

## SB0037S04 compared with SB0037S03

~~text~~ shows text that was in SB0037S03 but was deleted in SB0037S04.

text shows text that was not in SB0037S03 but was inserted into SB0037S04.

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Senator ~~Allen M.~~Kirk A. ~~Christensen~~Cullimore proposes the following substitute bill:

### ELECTRONIC CIGARETTE AND OTHER NICOTINE PRODUCT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Allen M. Christensen**

House Sponsor: Paul Ray

Cosponsors:	Jani Iwamoto	Kathleen Riebe
David G. Buxton	Derek L. Kitchen	Scott D. Sandall
Luz Escamilla	Karen Mayne	Jerry W. Stevenson
Keith Grover	Ann Millner	Ronald Winterton
Wayne A. Harper	Ralph Okerlund	
Lyle W. Hillyard		

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#### LONG TITLE

##### General Description:

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

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### Highlighted Provisions:

This bill:

- ▶ defines and coordinates terms;
- ▶ increases the minimum age for obtaining, possessing, using, providing, or furnishing of tobacco products, paraphernalia, and under certain circumstances, electronic cigarettes and nicotine products to 21 years old;
- ▶ imposes permitting requirements and processes for the sale of ~~{a}~~an alternative nicotine product;
- ▶ requires a tobacco retailer to provide itemized receipts and to maintain an itemized transaction log for sales of a tobacco product, an electronic cigarette product, or a nicotine product;
- ▶ establishes a Youth Electronic Cigarette, Marijuana, and Other Drug Prevention Program within the Department of Health;
- ▶ creates a committee to advise the department on the Youth Electronic Cigarette, Marijuana, and Other Drug Prevention Program;
- ▶ creates the Electronic Cigarette, Marijuana, and Other Drug Prevention Grant Program operated by local health departments;
- ▶ specifies requirements relating to the Electronic Cigarette, Marijuana, and Other Drug Prevention Grant Program;
- ▶ applies civil penalties to the improper sale of a nicotine product;
- ▶ requires certain nicotine products to have a statement on the products' exterior packages that the products contain nicotine;
- ▶ creates a reduction on certain tax rates for products that are issued a modified risk tobacco product order by the United States Food and Drug Administration;
- ▶ imposes licensing and bonding requirements on a person that sells or distributes an electronic cigarette product or ~~{a}~~an alternative nicotine product;
- ▶ imposes an excise tax on the sale in the state of an electronic cigarette substance, a prefilled electronic cigarette, and an alternative nicotine product ~~{, a nontherapeutic nicotine device substance, and a prefilled nontherapeutic nicotine device}~~;
- ▶ provides for the remittance of the tax collected;
- ▶ creates the Electronic Cigarette Substance and Nicotine Product Tax Restricted

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Account;

- ▶ addresses use of revenue from the taxation of an electronic cigarette substance, a prefilled electronic cigarette, and an alternative nicotine product ~~{, a nontherapeutic nicotine device substance, and a prefilled nontherapeutic nicotine device}~~;
- ▶ provides criminal penalties for a sale or a purchase of an electronic cigarette product or a nicotine product in violation of the law;
- ▶ prohibits a manufacturer, a wholesaler, or a retailer from providing certain discounts or giveaways for electronic cigarettes ~~{ and nicotine products}~~; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides a special effective date.

### Utah Code Sections Affected:

AMENDS:

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

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

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

**26-1-7**, as last amended by Laws of Utah 2017, Chapter 419

**26-38-2**, as last amended by Laws of Utah 2018, Chapters 231 and 281

**26-57-101**, as enacted by Laws of Utah 2015, Chapter 132

**26-57-102**, as enacted by Laws of Utah 2015, Chapter 132

**26-62-101**, as enacted by Laws of Utah 2018, Chapter 231

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

**26-62-201**, as enacted by Laws of Utah 2018, Chapter 231

**26-62-202**, as last amended by Laws of Utah 2019, Chapter 157

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

**26-62-301**, as enacted by Laws of Utah 2018, Chapter 231

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

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

**26-62-306**, as renumbered and amended by Laws of Utah 2018, Chapter 231

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**26A-1-128**, as enacted by Laws of Utah 2018, Chapter 231

**51-9-203 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapters 136 and 232

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

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

**53G-4-402**, as last amended by Laws of Utah 2019, Chapters 83, 293, and 451

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

**59-14-102**, as last amended by Laws of Utah 2013, Chapter 148

**59-14-302**, as last amended by Laws of Utah 2014, Chapter 189

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

**59-14-801**, as enacted by Laws of Utah 2015, Chapter 132

**59-14-802**, as last amended by Laws of Utah 2019, Chapter 136

**59-14-803**, as last amended by Laws of Utah 2018, Chapter 231

**63I-1-226**, as last amended by Laws of Utah 2019, Chapters 67, 136, 246, 289, 455 and last amended by Coordination Clause, Laws of Utah 2019, Chapter 246

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

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

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

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

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

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

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

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

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

### ENACTS:

**26-7-10**, Utah Code Annotated 1953

**26-57-104**, Utah Code Annotated 1953

**26-62-206**, Utah Code Annotated 1953

**26A-1-129**, Utah Code Annotated 1953

**[59-14-104, Utah Code Annotated 1953](#)**

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59-14-804, Utah Code Annotated 1953

59-14-805, Utah Code Annotated 1953

59-14-806, Utah Code Annotated 1953

59-14-807, Utah Code Annotated 1953

59-14-808, Utah Code Annotated 1953

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

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

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

(1) As used in this section:

(a) "Community location" means:

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

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

(iii) a trade or technical school;

(iv) a church;

(v) a public library;

(vi) a public playground;

(vii) a public park;

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

(ix) a public recreational facility;

(x) a public arcade; or

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

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

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

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

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

(f) "Nicotine product" means the same as that term is defined in Section 76-10-101.

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

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~~retail tobacco specialty business.]~~

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

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

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

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

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

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

~~[(g)]~~ (i) "Tobacco product" means~~[:]~~ the same as that term is defined in Section 76-10-101.

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

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

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

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

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

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

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

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

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

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a person to conduct business as a retail tobacco specialty business if the retail tobacco specialty business is located within:

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

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

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

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

~~[(+)]~~ (b) (i) for a retailer that sells a tobacco product, a valid license issued by the State Tax Commission in accordance with Section 59-14-201 or 59-14-301 to sell ~~[tobacco products from the State Tax Commission.]~~ a tobacco product; and

(ii) for a retailer that sells an electronic cigarette product or a nicotine product, a valid license issued by the State Tax Commission in accordance with Section 59-14-803 to sell an electronic cigarette product or ~~fa~~an alternative nicotine product.

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

- (6) (a) Nothing in this section:
- (i) requires a municipality to issue a retail tobacco specialty business license; or
  - (ii) prohibits a municipality from adopting more restrictive requirements on a person

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seeking a license or renewal of a license to conduct business as a retail tobacco specialty business.

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

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

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

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

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

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

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

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

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

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

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

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

(B) zoning ordinances;

(C) building codes; and

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



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December 31, 2015.

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

**10-8-47 (Effective 07/01/20). Intoxication -- Fights -- Disorderly conduct -- Assault and battery -- Petit larceny -- Riots and disorderly assemblies -- Firearms and fireworks -- False pretenses and embezzlement -- Sale of liquor, narcotics, or tobacco to minors -- Possession of controlled substances -- Treatment of alcoholics and narcotics or drug addicts.**

(1) A municipal legislative body may:

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

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

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

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

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

(f) prohibit the sale, giving away, or furnishing of tobacco [~~or e-cigarettes~~], an electronic cigarette product, or nicotine product to an individual younger than[:] 21 years old.

