07/01/20). Requirements for tobacco and electronic cigarette**
656 **programs.**

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

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

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

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

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

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

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

672 (C) if directed toward youth:

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

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

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

677 (IV) offers a positive focus that is inclusive of all youth; and
678 (iv) for enforcement, control, and compliance program, the request shall demonstrate
679 that the proposed program can reasonably be expected to reduce the extent to which [~~tobacco~~
680 ~~products~~] tobacco products and electronic cigarette products, as those terms are defined in
681 Section 76-10-101, are available to individuals under [~~the following ages: (A) beginning July~~
682 ~~1, 2020, and ending June 30, 2021, 20 years old; and (B) beginning July 1, 2021,]~~ 21 years
683 old;

684 (b) agree, by contract, to file an annual written report with the Department of Health
685 that contains the following:

686 (i) the amount funded;

687 (ii) the amount expended;

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

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

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

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

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

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

699 (A) the provisions of the Master Settlement Agreement;

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

701 (C) Title 26, Chapter 62, Part 3, Enforcement; and

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

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

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

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

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

708 Subsection (1). The review and evaluation:

709 (a) shall include a comparison of annual smoking trends;

710 (b) may be conducted by an independent evaluator; and

711 (c) may be paid for by funds appropriated from the account for that purpose.

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

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

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

715 Subsection (1) shall:

716 (a) repay the state as provided in Subsection (1)(d); and

717 (b) be disqualified from receiving funds under this part in any subsequent fiscal year.

718 (5) The attorney general shall be responsible for recovering funds that are required to
719 be repaid to the state under this section.

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

722 Section 13. Section **53-3-229** is amended to read:

723 **53-3-229. Prohibited uses of license certificate -- Penalty.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

764 Section 14. Section [53-3-810](#) is amended to read:

765 **[53-3-810. Prohibited uses of identification card -- Penalties.](#)**

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

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

769 (b) display or to represent as the ~~[person's]~~ individual's own identification card an

770 identification card not issued to the ~~[person]~~ individual;

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

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

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

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

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

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

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

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

787 (c) acquire, use, display, or transfer a false or altered identification card to procure~~[-]~~ a
788 tobacco product or an electronic cigarette product, as those terms are defined in Section
789 [76-10-101](#).

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

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

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

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

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

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

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

801 services; or

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

803 Section 15. Section **53G-8-209** is amended to read:

804 **53G-8-209. Extracurricular activities -- Prohibited conduct -- Reporting of**
805 **violations -- Limitation of liability.**

806 (1) The Legislature recognizes that:

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

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

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

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

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

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

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

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

832 activities;

833 (ii) the illicit use, possession, or distribution of:

834 (A) a controlled [substances] substance or drug paraphernalia~~[-, and the use, possession,~~
835 ~~or distribution of an electronic cigarette as defined in Section 76-10-101, tobacco, or alcoholic~~
836 ~~beverages contrary to law, and];~~

837 (B) a tobacco product or an electronic cigarette product, as those terms are defined in
838 Section 76-10-101; or

839 (C) an alcoholic beverage;

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

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

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

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

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

853 Section 16. Section 59-14-703 (Effective 07/01/20) is amended to read:

854 **59-14-703 (Effective 07/01/20). Certification of cigarette rolling machine**
855 **operators -- Renewal of certification -- Requirements for certification or renewal of**
856 **certification -- Denial.**

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

859 (a) locate a cigarette rolling machine within this state;

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

861 or

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

863 (i) the cigarette rolling machine operator; or

864 (ii) another person at the location of the cigarette rolling machine operator's cigarette
865 rolling machine.

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

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

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

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

875 (i) December 31 of each year; or

876 (ii) the day on which there is a change in any of the information the cigarette rolling
877 machine operator provides on the form described in Subsection (3).

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

880 (a) identify:

881 (i) the cigarette rolling machine operator's name and address;

882 (ii) the location, make, and brand of the cigarette rolling machine operator's cigarette
883 rolling machine; and

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

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

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

890 (A) brand family listed on the commission's directory listing required by Section
891 [59-14-603](#); and

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

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

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

900 (iv) the cigarettes produced from the cigarette rolling machine shall comply with Title
901 53, Chapter 7, Part 4, The Reduced Cigarette Ignition Propensity and Firefighter Protection
902 Act;

903 (v) the cigarette rolling machine shall be located in a separate and defined area where
904 the cigarette rolling machine operator ensures that an individual younger than ~~[the age specified~~
905 ~~in Subsection (6)]~~ 21 years old may not be:

- 906 (A) present at any time; or
- 907 (B) permitted to enter at any time; and

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

911 ~~[(6) For purposes of Subsection (5), an individual is younger than:]~~
912 ~~[(a) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and]~~
913 ~~[(b) beginning July 1, 2021, 21 years old.]~~

914 ~~[(7)]~~ (6) If the commission determines that a cigarette rolling machine operator meets
915 the requirements for certification or renewal of certification under this section, the commission
916 shall grant the certification or renewal of certification.

917 ~~[(8)]~~ (7) If the commission determines that a cigarette rolling machine operator does
918 not meet the requirements for certification or renewal of certification under this section, the
919 commission shall:

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

923 Section 17. Section **63I-1-210** is amended to read:

924 **63I-1-210. Repeal dates, Title 10.**

925 (1) Subsection 10-8-41.6(7), the language that states "December 31, 2018" is repealed
926 July 1, 2022, and replaced with "December 31, 2015".

927 (2) Section 10-9a-526 is repealed December 31, 2020.

928 Section 18. Section **63I-1-217** is amended to read:

929 **63I-1-217. Repeal dates, Title 17.**

930 (1) Subsection 17-16-21(2)(d) is repealed July 1, 2023.

931 (2) Subsection 17-50-333(7), the language that states "December 31, 2018" is repealed
932 July 1, 2022, and replaced with "December 31, 2015".

933 Section 19. Section **76-8-311.3** is amended to read:

934 **76-8-311.3. Items prohibited in correctional and mental health facilities --**

935 **Penalties.**

936 (1) As used in this section:

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

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

941 (c) "Correctional facility" means:

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

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

946 (iii) any juvenile detention facility; and

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

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

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

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

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

- 956 (h) "Secure area" is as defined in Section [76-8-311.1](#).
- 957 (i) "Tobacco product" means the same as that term is defined in Section [76-10-101](#).
- 958 (2) Notwithstanding Section [76-10-500](#), a correctional or mental health facility may
959 provide by rule that no firearm, ammunition, dangerous weapon, implement of escape,
960 explosive, controlled substance, spirituous or fermented liquor, medicine, or poison in any
961 quantity may be:
- 962 (a) transported to or upon a correctional or mental health facility;
 - 963 (b) sold or given away at any correctional or mental health facility;
 - 964 (c) given to or used by any offender at a correctional or mental health facility; or
 - 965 (d) knowingly or intentionally possessed at a correctional or mental health facility.
- 966 (3) It is a defense to any prosecution under this section if the accused in committing the
967 act made criminal by this section with respect to:
- 968 (a) a correctional facility operated by the Department of Corrections, acted in
969 conformity with departmental rule or policy;
 - 970 (b) a correctional facility operated by a municipality, acted in conformity with the
971 policy of the municipality;
 - 972 (c) a correctional facility operated by a county, acted in conformity with the policy of
973 the county; or
 - 974 (d) a mental health facility, acted in conformity with the policy of the mental health
975 facility.
- 976 (4) (a) [~~Any person~~] An individual who transports to or upon a correctional facility, or
977 into a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or
978 implement of escape with intent to provide or sell it to any offender, is guilty of a second
979 degree felony.
- 980 (b) [~~Any person~~] An individual who provides or sells to any offender at a correctional
981 facility, or any detainee at a secure area of a mental health facility, any firearm, ammunition,
982 dangerous weapon, or implement of escape is guilty of a second degree felony.
 - 983 (c) [~~Any~~] An offender who possesses at a correctional facility, or [~~any~~] a detainee who
984 possesses at a secure area of a mental health facility, any firearm, ammunition, dangerous
985 weapon, or implement of escape is guilty of a second degree felony.
 - 986 (d) [~~Any person~~] An individual who, without the permission of the authority operating

987 the correctional facility or the secure area of a mental health facility, knowingly possesses at a
988 correctional facility or a secure area of a mental health facility any firearm, ammunition,
989 dangerous weapon, or implement of escape is guilty of a third degree felony.

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

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

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

1000 (b) [~~A person~~] An individual is guilty of a third degree felony who knowingly violates
1001 correctional or mental health facility policy or rule by providing or selling to any offender at a
1002 correctional facility or detainee within a secure area of a mental health facility any:

- 1003 (i) spirituous or fermented liquor;
- 1004 (ii) medicine, whether or not lawfully prescribed for the offender; or
- 1005 (iii) poison in any quantity.

1006 (c) An inmate is guilty of a third degree felony who, in violation of correctional or
1007 mental health facility policy or rule, possesses at a correctional facility or in a secure area of a
1008 mental health facility any:

- 1009 (i) spirituous or fermented liquor;
- 1010 (ii) medicine, other than medicine provided by the facility's health care providers in
1011 compliance with facility policy; or
- 1012 (iii) poison in any quantity.

1013 (d) [~~A person~~] An individual is guilty of a class A misdemeanor who, with the intent to
1014 directly or indirectly provide or sell any tobacco product or electronic cigarette product to an
1015 offender, directly or indirectly:

- 1016 (i) transports, delivers, or distributes any tobacco product or electronic cigarette
1017 product to an offender or on the grounds of any correctional facility;

1018 (ii) solicits, requests, commands, coerces, encourages, or intentionally aids another
1019 person to transport any tobacco product or electronic cigarette product to an offender or on any
1020 correctional facility, if the person is acting with the mental state required for the commission of
1021 an offense; or

1022 (iii) facilitates, arranges, or causes the transport of any tobacco product or electronic
1023 cigarette product in violation of this section to an offender or on the grounds of any
1024 correctional facility.

1025 (e) [~~A person~~] An individual is guilty of a class A misdemeanor who, without the
1026 permission of the authority operating the correctional or mental health facility, fails to declare
1027 or knowingly possesses at a correctional facility or in a secure area of a mental health facility
1028 any:

1029 (i) spirituous or fermented liquor;

1030 (ii) medicine; or

1031 (iii) poison in any quantity.

1032 (f) [~~A person~~] An individual is guilty of a class B misdemeanor who, without the
1033 permission of the authority operating the correctional facility, knowingly engages in any
1034 activity that would facilitate the possession of any contraband by an offender in a correctional
1035 facility. The provisions of Subsection (5)(d) regarding any tobacco product or electronic
1036 cigarette product take precedence over this Subsection (5)(f).