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

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

(2) A city may:

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

(b) provide for treatment of alcoholics, narcotic addicts, and other individuals who are addicted to the use of drugs or intoxicants such that an individual substantially lacks the

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

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

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

(1) As used in this section:

(a) "Community location" means:

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

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

(iii) a trade or technical school;

(iv) a church;

(v) a public library;

(vi) a public playground;

(vii) a public park;

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

(ix) a public recreational facility;

(x) a public arcade; or

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

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

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

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

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

(f) "Nicotine product" means the same as that term is defined in Section 76-10-101.

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

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

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

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storage of tobacco products, electronic cigarette products, and nicotine products;

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

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

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

~~[(g)]~~ (i) "Tobacco product" means~~[:]~~ the same as that term is defined in Section 76-10-101.

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

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

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

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

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

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

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

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

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

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

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

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

(A) agriculture use; or

(B) residential use.

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

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

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

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

(ii) for a retailer that sells an electronic cigarette product or ~~fa~~an alternative nicotine product, a valid license issued by the State Tax Commission in accordance with Section 59-14-803 to sell an electronic cigarette product or a nicotine product.

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

(6) (a) Nothing in this section:

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

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

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

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

(ii) if a licensee violates the regulations restricting the sale and distribution of cigarettes and smokeless tobacco to protect children and adolescents issued by the United

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States Food and Drug Administration, 21 C.F.R. Part 1140;

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

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

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

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

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

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

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

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

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

(B) zoning ordinances;

(C) building codes; and

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

Section 4. Section **26-1-7** is amended to read:

### **26-1-7. Committees within department.**

(1) There are created within the department the following committees:

(a) Health Facility Committee;

(b) State Emergency Medical Services Committee;

(c) Air Ambulance Committee;

(d) Health Data Committee;

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- (e) Utah Health Care Workforce Financial Assistance Program Advisory Committee;
- (f) Residential Child Care Licensing Advisory Committee;
- (g) Child Care Center Licensing Committee; [~~and~~]
- (h) Primary Care Grant Committee[-]; and
- (i) Youth Electronic Cigarette, Marijuana, and Other Drug Prevention Committee.

(2) The department shall:

(a) consolidate advisory groups and committees with other committees or advisory groups as appropriate to create greater efficiencies and budgetary savings for the department; and

(b) create in writing, time-limited and subject-limited duties for the advisory groups or committees as necessary to carry out the responsibilities of the department.

Section 5. Section **26-7-10** is enacted to read:

### **26-7-10. Youth Electronic Cigarette, Marijuana, and Other Drug Prevention Program.**

(1) As used in this section:

(a) "Committee" means the Youth Electronic Cigarette, Marijuana, and Other Drug Prevention Committee created in Section 26-1-7.

(b) "Program" means the Youth Electronic Cigarette, Marijuana, and Other Drug Prevention Program created in this section.

(2) (a) There is created within the department the Youth Electronic Cigarette, Marijuana, and Other Drug Prevention Program.

(b) In consultation with the committee, the department shall:

(i) establish guidelines for the use of funds appropriated to the program;

(ii) ensure that guidelines developed under Subsection (2)(b)(i) are evidence-based and appropriate for the population targeted by the program; and

(iii) subject to appropriations from the Legislature, fund statewide initiatives to prevent use of electronic cigarettes, nicotine products, marijuana, and other drugs by youth.

(3) (a) The committee shall advise the department on:

(i) preventing use of electronic cigarettes, marijuana, and other drugs by youth in the state;

(ii) developing the guidelines described in Subsection (2)(b)(i); and

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(iii) implementing the provisions of the program.

(b) The executive director shall:

(i) appoint members of the committee; and

(ii) consult with the Utah Substance Use and Mental Health Advisory Council created in Section 63M-7-301 when making the appointment under Subsection (3)(b)(i).

(c) The committee shall include, at a minimum:

(i) the executive director of a local health department as defined in Section 26A-1-102, or the local health department executive director's designee;

(ii) one designee from the department;

(iii) one representative from the Department of Public Safety;

(iv) one representative from the behavioral health community; and

(v) one representative from the education community.

(d) A member of the committee may not receive compensation or benefits for the member's service on the committee, but may receive per diem and travel expenses in accordance with:

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

(iii) rules made by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(e) The department shall provide staff support to the committee.

(4) On or before October 31 of each year, the department shall report to:

(a) the Health and Human Services Interim Committee regarding:

(i) the use of funds appropriated to the program;

(ii) the impact and results of the program, including the effectiveness of each program funded under Subsection (2)(b)(iii), during the previous fiscal year;

(iii) a summary of the impacts and results on reducing youth use of electronic cigarettes and nicotine products by entities represented by members of the committee, including those entities who receive funding through the Electronic Cigarette Substance and Nicotine Product Tax Restricted Account created in Section 59-14-807; and

(iv) any recommendations for legislation; and

(b) the Utah Substance Use and Mental Health Advisory Council created in Section 63M-7-301, regarding:

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(i) the effectiveness of each program funded under Subsection (2)(b)(iii) in preventing youth use of electronic cigarettes, nicotine products, marijuana, and other drugs; and

(ii) any collaborative efforts and partnerships established by the program with public and private entities to prevent youth use of electronic cigarettes, marijuana, and other drugs.

Section 6. Section **26-38-2** is amended to read:

### **26-38-2. Definitions.**

As used in this chapter:

~~[(1) "E-cigarette":]~~

~~[(a) means any electronic oral device:]~~

~~[(i) that provides an aerosol or a vapor of nicotine or other substance; and]~~

~~[(ii) which simulates smoking through its use or through inhalation of the device; and]~~

~~[(b) includes an oral device that is:]~~

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

~~[(ii) marketed, manufactured, distributed, or sold as:]~~

~~[(A) an e-cigarette;]~~

~~[(B) e-cigar;]~~

~~[(C) e-pipe; or]~~

~~[(D) any other product name or descriptor, if the function of the product meets the definition of Subsection (1)(a):]~~

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

(2) "Non-tobacco shisha" means any product that:

(a) does not contain tobacco or nicotine; and

(b) is smoked or intended to be smoked in a hookah or water pipe.

(3) "Place of public access" means any enclosed indoor place of business, commerce, banking, financial service, or other service-related activity, whether publicly or privately owned and whether operated for profit or not, to which persons not employed at the place of public access have general and regular access or which the public uses, including:

(a) buildings, offices, shops, elevators, or restrooms;

(b) means of transportation or common carrier waiting rooms;

(c) restaurants, cafes, or cafeterias;

(d) taverns as defined in Section 32B-1-102, or cabarets;



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- (e) shopping malls, retail stores, grocery stores, or arcades;
  - (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical sites, auditoriums, or arenas;
  - (g) barber shops, hair salons, or laundromats;
  - (h) sports or fitness facilities;
  - (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and breakfast" lodging facilities, and other similar lodging facilities, including the lobbies, hallways, elevators, restaurants, cafeterias, other designated dining areas, and restrooms of any of these;
  - (j) (i) any child care facility or program subject to licensure or certification under this title, including those operated in private homes, when any child cared for under that license is present; and
    - (ii) any child care, other than child care as defined in Section 26-39-102, that is not subject to licensure or certification under this title, when any child cared for by the provider, other than the child of the provider, is present;
  - (k) public or private elementary or secondary school buildings and educational facilities or the property on which those facilities are located;
  - (l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or religious organization when used solely by the organization members or their guests or families;
  - (m) any facility rented or leased for private functions from which the general public is excluded and arrangements for the function are under the control of the function sponsor;
  - (n) any workplace that is not a place of public access or a publicly owned building or office but has one or more employees who are not owner-operators of the business;
  - (o) any area where the proprietor or manager of the area has posted a conspicuous sign stating "no smoking", "thank you for not smoking", or similar statement; and
  - (p) a holder of a bar establishment license, as defined in Section 32B-1-102.
- (4) "Publicly owned building or office" means any enclosed indoor place or portion of a place owned, leased, or rented by any state, county, or municipal government, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of federal, state, county, or municipal taxes.