1037 (g) Exemptions may be granted for worship for Native American inmates pursuant to
1038 Section [64-13-40](#).

1039 (6) The possession, distribution, or use of a controlled substance at a correctional
1040 facility or in a secure area of a mental health facility shall be prosecuted in accordance with
1041 Title 58, Chapter 37, Utah Controlled Substances Act.

1042 (7) The department shall make rules under Title 63G, Chapter 3, Utah Administrative
1043 Rulemaking Act, to establish guidelines for providing written notice to visitors that providing
1044 any tobacco product or electronic cigarette product to offenders is a class A misdemeanor.

1045 Section 20. Section **76-10-101** is amended to read:

1046 **76-10-101. Definitions.**

1047 As used in this part:

1048 (1) "Cigar" means a product that contains nicotine, is intended to be burned under

1049 ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in
1050 any substance containing tobacco, other than any roll of tobacco that is a cigarette as described
1051 in Subsection (2).

1052 (2) "Cigarette" means a product that contains nicotine, is intended to be burned under
1053 ordinary conditions of use, and consists of:

1054 (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

1055 (b) any roll of tobacco wrapped in any substance containing tobacco which, because of
1056 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to
1057 be offered to, or purchased by, consumers as a cigarette described in Subsection (2)(a).

1058 ~~[(3) "Electronic cigarette" means an electronic cigarette product, as defined in Section~~
1059 ~~59-14-802;]~~

1060 (3) (a) "Electronic cigarette" means:

1061 (i) any electronic oral device:

1062 (A) that provides an aerosol or a vapor of nicotine or other substance; and

1063 (B) which simulates smoking through the use or inhalation of the device;

1064 (ii) a component of the device described in Subsection (3)(a)(i); and

1065 (iii) an accessory sold in the same package as the device described in Subsection
1066 (3)(a)(i).

1067 (b) "Electronic cigarette" includes an oral device that is:

1068 (i) composed of a heating element, battery, or electronic circuit; and

1069 (ii) marketed, manufactured, distributed, or sold as:

1070 (A) an e-cigarette;

1071 (B) an e-cigar;

1072 (C) an e-pipe; or

1073 (D) any other product name or descriptor, if the function of the product meets the
1074 definition of Subsection (3)(a).

1075 (4) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette
1076 substance, or a prefilled electronic cigarette.

1077 (5) "Electronic cigarette substance" means any substance, including liquid containing
1078 nicotine, used or intended for use in an electronic cigarette.

1079 (6) (a) "Flavored electronic cigarette product" means an electronic cigarette product

1080 that has a taste or smell that is distinguishable by an ordinary consumer either before or during
1081 use or consumption of the electronic cigarette product.

1082 (b) "Flavored electronic cigarette product" includes an electronic cigarette product that
1083 has a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic
1084 beverage, herb, or spice.

1085 (c) "Flavored electronic cigarette product" does not include an electronic cigarette
1086 product that:

1087 (i) has a taste or smell of only tobacco, mint, or menthol; or

1088 (ii) has been approved by an order granting a premarket tobacco product application of
1089 the electronic cigarette product by the United States Food and Drug Administration under 21
1090 U.S.C. Sec. 387j(c)(1)(A)(i).

1091 ~~(4)~~ (7) "Place of business" includes:

1092 (a) a shop;

1093 (b) a store;

1094 (c) a factory;

1095 (d) a public garage;

1096 (e) an office;

1097 (f) a theater;

1098 (g) a recreation hall;

1099 (h) a dance hall;

1100 (i) a poolroom;

1101 (j) a café;

1102 (k) a cafeteria;

1103 (l) a cabaret;

1104 (m) a restaurant;

1105 (n) a hotel;

1106 (o) a lodging house;

1107 (p) a streetcar;

1108 (q) a bus;

1109 (r) an interurban or railway passenger coach;

1110 (s) a waiting room; and

- 1111 (t) any other place of business.
- 1112 (8) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled
- 1113 with an electronic cigarette substance.
- 1114 (9) "Retail tobacco specialty business" means the same as that term is defined in
- 1115 Section 26-62-102.
- 1116 ~~[(5)]~~ (10) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other
- 1117 lighted smoking equipment.
- 1118 (11) (a) "Tobacco paraphernalia" means equipment, product, or material of any kind
- 1119 that is used, intended for use, or designed for use to package, repack, store, contain,
- 1120 conceal, ingest, inhale, or otherwise introduce a tobacco product or an electronic cigarette
- 1121 substance into the human body.
- 1122 (b) "Tobacco paraphernalia" includes:
- 1123 (i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
- 1124 screens, permanent screens, hashish heads, or punctured metal bowls;
- 1125 (ii) water pipes;
- 1126 (iii) carburetion tubes and devices;
- 1127 (iv) smoking and carburetion masks;
- 1128 (v) roach clips, meaning objects used to hold burning material, such as a cigarette, that
- 1129 has become too small or too short to be held in the hand;
- 1130 (vi) chamber pipes;
- 1131 (vii) carburetor pipes;
- 1132 (viii) electric pipes;
- 1133 (ix) air-driven pipes;
- 1134 (x) chillums;
- 1135 (xi) bongs; and
- 1136 (xii) ice pipes or chillers.
- 1137 (c) "Tobacco paraphernalia" does not include matches or lighters.
- 1138 (12) "Tobacco product" means:
- 1139 (a) a cigar;
- 1140 (b) a cigarette; and
- 1141 (c) tobacco in any form, including:

- 1142 (i) chewing tobacco; and
- 1143 (ii) any substitute for tobacco, including flavoring or additives to tobacco.