## **SB0037S04 compared with SB0037S03**

(5) "Shisha" means any product that:

(a) contains tobacco or nicotine; and

(b) is smoked or intended to be smoked in a hookah or water pipe.

(6) "Smoking" means:

(a) the possession of any lighted or heated tobacco product in any form;

(b) inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe,

or hookah that contains:

(i) tobacco or any plant product intended for inhalation;

(ii) shisha or non-tobacco shisha;

(iii) nicotine;

(iv) a natural or synthetic tobacco substitute; or

(v) a natural or synthetic flavored tobacco product;

(c) using an [~~e-cigarette~~] electronic cigarette; or

(d) using an oral smoking device intended to circumvent the prohibition of smoking in

this chapter.

Section 7. Section **26-57-101** is amended to read:

### **CHAPTER 57. ELECTRONIC CIGARETTE AND NICOTINE PRODUCT REGULATION ACT**

#### **26-57-101. Title.**

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

Section 8. Section **26-57-102** is amended to read:

#### **26-57-102. Definitions.**

As used in this chapter:

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

(2) "Electronic cigarette" means the same as that term is defined in Section  
[~~59-14-802~~] 76-10-101.

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

(4) "Electronic cigarette substance" means the same as that term is defined in Section  
[~~59-14-802~~] 76-10-101.

## SB0037S04 compared with SB0037S03

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

~~(5)~~ (6) "Manufacture" includes:

- (a) to cast, construct, or make electronic cigarettes; or
- (b) to blend, make, process, or prepare an electronic cigarette substance.

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

- (a) is ~~[pre-filled]~~ prefilled by the electronic cigarette substance manufacturer; and
- (b) the electronic cigarette manufacturer does not intend for a consumer to open.

(8) "Nicotine" means the same as that term is defined in Section 76-10-101.

(9) "Nicotine product" means the same as that term is defined in Section 76-10-101.

Section 9. Section **26-57-104** is enacted to read:

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

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

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

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

(b) contains nicotine.

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

"This product contains nicotine."

Section 10. Section **26-62-101** is amended to read:

## **CHAPTER 62. TOBACCO, ELECTRONIC CIGARETTE, AND NICOTINE PRODUCT RETAIL PERMIT**

### **26-62-101. Title.**

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

Section 11. Section **26-62-102** is amended to read:

### **26-62-102. Definitions.**

## SB0037S04 compared with SB0037S03

As used in this chapter:

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

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

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

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

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

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

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

(7) "Nicotine product" means the same as that term is defined in Section 76-10-101.

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

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

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

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

- (a) Section 59-14-201 to sell ~~[cigarettes]~~ a cigarette at retail;
- (b) Section 59-14-301 to sell ~~[tobacco products]~~ a tobacco product at retail; or
- (c) Section 59-14-803 to sell an electronic cigarette product or a nicotine product.

~~[(9)]~~ (11) "Tobacco product" means~~[:]~~ the same as that term is defined in Section 76-10-101.

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

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

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

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

## SB0037S04 compared with SB0037S03

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

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

Section 12. Section **26-62-201** is amended to read:

### **26-62-201. Permitting requirement.**

(1) (a) ~~[Beginning July 1, 2018, a]~~ A tobacco retailer shall hold a valid tobacco retail permit issued in accordance with this chapter by the local health department with jurisdiction over the physical location where the tobacco retailer operates.

(b) A tobacco retailer without a valid permit may not:

(i) place ~~[tobacco products]~~ a tobacco product, an electronic cigarette product, or a nicotine product in public view;

(ii) display any advertisement related to ~~[tobacco products]~~ a tobacco product, an electronic cigarette product, or a nicotine product that promotes the sale, distribution, or use of those products; or

(iii) sell, offer for sale, or offer to exchange for any form of consideration, tobacco ~~[or tobacco products]~~, a tobacco product, an electronic cigarette product, or a nicotine product.

(2) A local health department may issue a permit under this chapter for a tobacco retailer in the classification of:

(a) a general tobacco retailer; or

(b) a retail tobacco specialty business.

(3) A permit under this chapter is:

(a) valid only for one physical location, including a vending machine;

(b) valid only at one fixed business address; and

(c) if multiple tobacco retailers are at the same address, separately required for each tobacco retailer.

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

~~[(a) may operate without a permit under this chapter until December 31, 2018; and]~~

~~[(b) shall obtain a permit from a local health department under this chapter before January 1, 2019.]~~

Section 13. Section **26-62-202** is amended to read:

## SB0037S04 compared with SB0037S03

### 26-62-202. Permit application.

(1) A local health department shall issue a permit under this chapter for a tobacco retailer if the local health department determines that the applicant:

(a) accurately provided all information required under Subsection (3) and, if applicable, Subsection (4); and

(b) meets all requirements for a permit under this chapter.

(2) An applicant for a permit shall:

(a) submit an application described in Subsection (3) to the local health department with jurisdiction over the area where the tobacco retailer is located; and

(b) pay all applicable fees described in Section 26-62-203.

(3) The application for a permit shall include:

(a) the name, address, and telephone number of each proprietor;

(b) the name and mailing address of each proprietor authorized to receive permit-related communication and notices;

(c) the business name, address, and telephone number of the single, fixed location for which a permit is sought;

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

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

(i) a provision of this chapter;

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

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

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

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

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

## SB0037S04 compared with SB0037S03

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

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

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

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

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

- (a) a municipality under Section 10-8-41.6; or
- (b) a county under Section 17-50-333.

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

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

Section 14. Section **26-62-205 (Effective 07/01/20)** is amended to read:

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

A retail tobacco specialty business shall:

(1) except as provided in Subsection 76-10-105.1(4), prohibit any individual from entering the business if the individual is ~~is~~ younger than 21 years old; and

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

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

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

## **SB0037S04 compared with SB0037S03**

Section 15. Section **26-62-206** is enacted to read:

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

(1) A tobacco retailer shall:

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

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

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

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

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

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

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

(iii) the date and time of the sale.

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

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

(b) made available to an enforcing agency or a peace officer at the request of the enforcing agency or the peace officer; and

(c) in addition to any documentation required under Section 59-1-1406 and Subsection 59-14-805(2).

Section 16. Section **26-62-301** is amended to read:

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

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

(1) a provision of this chapter;

(2) a provision of licensing laws under Section 10-8-41.6 or Section 17-50-333;

(3) a provision of Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic



## SB0037S04 compared with SB0037S03

Chemical Solvents;

- (4) a provision of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
- (5) a regulation restricting the sale and distribution of cigarettes and smokeless tobacco issued by the United States Food and Drug Administration under 21 C.F.R. Part 1140; or
- (6) any other provision of state law or local ordinance regarding the sale, marketing, or distribution of [~~tobacco products~~] a tobacco product, an electronic cigarette product, or a nicotine product.

Section 17. Section **26-62-304 (Effective 07/01/20)** is amended to read:

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

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

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

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

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

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

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

Section 18. Section **26-62-305 (Effective 07/01/20)** is amended to read:

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

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

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

(2) (a) The administrative penalty for a first violation at a retail location is a penalty of

## SB0037S04 compared with SB0037S03

not more than \$500.