1144 (13) "Tobacco retailer" means:

1145 (a) a general tobacco retailer, as that term is defined in Section [26-62-102](#); and

1146 (b) a retail tobacco specialty business.

1147 Section 21. Section **76-10-103 (Effective 07/01/20)** is amended to read:

1148 **76-10-103 (Effective 07/01/20). Permitting minors to use a tobacco product or an**
1149 **electronic cigarette product in place of business.**

1150 It is a class C misdemeanor for the proprietor of any place of business to knowingly
1151 permit an individual under [~~the following ages~~] 21 years old to frequent a place of business
1152 while the individual is using [~~tobacco;~~] a tobacco product or an electronic cigarette product.

1153 [~~(1) beginning July 1, 2020, and ending June 30, 2021, under 20 years old; and]~~

1154 [~~(2) beginning July 1, 2021, under 21 years old.]~~

1155 Section 22. Section **76-10-104 (Effective 07/01/20)** is amended to read:

1156 **76-10-104 (Effective 07/01/20). Providing a cigar, cigarette, electronic cigarette,**
1157 **or tobacco to a minor -- Penalties.**

1158 [~~(1) A person violates this section who knowingly, intentionally, recklessly, or with~~
1159 ~~criminal negligence provides a cigar, cigarette, electronic cigarette, or tobacco in any form, to~~
1160 ~~an individual under the following ages, is guilty of a class C misdemeanor on the first offense,~~
1161 ~~a class B misdemeanor on the second offense, and a class A misdemeanor on subsequent~~
1162 ~~offenses:]~~

1163 [~~(a) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and]~~

1164 [~~(b) beginning July 1, 2021, 21 years old.]~~

1165 [~~(2)~~] (1) As used in this section "provides":

1166 (a) includes selling, giving, furnishing, sending, or causing to be sent; and

1167 (b) does not include the acts of the United States Postal Service or other common
1168 carrier when engaged in the business of transporting and delivering packages for others or the
1169 acts of a person, whether compensated or not, who transports or delivers a package for another
1170 person without any reason to know of the package's content.

1171 (2) An individual who knowingly, intentionally, recklessly, or with criminal negligence
1172 provides a tobacco product or an electronic cigarette product to an individual who is under 21

1173 years old, is guilty of:

1174 (a) a class C misdemeanor on the first offense;

1175 (b) a class B misdemeanor on the second offense; and

1176 (c) a class A misdemeanor on any subsequent offense.

1177 (3) This section does not apply to conduct of an employee of a tobacco retailer that is a
1178 violation of Section [76-10-114](#).

1179 Section 23. Section **76-10-104.1 (Effective 07/01/20)** is amended to read:

1180 **76-10-104.1 (Effective 07/01/20). Providing tobacco paraphernalia to minors --**

1181 **Penalties.**

1182 (1) ~~[For purposes of this section: (a) "Provides"]~~ As used in this section, "provides":

1183 ~~[(i) (a) includes selling, giving, furnishing, sending, or causing to be sent; and~~

1184 ~~[(ii) (b) does not include the acts of the United States Postal Service or other common~~
1185 ~~carrier when engaged in the business of transporting and delivering packages for others or the~~
1186 ~~acts of a person, whether compensated or not, who transports or delivers a package for another~~
1187 ~~person without any reason to know of the package's content.~~

1188 ~~[(b) "Tobacco paraphernalia":]~~

1189 ~~[(i) means equipment, product, or material of any kind that is used, intended for use, or~~
1190 ~~designed for use to package, repackage, store, contain, conceal, ingest, inhale, or otherwise~~
1191 ~~introduce a cigar, cigarette, or tobacco in any form into the human body, including:]~~

1192 ~~[(A) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without~~
1193 ~~screens, permanent screens, hashish heads, or punctured metal bowls;]~~

1194 ~~[(B) water pipes;]~~

1195 ~~[(C) carburetion tubes and devices;]~~

1196 ~~[(D) smoking and carburetion masks;]~~

1197 ~~[(E) roach clips, meaning objects used to hold burning material, such as a cigarette,~~
1198 ~~that has become too small or too short to be held in the hand;]~~

1199 ~~[(F) chamber pipes;]~~

1200 ~~[(G) carburetor pipes;]~~

1201 ~~[(H) electric pipes;]~~

1202 ~~[(I) air-driven pipes;]~~

1203 ~~[(J) chillums;]~~

1204 ~~[(K) bongs; and]~~

1205 ~~[(L) ice pipes or chillers; and]~~

1206 ~~[(ii) does not include matches or lighters.]~~

1207 (2) (a) It is unlawful for ~~[a person]~~ an individual to knowingly, intentionally,
1208 recklessly, or with criminal negligence provide tobacco paraphernalia to an individual under[
1209 ~~(i) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and (ii) beginning July 1,~~
1210 ~~2021,]~~ 21 years old.

1211 (b) ~~[A person]~~ An individual who violates this section is guilty of:

1212 (i) a class C misdemeanor on the first offense; and

1213 (ii) a class B misdemeanor on any subsequent ~~[offenses]~~ offense.