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

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

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

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

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

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

(b) in addition to a monetary penalty imposed under Subsection (2), suspend the permit if the violation is due to a sale of ~~[tobacco products]~~ a tobacco product, an electronic cigarette product, or a nicotine product to an individual under~~[:]~~ 21 years old; and

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

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

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

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

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

or

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

(b) A person whose permit:

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

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

## **SB0037S04 compared with SB0037S03**

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

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

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

Section 19. Section **26-62-306** is amended to read:

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

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

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

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

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

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

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

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

Section 20. Section **26A-1-128** is amended to read:

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

## SB0037S04 compared with SB0037S03

A local health department:

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

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

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

Section 21. Section **26A-1-129** is enacted to read:

### **26A-1-129. Electronic Cigarette, Marijuana, and Other Drug Prevention Grant Program -- Reporting.**

(1) As used in this section "grant program" means the Electronic Cigarette, Marijuana, and Other Drug Prevention Grant Program created in this section.

(2) There is created the Electronic Cigarette, Marijuana, and Other Drug Prevention Grant Program which shall be administered by local health departments in accordance with this section.

(3) (a) A local health department shall administer the grant program with funds allocated to the grant program under Subsection 59-14-807(4)(d), to award grants to:

(i) a coalition of community organizations that is focused on substance abuse prevention;

(ii) a local government agency, including a law enforcement agency, for a program that is focused on substance abuse prevention; or

(iii) a local education agency as defined in Section 53J-1-301.

(b) A recipient of a grant under the grant program shall use the grant to address root causes and factors associated with the use of electronic cigarettes, marijuana, and other drugs:

(i) by addressing one or more risk or protective factors identified in the Utah Student Health and Risk Prevention Statewide Survey; and

(ii) through one or more of the following activities aimed at reducing use of electronic cigarettes, marijuana, and other drugs:

## **SB0037S04 compared with SB0037S03**

(A) providing information;

(B) enhancing individual skills;

(C) providing support to activities that reduce risk or enhance protections;

(D) enhancing access or reducing barriers systems, processes, or programs;

(E) changing consequences by addressing incentives or disincentives;

(F) changing the physical design or structure of an environment to reduce risk or enhance protections; or

(G) supporting modifications or changing policies.

(c) The grant program shall provide funding for a program or purpose that is:

(i) evidence-based; or

(ii) a promising practice as defined by the United States Centers for Disease Control and Prevention.

(4) (a) An applicant for a grant under the grant program shall submit an application to the local health department that has jurisdiction over the area in which the applicant is proposing use of grant funds.

(b) The application described in Subsection (4)(a) shall:

(i) provide a summary of how the applicant intends to expend grant funds; and

(ii) describe how the applicant will meet the requirements described in Subsection (3).

(c) A local health department may establish the form or manner in which an applicant must submit an application for the grant program under this section.

(5) (a) A local health department shall:

(i) on or before June 30 of each year:

(A) review each grant application the local health department receives for the grant program; and

(B) select recipients for a grant under the grant program; and

(ii) before July 15 of each year, disperse grant funds to each selected recipient.

(b) A local health department may not award a single grant under this section in an amount that exceeds \$100,000.

(6) (a) Before August 1 of each year, a recipient of a grant under the grant program shall, for the previous year, submit a report to the local health department that:

(i) provides an accounting for the expenditure of grant funds;

## **SB0037S04 compared with SB0037S03**

(ii) describes measurable outcomes as a result of the expenditures;

(iii) describes the impact and effectiveness of programs and activities funded through the grant; and

(iv) indicates the amount of grant funds remaining on the date that the report is submitted.

(b) (i) A grant recipient shall submit the report described in Subsection (6)(a) before August 1 of each year until the grant recipient expends all funds awarded to the recipient under the grant program.

(ii) After a grant recipient expends all funds awarded to the recipient under the grant program, the grant recipient shall submit a final report to the local health department with the information described in Subsection (6)(a).

(7) (a) On or before September 1 of each year, each local health department shall submit the reports described in Subsection (6) to the Association of Local Health Departments.

(b) The Association of Local Health Departments shall compile the reports and, in collaboration with the Department of Health, submit a report to the Health and Human Services Interim Committee regarding:

(i) the use of funds appropriated to the grant program;

(ii) the impact and effectiveness of programs activities that the grant program funds during the previous fiscal year; and

(iii) any recommendations for legislation.

Section 22. Section **51-9-203 (Effective 07/01/20)** is amended to read:

### **51-9-203 (Effective 07/01/20). Requirements for tobacco programs.**

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

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

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

(ii) for school-based education programs to prevent and reduce youth smoking, the

## SB0037S04 compared with SB0037S03

request shall describe how the program will be effective in preventing and reducing youth smoking;

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

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

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

(C) if directed toward youth:

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

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

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

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

(iv) for enforcement, control, and compliance program, the request shall demonstrate that the proposed program can reasonably be expected to reduce the extent to which tobacco products are available to individuals under [~~the following ages:~~] 21 years old;

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

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

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

(i) the amount funded;

(ii) the amount expended;

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

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

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

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

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

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

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enforce:

- (A) the provisions of the Master Settlement Agreement;
  - (B) Title 26, Chapter 38, Utah Indoor Clean Air Act;
  - (C) Title 26, Chapter 62, Part 3, Enforcement; and
  - (D) Title 77, Chapter 39, Sale of Tobacco or Alcohol to Under Age Persons; and
- (d) agree, by contract, to repay the funds provided under this part if the organization:
- (i) fails to file a timely report as required by Subsection (1)(b); or
  - (ii) uses any portion of the funds in violation of Subsection (1)(c).

(2) The Department of Health shall review and evaluate the success and effectiveness of any program or campaign that receives funding pursuant to a request submitted under Subsection (1). The review and evaluation:

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

(3) The Department of Health shall annually report to the Social Services Appropriations Subcommittee on the reviews conducted pursuant to Subsection (2).

(4) An organization that fails to comply with the contract requirements set forth in Subsection (1) shall:

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

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

Section 23. Section **53-3-229** is amended to read:

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

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

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

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



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

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

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

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

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

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

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

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

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

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

(i) a cigarette;

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

(iii) a nicotine product as defined in Section 76-10-101;

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

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

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

(5) It is a third degree felony if [~~a person's~~] an individual's acquisition, use, display, or

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transfer of a false or altered driver license certificate:

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

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

Section 24. Section **53-3-810** is amended to read:

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

(1) It is a class C misdemeanor to:

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

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

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

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

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

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

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

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

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

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

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

(i) a cigarette;

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

(iii) a nicotine product as defined in Section 76-10-101;

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

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

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

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

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

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

Section 25. Section **53G-4-402** is amended to read:

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

(1) A local school board shall:

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

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

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

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

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

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

(g) ensure that the local school board meets the data collection and reporting standards

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described in Section 53E-3-501.

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

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

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

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

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

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

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

(iii) be filed with the state board.

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

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

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

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

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

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

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

(11) (a) A local school board may organize school safety patrols and adopt policies

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under which the patrols promote student safety.

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

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

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

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

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

(13) (a) A local school board may appoint and fix the compensation of a compliance officer to issue citations for violations of Subsection 76-10-105(2)(b).

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

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

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

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

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

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

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

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

(i) the schools within the district;

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

(iii) the municipality or county;

(iv) state or local law enforcement; and

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(v) state or local traffic safety engineering.

(c) The committee shall:

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

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

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

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

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

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

(b) The plan shall:

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

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

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

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

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

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

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

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

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

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

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

(c) The plan may:

(i) include emergency personnel, emergency communication, and emergency equipment components;

(ii) require professional learning on the emergency response plan for school personnel who are involved in sports programs in the district's secondary schools; and

(iii) provide for coordination with individuals and agency representatives who:

(A) are not employees of the school district; and

(B) would be involved in providing emergency services to students injured while participating in sports events.

(d) The local school board, in collaboration with the schools referred to in Subsection (19)(b), may review the plan each year and make revisions when required to improve or enhance the plan.

(e) The state board, through the state superintendent, shall provide local school boards with an emergency plan response model that local school boards may use to comply with the requirements of this Subsection (19).

(20) A local school board shall do all other things necessary for the maintenance, prosperity, and success of the schools and the promotion of education.

(21) (a) Before closing a school or changing the boundaries of a school, a local school

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board shall:

(i) at least 120 days before approving the school closure or school boundary change, provide notice to the following that the local school board is considering the closure or boundary change:

(A) parents of students enrolled in the school, using the same form of communication the local school board regularly uses to communicate with parents;

(B) parents of students enrolled in other schools within the school district that may be affected by the closure or boundary change, using the same form of communication the local school board regularly uses to communicate with parents; and

(C) the governing council and the mayor of the municipality in which the school is located;

(ii) provide an opportunity for public comment on the proposed school closure or school boundary change during at least two public local school board meetings; and

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

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

(i) indicate the:

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

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

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

(A) published:

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

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

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

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

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

(23) A local school board may establish or partner with a certified youth court program, in accordance with Section 78A-6-1203, or establish or partner with a comparable



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restorative justice program, in coordination with schools in that district. A school may refer a student to youth court or a comparable restorative justice program in accordance with Section 53G-8-211.

Section 26. Section **53G-8-209** is amended to read:

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

(1) The Legislature recognizes that:

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

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

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

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

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

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

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

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(i) use of foul, abusive, or profane language while engaged in school related activities;  
(ii) illicit use, possession, or distribution of controlled substances or drug paraphernalia, and the use, possession, or distribution of an electronic cigarette product or a nicotine product as those terms are defined in Section 76-10-101, tobacco, or alcoholic beverages contrary to law; and

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

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

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

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

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

Section 27. Section **59-14-102** is amended to read:

### **59-14-102. Definitions.**

As used in this chapter:

(1) "Alternative nicotine product" means the same as that term is defined in Section 76-10-101.

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

(a) regardless of:

(i) the size of the roll;

(ii) the shape of the roll; or

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

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

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~~[(2)]~~ (3) "Cigarette rolling machine" means a device or machine that has the capability to produce at least 150 cigarettes in less than 30 minutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) "Electronic cigarette substance" means the same as that term is defined in Section 76-10-101.

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

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

~~[(8)]~~ (12) "Little cigar" means a roll for smoking that:

(a) is made wholly or in part of tobacco;

(b) ~~[that]~~ uses an integrated cellulose acetate filter or other similar filter; and

(c) ~~[that]~~ is wrapped in a substance:

(i) containing tobacco; and

(ii) that is not exclusively natural leaf tobacco.

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~~[(9)] (13)~~ (a) Except as provided in Subsection ~~[(9)] (13)~~(b), "manufacturer" means a person ~~[who]~~ that:

(i) manufactures, fabricates, assembles, processes, or labels a finished cigarette[-]; or

(ii) makes, modifies, mixes, manufactures, fabricates, assembles, processes, labels, repackages, relabels, or imports an electronic cigarette product or a nicotine product.

(b) "Manufacturer" does not include a cigarette rolling machine operator.

~~[(10)] (14)~~ "Moist snuff" means tobacco that:

(a) is finely~~[-(i)-]~~ cut~~[-(ii)]~~, ground~~[-or-(iii)]~~, or powdered;

(b) has at least 45% moisture content, as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(c) is not intended to be:

(i) smoked; or

(ii) placed in the nasal cavity; and

(d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or distributed in single-use units, including:

(i) tablets;

(ii) lozenges;

(iii) strips;

(iv) sticks; or

(v) packages containing multiple single-use units.

(15) "Nicotine" means the same as that term is defined in Section 76-10-101.

(16) "~~{Nicotine product}~~ **Prefilled electronic cigarette**" means the same as that term is defined in Section 76-10-101.

(17) "~~{Nontherapeutic}~~ **Prefilled nontherapeutic** nicotine device" means the same as that term is defined in Section 76-10-101.

~~{(18) "Nontherapeutic nicotine device substance" means the same as that term is defined in Section 76-10-101.~~

~~(19) "Nontherapeutic nicotine product" means the same as that term is defined in Section 76-10-101.~~

~~(20) "Prefilled electronic cigarette" means the same as that term is defined in Section 76-10-101.~~

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~~———— (21) "Prefilled nontherapeutic nicotine device" means the same as that term is defined in Section 76-10-101.~~

† [(11)] ~~(22)~~ 18) "Retailer" means a person that:

(a) sells or distributes a cigarette, an electronic cigarette product, or a nicotine product to a consumer in the state; or

(b) intends to sell or distribute a cigarette, an electronic cigarette product, or a nicotine product to a consumer in the state.

[(12)] ~~(23)~~ 19) "Stamp" means the indicia required to be placed on a cigarette package that evidences payment of the tax on cigarettes required by Section 59-14-205.

[(13)] ~~(24)~~ 20) (a) "Tobacco product" means a product made of, or containing, tobacco.

(b) "Tobacco product" includes:

(i) a cigarette produced from a cigarette rolling machine;

(ii) a little cigar; or

(iii) moist snuff.

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

[(14)] ~~(25)~~ 21) "Tribal lands" means land held by the United States in trust for a federally recognized Indian tribe.

Section 28. Section ~~{59-14-302}~~ 59-14-104 is ~~{amended}~~ enacted to read:

### 59-14-104. Rate reduction for modified risk tobacco products.

(1) Beginning July 1, 2021, the tax imposed under this chapter is reduced in accordance with Subsection (2):

(a) on the first day of a calendar quarter; and

(b) after a 90-day period beginning on the day on which the commission receives a notice from the manufacturer of a product that has received a modified risk tobacco product order from the United States Food and Drug Administration.

(2) The tax imposed under this chapter is reduced by:

(a) 50% for any product that is issued a modified risk tobacco product order under 21 U.S.C. Sec. 387k(g)(1); and

(b) 25% for any product that is issued a modified risk tobacco product order under 21 U.S.C. Sec. 387k(g)(2).

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### Section 29. Section 59-14-302 is amended to read:

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

(1) As used in this section:

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

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

(i) whether the tobacco product is shipped f.o.b. origin or f.o.b. destination; or

(ii) who pays the original Utah destination freight charge.

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

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

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

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

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

(i) at a rate of \$1.83 per ounce; and

(ii) on the basis of the net weight of the moist snuff as listed by the manufacturer.

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

(i) on that fractional part of one ounce; and

(ii) in accordance with rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

(ii) A tax under this Subsection (6)(b) is imposed on the date the cigarette is produced

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from the cigarette rolling machine.

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

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

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

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

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

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

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

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

Section ~~29~~30. Section **59-14-703 (Effective 07/01/20)** is amended to read:

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

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

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

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

or

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

(i) the cigarette rolling machine operator; or

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

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rolling machine.