1214 Section 24. Section **76-10-105 (Effective 07/01/20)** is amended to read:

1215 **76-10-105 (Effective 07/01/20). Buying or possessing a tobacco product or an**
1216 **electronic cigarette product by a minor -- Penalty -- Compliance officer authority --**
1217 **Juvenile court jurisdiction.**

1218 (1) ~~[(a)]~~ An individual who is 18 years old or older, but younger than ~~[the age specified~~
1219 ~~in Subsection (1)(b)]~~ 21 years old, and who buys or attempts to buy, accepts, or has in the
1220 individual's possession ~~[any cigar, cigarette, electronic cigarette, or tobacco in any form]~~ a
1221 tobacco product or an electronic cigarette product is:

1222 (a) guilty of an infraction; and

1223 (b) subject to:

1224 (i) a minimum fine or penalty of \$60; and

1225 (ii) participation in a court-approved tobacco education or cessation program, which
1226 may include a participation fee.

1227 ~~[(b) For purposes of Subsection (1)(a), the individual is younger than:]~~

1228 ~~[(i) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and]~~

1229 ~~[(ii) beginning July 1, 2021, 21 years old.]~~

1230 (2) (a) An individual who is under ~~[the age of]~~ 18 years old and who buys or attempts
1231 to buy, accepts, or has in the individual's possession ~~[any cigar, cigarette, electronic cigarette,~~
1232 ~~or tobacco in any form]~~ a tobacco product or an electronic cigarette product is subject to the
1233 jurisdiction of the juvenile court and subject to Section [78A-6-602](#), unless the violation is
1234 committed on school property.

1235 (b) If a violation under this section is adjudicated under Section 78A-6-117, the minor
1236 may be subject to the following:

1237 ~~[(a)]~~ (i) a fine or penalty, in accordance with Section 78A-6-117; and

1238 ~~[(b)]~~ (ii) participation in a court-approved tobacco education program, which may
1239 include a participation fee.

1240 (3) (a) A compliance officer appointed by a board of education under Section
1241 53G-4-402 may not issue a citation for a violation of this section committed on school
1242 property.

1243 (b) A cited violation committed on school property shall be addressed in accordance
1244 with Section 53G-8-211.

1245 ~~[(4) (a) This section does not apply to the purchase or possession of a cigar, cigarette,
1246 electronic cigarette, tobacco, or tobacco paraphernalia by an individual who is 18 years or older
1247 and is:]~~

1248 ~~[(i) on active duty in the United States Armed Forces; or]~~

1249 ~~[(ii) a spouse or dependent of an individual who is on active duty in the United States
1250 Armed Forces:]~~

1251 ~~[(b) A valid, government-issued military identification card is required to verify proof
1252 of age under Subsection (4)(a):]~~

1253 Section 25. Section 76-10-105.1 (Effective 07/01/20) is amended to read:

1254 **76-10-105.1 (Effective 07/01/20). Requirement of direct, face-to-face sale of**
1255 **tobacco products and electronic cigarette products -- Minors not allowed in retail tobacco**
1256 **specialty business -- Penalties.**

1257 (1) As used in this section:

1258 ~~[(a) "Cigarette" means the same as that term is defined in Section 59-14-102:]~~

1259 ~~[(b)]~~ (a) (i) "Face-to-face exchange" means a transaction made in person between an
1260 individual and a retailer or retailer's employee.

1261 (ii) "Face-to-face exchange" does not include a sale through a:

1262 (A) vending machine; or

1263 (B) self-service display.

1264 ~~[(c)]~~ (b) "Retailer" means a person who:

1265 (i) sells a ~~[cigarette, tobacco,]~~ tobacco product or an electronic cigarette product to an

1266 individual for personal consumption; or

1267 (ii) operates a facility with a vending machine that sells a [~~cigarette, tobacco,~~] tobacco
1268 product or an electronic cigarette product.

1269 [~~(d)~~] (c) "Self-service display" means a display of a [~~cigarette, tobacco,~~] tobacco
1270 product or an electronic cigarette product to which the public has access without the
1271 intervention of a retailer or retailer's employee.

1272 [~~(e) "Tobacco" means any product, except a cigarette, made of or containing tobacco.]~~

1273 [~~(f) "Tobacco specialty shop" means a "retail tobacco specialty business" as that term is~~
1274 ~~defined:~~]

1275 [~~(i) as it relates to a municipality, in Section 10-8-41.6; and]~~

1276 [~~(ii) as it relates to a county, in Section 17-50-333.]~~

1277 (2) Except as provided in Subsection (3), a retailer may sell a [~~cigarette, tobacco,~~]
1278 tobacco product or an electronic cigarette product only in a face-to-face exchange.

1279 (3) The face-to-face sale requirement in Subsection (2) does not apply to:

1280 (a) a mail-order, telephone, or Internet sale made in compliance with Section
1281 [59-14-509](#);

1282 (b) a sale from a vending machine or self-service display that is located in an area of a
1283 retailer's facility:

1284 (i) that is distinct and separate from the rest of the facility; and

1285 (ii) where the retailer only allows an individual who complies with Subsection (4) to be
1286 present; or

1287 (c) a sale at a retail tobacco specialty [~~shop~~] business.

1288 (4) [~~(a)~~] An individual who [~~is less than the age specified in Subsection (4)(b)] is under~~
1289 21 years old may not enter or be present at a [~~tobacco specialty shop~~] retail tobacco specialty
1290 business unless the individual is:

1291 [~~(i)~~] (a) accompanied by a parent or legal guardian;

1292 [~~(ii)~~] (b) present at the [~~tobacco shop~~] retail tobacco specialty business for a bona fide
1293 commercial purpose other than to purchase a [~~cigarette, tobacco,~~] tobacco product or an
1294 electronic cigarette[~~;~~ ~~or~~] product.