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

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

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

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

(i) December 31 of each year; or

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

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

(a) identify:

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

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

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

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

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

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

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

(ii) the cigarette rolling machine operator shall prohibit another person who uses the cigarette rolling machine operator's cigarette rolling machine from using tobacco, a wrapper, or



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a cover except for tobacco, a wrapper, or a cover purchased by or provided to the cigarette rolling machine operator from a person identified in accordance with Subsection (5)(a)(iii);

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

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

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

(A) present at any time; or

(B) permitted to enter at any time; and

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

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

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

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

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

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

~~(a) deny the certification or renewal of certification; and~~

~~(b) provide the cigarette rolling machine operator the grounds for denial of the certification or renewal of certification in writing.~~

Section ~~30~~31. Section **59-14-801** is amended to read:

### **Part 8. Electronic Cigarette and Nicotine Product Licensing and Taxation Act** **59-14-801. Title.**

This part is known as the "Electronic Cigarette Product and Nicotine Product Licensing

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and Taxation Act."

Section ~~{31}~~32. Section 59-14-802 is amended to read:

### 59-14-802. Definitions.

As used in this part:

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

~~[(2)(a) "Electronic cigarette" means:]~~

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

~~[(ii) a component of the device described in Subsection (2)(a)(i); or]~~

~~[(iii) an accessory sold in the same package as the device described in Subsection (2)(a)(i).]~~

~~[(b) "Electronic cigarette" includes an e-cigarette as defined in Section 26-38-2.]~~

~~[(3) "Electronic cigarette product" means an electronic cigarette or an electronic cigarette substance.]~~

~~[(4) "Electronic cigarette substance" means any substance, including liquid containing nicotine, used or intended for use in an electronic cigarette.]~~

~~[(5) (1) "Licensee" means a person that holds a valid license to sell an electronic cigarette ~~[products]~~ product or a nicotine product.~~

~~[(6) "License to sell an electronic cigarette product" means a license issued by the commission under Subsection 59-14-803(3).]~~

(2) (a) "Manufacturer's sales price" means the amount that the manufacturer of an electronic cigarette substance ~~{,}~~ or a prefilled electronic cigarette ~~{, an alternative nicotine product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device}~~ charges after subtracting a discount.

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

(i) whether the electronic cigarette substance ~~{,}~~ or prefilled electronic cigarette ~~{, alternative nicotine product, nontherapeutic nicotine device substance, or prefilled nontherapeutic nicotine device}~~ is shipped f.o.b. origin or f.o.b. destination; or

(ii) who pays the original Utah destination freight charge.

Section ~~{32}~~33. Section 59-14-803 is amended to read:

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### 59-14-803. License to sell electronic cigarette product or nicotine product.

(1) ~~[Except as provided in Subsection (2), a]~~ A person may not sell, offer to sell, or distribute an electronic cigarette product [in Utah] or ~~fa~~an alternative nicotine product in this state without first:

(a) except as provided in Subsection (2), obtaining a license from the commission under this section to sell an electronic cigarette product [from the commission under this section:] or ~~fa~~an alternative nicotine product; and

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

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

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

(a) the person's name;

(b) the address of the facility where the person will sell an electronic cigarette product or ~~fa~~an alternative nicotine product; and

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

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

(a) valid only at one fixed business address;

(b) valid for three years;

(c) valid only for a physical location; and

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

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

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

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59-14-301.

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

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

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

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

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

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

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

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

Section ~~{33}~~ 34. Section **59-14-804** is enacted to read:

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

(1) (a) Beginning on July 1, 2020, a tax is imposed upon the following:

(i) an electronic cigarette substance; and

(ii) a prefilled electronic cigarette.

(b) Beginning on July 1, 2021, a tax is imposed upon ~~the following:~~

~~(i) an alternative nicotine product;~~

~~(ii) a nontherapeutic nicotine device substance; and~~

~~(iii) a prefilled nontherapeutic nicotine device.~~

(2) (a) The amount of tax levied under Subsection (1)(a) is .56 multiplied by the manufacturer's sales price.

~~(b) (i) The tax described in Subsection (1)(b) on an alternative nicotine product is~~

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imposed:

(A) at a rate of \$1.83 per ounce; and

(B) on the basis of the net weight of the alternative nicotine product as listed by the manufacturer.

(ii) If the net weight of the alternative nicotine product is in a quantity that is a fractional part of one ounce, a proportionate amount of the tax described in Subsection (2)(b)(i)(A) is imposed:

(A) on that fractional part of one ounce; and

(B) in accordance with rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) If a product is sold in the same package as a product that is taxed under Subsection (1)(a), the tax described in Subsection (2)(a) shall apply to the wholesale manufacturer's sale price of the entire packaged product.

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

(b) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user may not resell an electronic cigarette substance, a prefilled electronic cigarette, or an alternative nicotine product, ~~a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device~~ to another distributor, another retailer, or a consumer before paying the tax levied under Subsection (1).

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

(b) The commission shall deposit revenues generated by the tax imposed by this section into the Electronic Cigarette Substance and Nicotine Product Tax Restricted Account created in Section 59-14-807.

Section ~~34~~35. Section **59-14-805** is enacted to read:

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

(1) (a) The manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user

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that collects the tax imposed on an electronic cigarette substance, a prefilled electronic cigarette, ~~or an alternative nicotine product~~, ~~a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device~~ shall remit to the commission, in an electronic format approved by the commission:

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

(ii) the quarterly tax return.

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

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

(i) the seller's name and address;

(ii) the name and address of the purchaser;

(iii) the date of sale;

(iv) the name and price of the product; and

(v) the discount, if any.

(b) The invoice shall show whether the price includes the tax.

(c) The seller and the purchaser shall retain copies of the invoice and make the invoice available for inspection at the request of the commission or the commission's agent for a period of three years following the sale.

(3) (a) A consumer that purchases an untaxed electronic cigarette substance, ~~a~~ ~~prefilled electronic cigarette, ~~or an~~ alternative nicotine product~~, ~~nontherapeutic nicotine device substance, or prefilled nontherapeutic nicotine device~~ for use or other consumption shall:

(i) file with the commission, on forms prescribed by the commission, a statement showing the quantity and description of the item subject to tax under this part; and

(ii) pay the tax imposed by this part on that item.

(b) The consumer shall file the statement described in Subsection (3)(a) and pay the tax due on or before the last day of the month immediately following the month during which the consumer purchased an untaxed electronic cigarette substance, ~~a~~ ~~prefilled electronic cigarette,~~

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or an alternative nicotine ~~{device substance, nontherapeutic nicotine }~~ product~~{, or prefilled nontherapeutic nicotine device}~~.

(c) A consumer shall maintain records necessary to determine the amount of tax the consumer is liable to pay under this part for a period of three years following the date on which the statement required by this section was filed.

(4) A tourist who imports an untaxed electronic cigarette substance, a prefilled electronic cigarette, or an alternative nicotine product~~{, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device}~~ into the state does not need to file the statement described in Subsection (3) or pay the tax if the item is for the tourist's own use or consumption while in this state.

(5) In addition to the tax required by this part, a person shall pay a penalty as provided in Section 59-1-401, plus interest at the rate and in the manner prescribed in Section 59-1-402, if a person subject to this section fails to:

- (a) pay the tax prescribed by this part;
- (b) pay the tax on time; or
- (c) file a return required by this part.

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

Section ~~{35}~~36. Section **59-14-806** is enacted to read:

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

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

- (a) is a licensed dealer;
- (b) signs an affidavit that the electronic cigarette substance, the prefilled electronic cigarette, or the alternative nicotine product~~{, the nontherapeutic nicotine device substance, or the prefilled nontherapeutic nicotine device}~~ was sold and shipped to a regular dealer in those articles in another state;

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(c) furnishes, from the purchaser, a written acknowledgment that the purchaser has received the electronic cigarette substance, the prefilled electronic cigarette, ~~or~~ the alternative nicotine product~~{, the nontherapeutic nicotine device substance, or the prefilled nontherapeutic nicotine device}~~; and

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

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

Section ~~{36}~~37. Section **59-14-807** is enacted to read:

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

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

(2) The Electronic Cigarette Substance and Nicotine Product Tax Restricted Account consists of:

(a) revenues collected from the tax imposed by Section 59-14-804; and

(b) amounts appropriated by the Legislature.

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

(a) \$2,000,000 which shall be allocated to the local health departments by the Department of Health using the formula created in accordance with Section 26A-1-116;

(b) \$2,000,000 to the Department of Health for statewide cessation programs and prevention education;

(c) \$1,180,000 to the Department of Public Safety for law enforcement officers aimed at disrupting organizations and networks that provide tobacco products, electronic cigarette products, nicotine products, and other illegal controlled substances to minors; and

(d) \$3,000,000 which shall be allocated to the local health departments by the Department of Health using the formula created in accordance with Section 26A-1-116.



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(4) (a) The local health departments shall use the money received in accordance with Subsection (3)(a) for enforcing:

- (i) the regulation provisions described in Section 26-57-103;
- (ii) the labeling requirement described in Section 26-57-104; and
- (iii) the penalty provisions described in Section 26-62-305.

(b) The Department of Health shall use the money received in accordance with Subsection (3)(b) for the Youth Electronic Cigarette, Marijuana, and Other Drug Prevention Program created in Section 26-7-10.

(c) The local health department shall use the money received in accordance with Subsection (3)(~~fe~~d) to issue grants under the Electronic Cigarette, Marijuana, and Other Drug Prevention Grant Program created in Section 26A-1-129.

(5) (a) The fund shall earn interest.

(b) All interest earned on fund money shall be deposited into the fund.

(6) Subject to legislative appropriations, funds remaining in the Electronic Cigarette Substance and Nicotine Product Tax Restricted Account after the distribution described in Subsection (3) may only be used for programs and activities related to the prevention and cessation of electronic cigarette, nicotine products, marijuana, and other drug use.

Section ~~{37}~~38. Section **59-14-808** is enacted to read:

### **59-14-808. Restrictions on mail order or Internet sales.**

(1) For purposes of this section:

(a) "Distributor" means a person, wherever residing or located, who:

(i) is licensed in this state to purchase a non-taxed nicotine product or a non-taxed electronic cigarette product; and

(ii) stores, sells, or otherwise disposes of a nicotine product or an electronic cigarette product.

(b) "Licensed person" means the same as that term is defined in Section 59-14-409.

(c) "Order or purchase" includes:

(i) by mail or delivery service;

(ii) through the Internet or computer network;

(iii) by telephone; or

(iv) through some other electronic method.

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(d) "Retailer" means any person who sells a nicotine product or an electronic cigarette product to consumers for personal consumption.

(2) A person, distributor, manufacturer, or retailer shall not:

(a) cause a nicotine product or an electronic cigarette product to be ordered or purchased by anyone other than a licensed person; or

(b) knowingly provide substantial assistance to a person who violates this section.

(3) (a) Each order or purchase of a nicotine product or an electronic cigarette product in violation of Subsection (2) constitutes a separate violation under this section.

(b) In addition to the penalties in Subsection (4), a person who violates this section is subject to:

(i) a civil penalty in an amount not to exceed \$5,000 for each violation of this section;

(ii) an injunction to restrain a threatened or actual violation of this section; and

(iii) recovery by the state for:

(A) the costs of investigation;

(B) the cost of expert witness fees;

(C) the cost of the action; and

(D) reasonable attorney's fees.

(4) A person who knowingly violates this section has engaged in an unfair and deceptive trade practice in violation of Title 13, Chapter 5, Unfair Practices Act, and the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the state treasurer for deposit in the General Fund.

Section ~~{38}~~39. Section **63I-1-226** is amended to read:

**63I-1-226. Repeal dates, Title 26.**

(1) Section 26-1-40 is repealed July 1, 2022.

(2) Section 26-7-10 is repealed July 1, 2025.

~~{2}~~ (3) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July 1, 2025.

~~{3}~~ (4) Section 26-10-11 is repealed July 1, 2020.

~~{4}~~ (5) Subsection 26-18-417(3) is repealed July 1, 2020.

~~{5}~~ (6) Subsection 26-18-418(2), the language that states "and the Mental Health Crisis Line Commission created in Section 63C-18-202" is repealed July 1, 2023.

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~~[(6) Section 26-18-419.1 is repealed December 31, 2019.]~~

(7) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 2024.

(8) Title 26, Chapter 36b, Inpatient Hospital Assessment Act, is repealed July 1, 2024.

(9) Title 26, Chapter 36c, Medicaid Expansion Hospital Assessment Act, is repealed July 1, 2024.

(10) Title 26, Chapter 36d, Hospital Provider Assessment Act, is repealed July 1, 2024.

(11) Title 26, Chapter 54, Spinal Cord and Brain Injury Rehabilitation Fund and Pediatric Neuro-Rehabilitation Fund, is repealed January 1, 2023.

(12) Subsection 26-61a-108(2)(e)(i), related to the Native American Legislative Liaison Committee, is repealed July 1, 2022.

(13) Title 26, Chapter 63, Nurse Home Visiting Pay-for-Success Program, is repealed July 1, 2026.

Section ~~39~~40. Section **76-8-311.3** is amended to read:

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

### **Penalties.**

(1) As used in this section:

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

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

(c) "Correctional facility" means:

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

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

(iii) any juvenile detention facility; and

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

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

(e) "Medicine" means any prescription drug as defined in Title 58, Chapter 17b,

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Pharmacy Practice Act, but does not include any controlled substances as defined in Title 58, Chapter 37, Utah Controlled Substances Act.

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

(g) "Nicotine product" means the same as that term is defined in Section 76-10-101.

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

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

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

- (a) transported to or upon a correctional or mental health facility;
- (b) sold or given away at any correctional or mental health facility;
- (c) given to or used by any offender at a correctional or mental health facility; or
- (d) knowingly or intentionally possessed at a correctional or mental health facility.

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

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

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

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

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

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

(b) Any [~~person~~] individual who provides or sells to any offender at a correctional

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facility, or any detainee at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a second degree felony.

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

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

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

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

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

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

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

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

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

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(iii) poison in any quantity.

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

(i) transports, delivers, or distributes any tobacco product [~~or~~], electronic cigarette product, or nicotine product to an offender or on the grounds of any correctional facility;

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

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

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

(i) spirituous or fermented liquor;

(ii) medicine; or

(iii) poison in any quantity.

(f) (i) [~~A person~~] Except as provided in Subsection (5)(f)(ii), an individual is guilty of a class B misdemeanor who, without the permission of the authority operating the correctional facility, knowingly engages in any activity that would facilitate the possession of any contraband by an offender in a correctional facility.

(ii) The provisions of Subsection (5)(d) regarding any tobacco product [~~or~~], electronic cigarette product, or nicotine product take precedence over this Subsection (5)(f).

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

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

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

Section ~~{40}~~41. Section **76-10-101** is amended to read:

### **76-10-101. Definitions.**

As used in this part:

(1) (a) "Alternative nicotine product" means a product, other than a cigarette, a counterfeit cigarette, an electronic cigarette product, a nontherapeutic nicotine product, or a tobacco product, that:

(i) contains nicotine;

(ii) is intended for human consumption;

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

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

(b) "Alternative nicotine product" includes:

(i) pure nicotine;

(ii) snortable nicotine;

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

(iv) nicotine-laced food and beverage.