1295 [~~(iii) 18 years old or older and an active duty member of the United States Armed~~
1296 ~~Forces, as demonstrated by a valid, government-issued military identification card.]~~

1297 ~~[(b) For purposes of Subsection (4)(a), the individual is younger than:]~~
1298 ~~[(i) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and]~~
1299 ~~[(ii) beginning July 1, 2021, 21 years old.]~~

1300 (5) A parent or legal guardian who accompanies, under Subsection (4)(a)(i), an
1301 individual into an area described in Subsection (3)(b)~~;~~ or into a ~~[tobacco specialty shop]~~ retail
1302 tobacco specialty business, may not allow the individual to purchase a ~~[cigarette, tobacco,]~~
1303 tobacco product or an electronic cigarette product.

1304 (6) A violation of Subsection (2) or (4) is a:
1305 (a) class C misdemeanor on the first offense;
1306 (b) class B misdemeanor on the second offense; and
1307 (c) class A misdemeanor on ~~[the third and all]~~ any subsequent offenses.

1308 (7) An individual who violates Subsection (5) is guilty of ~~[providing tobacco to a~~
1309 minor] an offense under Section [76-10-104](#).

1310 ~~[(8) (a) An ordinance, regulation, or rule adopted by the governing body of a political~~
1311 ~~subdivision of the state or by a state agency that affects the sale, minimum age of sale,~~
1312 ~~placement, or display of cigarettes, tobacco, or electronic cigarettes that is not essentially~~
1313 ~~identical to this section and Section [76-10-102](#) is superseded.]~~

1314 ~~[(b) Subsection (8)(a) does not apply to the adoption or enforcement of a land use~~
1315 ~~ordinance by a municipal or county government.]~~

1316 Section 26. Section [76-10-111](#) is amended to read:

1317 **76-10-111. Prohibition of gift or free distribution of smokeless tobacco or**
1318 **electronic cigarettes products -- Exceptions.**

1319 (1) The Legislature finds that:
1320 (a) smokeless tobacco, or chewing tobacco, is harmful to the health of individuals who
1321 use ~~[those products]~~ smokeless tobacco because research indicates that ~~[they]~~ smokeless
1322 tobacco may cause mouth or oral cancers;
1323 (b) the use of smokeless tobacco among juveniles in this state is increasing rapidly;
1324 (c) the use of electronic ~~[cigarettes]~~ cigarette products may lead to unhealthy behavior
1325 such as the use of tobacco products; and
1326 (d) it is necessary to restrict the gift of the products described in this Subsection (1) in
1327 the interest of the health of the citizens of this state.

1328 (2) (a) Except as provided in Subsection (3), it is unlawful for a manufacturer,
1329 wholesaler, and retailer to:

1330 (i) give or distribute without charge any smokeless tobacco, chewing tobacco, or an
1331 electronic cigarette product in this state[-];

1332 (ii) except as provided in Subsection (2)(b), sell, offer for sale, or furnish an electronic
1333 cigarette product at less than the cost of the product to the manufacturer, wholesaler, or retailer;

1334 or

1335 (iii) give, distribute, sell, offer for sale, or furnish an electronic cigarette product for
1336 free or at a lower price because the purchaser makes another purchase.

1337 (b) The price that a manufacturer, wholesaler, or retailer may charge under Subsection
1338 (2)(a)(ii) does not include a discount for:

1339 (i) a physical manufacturer coupon:

1340 (A) that is surrendered to the retailer at the time of sale; and

1341 (B) for which the manufacturer will reimburse the wholesaler or retailer for the full
1342 amount of the discount described in the manufacturer coupon and provided to the purchaser;

1343 (ii) a rebate that will be paid to the manufacturer, wholesaler, or retailer for the full
1344 amount of the rebate provided to the purchaser; or

1345 (iii) a promotional fund that will be paid to the manufacturer, wholesaler, or retailer for
1346 the full amount of the promotional fund to the purchaser.

1347 (3) ~~[Any person]~~ An individual who violates this section is guilty of:

1348 (a) a class C misdemeanor for the first offense[-]; and ~~[is guilty of]~~

1349 (b) a class B misdemeanor for any subsequent offense.

1350 ~~[(3)]~~ (4) (a) Smokeless tobacco, chewing tobacco, or an electronic cigarette product
1351 may be distributed to ~~[adults]~~ an adult without charge at a professional ~~[conventions]~~
1352 convention where the general public is excluded.

1353 ~~[(b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who gives~~
1354 ~~smokeless tobacco, chewing tobacco, or an electronic cigarette to a person of legal age upon~~
1355 ~~the person's purchase of another tobacco product or electronic cigarette.]~~

1356 Section 27. Section **76-10-112** is amended to read:

1357 **76-10-112. Prohibition of distribution of electronic cigarette product --**

1358 **Exceptions.**

1359 (1) Except as provided in Subsection ~~[(2)]~~ (3), it is unlawful for a manufacturer,
 1360 wholesaler, or retailer to give or distribute ~~[cigarettes or other tobacco products]~~ a tobacco
 1361 product in this state without charge.

1362 (2) ~~[Any person]~~ An individual who violates this subsection is guilty of:

1363 (a) a class C misdemeanor for the first offense; and

1364 (b) a class B misdemeanor for any subsequent offense.

1365 ~~[(2) Cigarettes and other tobacco products]~~

1366 (3) A tobacco product may be distributed to ~~[adults]~~ an adult without charge at a
 1367 professional ~~[conventions]~~ convention where the general public is excluded.