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

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

~~[(2)]~~ (3) "Cigarette" means a product that contains nicotine, is intended to be burned under ordinary conditions of use, and consists of:

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

(b) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in Subsection ~~[(2)]~~ (3)(a).

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

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

(i) any electronic oral device;

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

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

(ii) a component of the device described in Subsection (4)(a)(i); and

(iii) an accessory sold in the same package as the device described in Subsection

(4)(a)(i).

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

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

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

(A) an e-cigarette;

(B) an e-cigar;

(C) an e-pipe; or

(D) any other product name or descriptor, if the function of the product meets the definition of Subsection (4)(a).

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

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

(7) "Nicotine" means a poisonous, nitrogen containing chemical that is made synthetically or derived from tobacco or other plants.

(8) "Nicotine product" means an alternative nicotine product or a nontherapeutic nicotine product.

(9) (a) "Nontherapeutic nicotine device" means a device that:

(i) has a pressurized canister that is used to administer nicotine to the user through inhalation or intranasally;

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

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



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(b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or a nontherapeutic nicotine nasal spray.

(10) "Nontherapeutic nicotine device substance" means a substance that:

(a) contains nicotine;

(b) is sold in a cartridge for use in a nontherapeutic nicotine device;

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

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

(11) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device.

~~(4)~~ (12) "Place of business" includes:

(a) a shop;

(b) a store;

(c) a factory;

(d) a public garage;

(e) an office;

(f) a theater;

(g) a recreation hall;

(h) a dance hall;

(i) a poolroom;

(j) a café;

(k) a cafeteria;

(l) a cabaret;

(m) a restaurant;

(n) a hotel;

(o) a lodging house;

(p) a streetcar;

(q) a bus;

(r) an interurban or railway passenger coach;

(s) a waiting room; and

(t) any other place of business.

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(13) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled with an electronic cigarette substance.

(14) "Prefilled nontherapeutic nicotine device" means a nontherapeutic nicotine device that is sold prefilled with a nontherapeutic nicotine device substance.

~~(5)~~ (15) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other lighted smoking equipment.

(16) (a) "Tobacco paraphernalia" means equipment, product, or material of any kind that is used, intended for use, or designed for use to package, repackage, store, contain, conceal, ingest, inhale, or otherwise introduce a cigar, a cigarette, an electronic cigarette substance, a nontherapeutic nicotine device substance, or tobacco in any form into the human body.

(b) "Tobacco paraphernalia" includes:

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

(ii) water pipes;

(iii) carburetion tubes and devices;

(iv) smoking and carburetion masks;

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

(vi) chamber pipes;

(vii) carburetor pipes;

(viii) electric pipes;

(ix) air-driven pipes;

(x) chillums;

(xi) bongs; and

(xii) ice pipes or chillers.

(c) "Tobacco paraphernalia" does not include matches or lighters.

(17) "Tobacco product" means:

(a) a cigar;

(b) a cigarette;

(c) a tobacco product, including:

## SB0037S04 compared with SB0037S03

(i) chewing tobacco; and

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

and

(d) tobacco paraphernalia.

Section ~~{41}~~42. Section 76-10-103 (Effective 07/01/20) is amended to read:

**76-10-103 (Effective 07/01/20). Permitting minors to use tobacco products, electronic cigarette products, or nicotine products in place of business.**

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

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

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

Section ~~{42}~~43. Section 76-10-104 (Effective 07/01/20) is amended to read:

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

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

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

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

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

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

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

(2) An individual is guilty of a class C misdemeanor on the first offense, a class B misdemeanor on the second offense, and a class A misdemeanor on subsequent offenses if the

## SB0037S04 compared with SB0037S03

individual knowingly, intentionally, recklessly, or with criminal negligence provides a cigar, a cigarette, an electronic cigarette product, a nicotine product, or tobacco in any form to an individual who is under 21 years old.

Section ~~{43}~~44. Section 76-10-104.1 (Effective 07/01/20) is amended to read:

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

### **Penalties.**

(1) For purposes of this section~~[-]~~, "provides":

~~[(a) "Provides":]~~

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

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

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

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

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

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

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

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

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

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

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

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

~~[(J) chillums;]~~

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

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

## SB0037S04 compared with SB0037S03

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

(2) (a) It is unlawful for ~~[a person]~~ an individual to knowingly, intentionally, recklessly, or with criminal negligence provide tobacco paraphernalia to an individual under~~[:]~~ 21 years old.

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

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

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

Section ~~{44}~~45. Section **76-10-105 (Effective 07/01/20)** is amended to read:

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

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

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

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

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

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

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

(2) (a) An individual under the age of 18 who buys or attempts to buy, accepts, or has in the individual's possession any cigar, cigarette, electronic cigarette product, nicotine product, or tobacco in any form is subject to the jurisdiction of the juvenile court and subject to Section 78A-6-602, unless the violation is committed on school property.

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

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

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

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

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

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

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

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

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

Section ~~{45}~~46. Section **76-10-105.1 (Effective 07/01/20)** is amended to read:

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

(1) As used in this section:

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

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

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

(A) vending machine; or

(B) self-service display.

(c) "Retailer" means a person who:

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

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

(d) "Self-service display" means a display of a cigarette, tobacco, ~~[or]~~ an electronic cigarette product, or a nicotine product to which the public has access without the intervention

## SB0037S04 compared with SB0037S03

of a retailer or retailer's employee.

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

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

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

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

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

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

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

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

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

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

(c) a sale at a tobacco specialty shop.

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

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

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

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

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

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

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

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

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

- (a) class C misdemeanor on the first offense;
- (b) class B misdemeanor on the second offense; and
- (c) class A misdemeanor on the third and all subsequent offenses.

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

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

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

Section ~~{46}~~47. Section **76-10-111** is amended to read:

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

(1) The Legislature finds that:

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

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

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

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

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

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

(ii) sell, offer for sale, or furnish any electronic cigarette product ~~for nicotine product~~ at less than 90% of the cost, including the amount of any applicable tax, of the product to the manufacturer, wholesaler, or retailer; or



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(iii) give, distribute, sell, offer for sale, or furnish any electronic cigarette product ~~for nicotine product~~ for free or at a lower price because the recipient of the electronic cigarette product makes another purchase.

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

(i) a physical manufacturer coupon:

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

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

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

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

(c) Any ~~person~~ individual who violates this section is guilty of:

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

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

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

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

Section ~~{47}~~48. Section 77-39-101 (Effective 07/01/20) is amended to read:

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

(1) As used in this section~~;~~:

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

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

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

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

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

(A) a cigar;

(B) a cigarette;

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

(D) an electronic cigarette[-] product; or

(E) a nicotine product.

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

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

(i) alcohol; or

(ii) (A) a cigar;

(B) a cigarette;

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

(D) an electronic cigarette[-] product; or

(E) a nicotine product.

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

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

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

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

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

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

(i) be a trained volunteer; or

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(ii) receive payment, but may not be paid based on the number of successful purchases of alcohol, tobacco, [or] an electronic cigarette product, or a nicotine product.

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

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

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

(i) on a random basis; and

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

(A) two times for the attempted purchase of:

(I) a cigar;

(II) a cigarette;

(III) tobacco in any form; [or]

(IV) an electronic cigarette product; [and] or

(V) a nicotine product; and

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

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

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

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

(7) (a) The peace officer exercising direction, supervision, and monitoring of the

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attempted purchase shall make a report of the attempted purchase, whether or not a purchase was made.

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

(i) the name of the supervising peace officer;

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

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

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

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

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

Section ~~{48}~~49. **Effective date.**

This bill takes effect on July 1, 2020.