1368 ~~[(3)]~~ (4) The prohibition described in Subsection (1) does not apply to ~~[retailers,~~
 1369 ~~manufacturers, or distributors who give cigarettes or other tobacco products to persons of legal~~
 1370 ~~age upon their purchase of cigarettes or other tobacco products]~~ a tobacco retailer, a
 1371 manufacturer, or a distributor that gives a tobacco product to an individual who is 21 years old
 1372 or older upon the individual's purchase of a tobacco product.

1373 Section 28. Section **76-10-113** is enacted to read:

1374 **76-10-113. Prohibition on distribution of flavored electronic cigarette products.**

1375 (1) It is unlawful for a tobacco retailer that is not a retail tobacco specialty business to
 1376 give, distribute, sell, offer for sale, or furnish a flavored electronic cigarette product to any
 1377 person.

1378 (2) An individual who violates this section is guilty of:

1379 (a) a class C misdemeanor for the first offense; and

1380 (b) a class B misdemeanor for any subsequent offense.

1381 Section 29. Section **76-10-114** is enacted to read:

1382 **76-10-114. Unlawful sale of a tobacco product or electronic cigarette product.**

1383 (1) As used in this section:

1384 (a) "Compensatory service" means service or unpaid work performed by an employee,
 1385 in lieu of the payment of a fine or imprisonment.

1386 (b) "Employee" means an employee or an owner of a tobacco retailer.

1387 (2) It is unlawful for an employee to knowingly or intentionally sell or give a tobacco
 1388 product or an electronic cigarette product in the course of business to an individual who is
 1389 under 21 years old.

1390 (3) An employee who violates this section is:

1391 (a) on a first violation:

1392 (i) guilty of an infraction; and

1393 (ii) subject to:

1394 (A) a fine not exceeding \$1,000; or

1395 (B) compensatory service;

1396 (b) on any subsequent violation:

1397 (i) guilty of a class C misdemeanor; and

1398 (ii) subject to:

1399 (A) a fine not exceeding \$2,000; or

1400 (B) compensatory service.

1401 Section 30. Section **76-10-115** is enacted to read:

1402 **76-10-115. Unlawful transfer or use of proof of age.**

1403 (1) As used in this section:

1404 (a) "Proof of age" means:

1405 (i) a valid identification card issued under Title 53, Chapter 3, Part 8, Identification

1406 Card Act;

1407 (ii) a valid identification that:

1408 (A) is substantially similar to an identification card issued under Title 53, Chapter 3,

1409 Part 8, Identification Card Act;

1410 (B) is issued in accordance with the laws of a state other than Utah in which the

1411 identification is issued;

1412 (C) includes date of birth; and

1413 (D) has a picture affixed;

1414 (iii) a valid driver license certificate that is issued under Title 53, Chapter 3, Uniform

1415 Driver License Act, or in accordance with the laws of the state in which the valid driver license

1416 is issued;

1417 (iv) a valid United States military identification card that:

1418 (A) includes date of birth; and

1419 (B) has a picture affixed; or

1420 (v) a valid passport.

1421 (b) "Proof of age" does not include a driving privilege card issued in accordance with
1422 Section 53-3-207.

1423 (2) An individual who knowingly and intentionally transfers that individual's proof of
1424 age to another individual to aid that individual in purchasing a tobacco product or an electronic
1425 cigarette product, or in gaining admittance to any part of the premises of a retail tobacco
1426 specialty business, is guilty of a class B misdemeanor.

1427 (3) An individual who knowingly and intentionally uses proof of age containing false
1428 information with the intent to purchase a tobacco product or an electronic cigarette product, or
1429 to gain admittance to any part of the premises of a retail tobacco specialty business, is guilty of
1430 a class A misdemeanor.

1431 Section 31. Section 76-10-116 is enacted to read:

1432 **76-10-116. Ordinances, rules, and regulations.**

1433 (1) Except as provided in Subsection (2), an ordinance, rule, or regulation adopted by a
1434 governing body of a political subdivision of the state or a state agency is superseded if:

1435 (a) the ordinance, rule, or regulation affects:

1436 (i) the minimum age of sale for a tobacco product, an electronic cigarette product, or
1437 tobacco paraphernalia;

1438 (ii) the provision or sale of a tobacco product, an electronic cigarette product, or
1439 tobacco paraphernalia;

1440 (iii) the flavoring of a tobacco product or an electronic cigarette product;

1441 (iv) the purchase or possession of a tobacco product, an electronic cigarette product, or
1442 tobacco paraphernalia; or

1443 (v) the placement or display of a tobacco product or an electronic cigarette product;

1444 and

1445 (b) the ordinance, rule, or regulation is not essentially identical to any state statute
1446 relating to the applicable subject described in Subsection (1)(a).

1447 (2) A governing body of a political subdivision of the state or a state agency may adopt
1448 an ordinance, rule, or regulation on a subject described in Subsections (1)(a)(i) through (v) if
1449 the governing body of a political subdivision of the state or a state agency is authorized by
1450 statute to adopt the ordinance, rule, or regulation.

1451 (3) Subsection (1) does not apply to the adoption or enforcement of a land use

1452 ordinance by a municipal or county government.

1453 Section 32. Section **77-39-101 (Effective 07/01/20)** is amended to read:

1454 **77-39-101 (Effective 07/01/20). Investigation of sales of alcohol, tobacco, and**
1455 **electronic cigarettes to underage individuals.**

1456 (1) As used in this section[~~,"electronic cigarette" is as~~]:

1457 (a) "Electronic cigarette product" means the same as that term is defined in Section
1458 76-10-101.

1459 (b) "Tobacco product means the same as that term is defined in Section 76-10-101.

1460 (2) (a) A peace officer, as defined by Title 53, Chapter 13, Peace Officer
1461 Classifications, may investigate the possible violation of:

1462 (i) Section 32B-4-403 by requesting an individual under 21 years old to enter into and
1463 attempt to purchase or make a purchase of alcohol from a retail establishment; or

1464 (ii) Section [~~76-10-104~~] 76-10-114 by requesting an individual under [~~the age specified~~
1465 ~~in Subsection (2)(e)] 21 years old to enter into and attempt to purchase or make a purchase
1466 from a retail establishment of:~~

1467 (A) a [~~cigar~~] tobacco product; or

1468 [~~(B) a cigarette;~~]

1469 [~~(C) tobacco in any form; or~~]

1470 [~~(D)~~] (B) an electronic cigarette product.

1471 (b) A peace officer who is present at the site of a proposed purchase shall direct,
1472 supervise, and monitor the individual requested to make the purchase.

1473 (c) Immediately following a purchase or attempted purchase or as soon as practical the
1474 supervising peace officer shall inform the cashier and the proprietor or manager of the retail
1475 establishment that the attempted purchaser was under the legal age to purchase:

1476 (i) alcohol; or

1477 (ii) (A) a [~~cigar~~] tobacco product; or

1478 [~~(B) a cigarette;~~]

1479 [~~(C) tobacco in any form; or~~]

1480 [~~(D)~~] (B) an electronic cigarette product.

1481 (d) If a citation or information is issued, [~~it~~] the citation or information shall be issued
1482 within seven days of the purchase.

1483 ~~[(e) For purposes of Subsection (2)(a)(ii), the individual is younger than:]~~
1484 ~~[(i) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and]~~
1485 ~~[(ii) beginning July 1, 2021, 21 years old.]~~

1486 (3) (a) If an individual under ~~[the age of]~~ 18 years old is requested to attempt a
1487 purchase, a written consent of that individual's parent or guardian shall be obtained prior to that
1488 individual participating in any attempted purchase.

1489 (b) An individual requested by the peace officer to attempt a purchase may:

1490 (i) be a trained volunteer; or

1491 (ii) receive payment, but may not be paid based on the number of successful purchases
1492 of alcohol, tobacco products, or ~~[an]~~ electronic cigarette products.

1493 (4) The individual requested by the peace officer to attempt a purchase and anyone
1494 accompanying the individual attempting a purchase may not during the attempted purchase
1495 misrepresent the age of the individual by false or misleading identification documentation in
1496 attempting the purchase.

1497 (5) An individual requested to attempt to purchase or make a purchase pursuant to this
1498 section is immune from prosecution, suit, or civil liability for the purchase of, attempted
1499 purchase of, or possession of alcohol, a ~~[cigar, a cigarette, tobacco in any form]~~ tobacco
1500 product, or an electronic cigarette product if a peace officer directs, supervises, and monitors
1501 the individual.

1502 (6) (a) Except as provided in Subsection (6)(b), a purchase attempted under this section
1503 shall be conducted~~[:]~~ within a 12-month period:

1504 ~~[(i) on a random basis; and]~~

1505 ~~[(ii) within a 12-month period at any one retail establishment location not more often~~
1506 ~~than:]~~

1507 ~~[(A) two times for the attempted purchase of:]~~

1508 ~~[(F) a cigar;]~~

1509 ~~[(H) a cigarette;]~~

1510 ~~[(III) tobacco in any form; or]~~

1511 ~~[(IV) an electronic cigarette; and]~~

1512 ~~[(B) four times for the attempted purchase of alcohol.]~~

1513 (i) on a random basis at any one retail establishment location, not more often than four

1514 times for the attempted purchase of alcohol; and

1515 (ii) a minimum of two times at a retail establishment that sells tobacco products or
1516 electronic cigarette products for the attempted purchase of a tobacco product or an electronic
1517 cigarette product.

1518 (b) This section does not prohibit an investigation or an attempt to purchase [~~tobacco~~ a
1519 alcohol, a tobacco product, or an electronic cigarette product under this section if:

1520 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a
1521 [~~cigar, a cigarette, tobacco in any form~~] tobacco product, or an electronic cigarette product to
1522 an individual under the age established by Section 32B-4-403 or [~~76-10-104~~] 76-10-114; and

1523 (ii) the supervising peace officer makes a written record of the grounds for the
1524 reasonable suspicion.

1525 (7) (a) The peace officer exercising direction, supervision, and monitoring of the
1526 attempted purchase shall make a report of the attempted purchase, whether or not a purchase
1527 was made.

1528 (b) The report required by this Subsection (7) shall include:

1529 (i) the name of the supervising peace officer;

1530 (ii) the name of the individual attempting the purchase;

1531 (iii) a photograph of the individual attempting the purchase showing how that
1532 individual appeared at the time of the attempted purchase;

1533 (iv) the name and description of the cashier or proprietor from whom the individual
1534 attempted the purchase;

1535 (v) the name and address of the retail establishment; and

1536 (vi) the date and time of the attempted purchase.

1537 Section 33. **Effective date.**

1538 This bill takes effect on July 1, 2020.