

Matt MacPherson proposes the following substitute bill:

Tobacco and Electronic Cigarette Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jen Plumb

House Sponsor: Jefferson S. Burton

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- amends provisions related to electronic cigarette product enforcement;
- amends provisions related to electronic cigarette product searches;
- **↔ creates civil penalties for selling menthol flavored electronic cigarette products; ↔**
- modifies the electronic cigarette product registry;
- creates penalties for general tobacco retailers that sell flavored electronic cigarette products;
- raises permit fees for general tobacco retailers;
- raises permit fees for retail tobacco specialty businesses;
- amends criminal penalties regarding the illegal sale of tobacco and electronic cigarette products; and
- includes a coordination clause with H.B. 21, Criminal Code Recodification and Cross References, to ensure the policy changes made in this bill are accurately reflected if both bills pass.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

26A-1-131, as enacted by Laws of Utah 2024, Chapter 470

28 **26B-7-501**, as renumbered and amended by Laws of Utah 2023, Chapter 308
 29 **26B-7-509**, as renumbered and amended by Laws of Utah 2023, Chapter 308
 30 **26B-7-518**, as renumbered and amended by Laws of Utah 2023, Chapter 308
 31 **26B-7-521**, as renumbered and amended by Laws of Utah 2023, Chapter 308
 32 **59-14-810**, as enacted by Laws of Utah 2024, Chapter 470
 33 **76-10-104**, as last amended by Laws of Utah 2020, Chapters 302, 347
 34 **76-10-104.1**, as last amended by Laws of Utah 2020, Chapters 302, 347
 35 **76-10-105.1**, as last amended by Laws of Utah 2021, Chapter 348
 36 **76-10-111**, as last amended by Laws of Utah 2020, Chapters 302, 347
 37 **76-10-112**, as last amended by Laws of Utah 2020, Chapter 302
 38 **76-10-113**, as last amended by Laws of Utah 2024, Chapter 470
 39 **76-10-114**, as last amended by Laws of Utah 2021, First Special Session, Chapter 12

40 **Utah Code Sections affected by Coordination Clause:**

41

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

43 Section 1. Section **26A-1-131** is amended to read:

44 **26A-1-131 . Electronic cigarette registry enforcement.**

45 ~~[(1)(a) A local health department may examine the books, papers, and records of a~~
 46 ~~retailer in this state, for the purpose of determining compliance with Section~~
 47 ~~59-14-810.]~~

48 ~~[(b) A local health department may make the inspections and examinations at any time~~
 49 ~~during ordinary business hours, and may inspect the premises and all desks, safes,~~
 50 ~~vaults, and other fixtures and furniture contained in or upon the premises for the~~
 51 ~~purpose of ascertaining whether an electronic cigarette product is held or possessed~~
 52 ~~in violation of Section 59-14-810.]~~

53 ~~[(c) Unannounced follow-up examinations of all retailers are required within 30 days~~
 54 ~~after any violation of Section 59-14-810.]~~

55 ~~[(d)]~~ (1)(a) A local health department may conduct regular inspections of a business that
 56 sells an electronic cigarette product as that term is defined in Section 76-10-101, in
 57 accordance with the provisions of Section 26B-7-516.

58 (b) A local health department shall publish the results of all [examinations] inspections at
 59 least annually and shall make the results available to the public on request.

60 ~~[(e)]~~ (c) Any electronic cigarette product offered for sale in violation of Section
 61 59-14-810 is declared to be a contraband good and shall be immediately embargoed

by a local health department.

~~[(f)]~~ (d) An electronic cigarette product described in Subsection ~~[(+)(e)]~~ (1)(c) may be embargoed without a warrant by:

(i) a local health department; or

(ii) a law enforcement agency of this state if directed by a local health department with jurisdiction over where the product is found.

~~[(g)]~~ (e) The cost of embargoing shall be borne by the retailer.

~~[(h)]~~ (f) In an action brought under this section, a local health department may recover reasonable expenses incurred in investigating and preparing the case and attorney fees.

~~[(+)]~~ (g) A retailer shall remove any embargoed electronic cigarette product from the retailer's active inventory and work with the wholesaler or distributor to return or dispose the electronic cigarette product.

(2)(a) A local health department shall disclose to the attorney general any information received under this section which is requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this section or Section 59-14-810.

(b) A local health department and the attorney general shall share with each other information received under this section and Section 59-14-810 or corresponding laws of other states.

(c) A local health department shall provide any necessary information to the State Tax Commission regarding violations of Section 59-14-810.

(3) A monetary penalty assessed to a retailer by a local health department under this section shall be doubled if the retailer fails to provide documentation establishing a clear chain of custody back to the manufacturer.

Section 2. Section **26B-7-501** is amended to read:

26B-7-501 . Definitions.

As used in this part:

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

(3) "Electronic cigarette product" means 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 76-10-101.
- (5) "Employee" means an employee of a tobacco retailer.
- (6) "Enforcing agency" means the department, or any local health department enforcing the provisions of this part.
- (7) ~~Ĥ~~ → (a) ← ~~Ĥ~~ "Flavored electronic cigarette product" means ~~Ĥ~~ → [the same as that term is defined in] ← ~~Ĥ~~ Ĥ → [Section 76-10-101] an electronic cigarette product that has a taste or smell that is distinguishable by an ordinary consumer either before or during use or consumption of the electronic cigarette product ← ~~Ĥ~~ .
- ~~Ĥ~~ → (b) "Flavored electronic cigarette product" includes an electronic cigarette product that is labeled as, or has a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, spice, menthol, or mint.
- (c) "Flavored electronic cigarette product" does not include an electronic cigarette product that has a taste or smell of only tobacco. ← ~~Ĥ~~
- ~~[(7)]~~ (8) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco specialty business.
- ~~[(8)]~~ (9) "Local health department" means the same as that term is defined in Section 26A-1-102.
- ~~[(9)]~~ (10) "Manufacture" includes:
- (a) to cast, construct, or make electronic cigarettes; or
 - (b) to blend, make, process, or prepare an electronic cigarette substance.
- ~~[(10)]~~ (11) "Manufacturer sealed electronic cigarette substance" means an electronic cigarette substance that is sold in a container that:
- (a) is prefilled by the electronic cigarette substance manufacturer; and
 - (b) the electronic cigarette manufacturer does not intend for a consumer to open.
- ~~[(11)]~~ (12) "Manufacturer sealed electronic cigarette product" means:
- (a) an electronic cigarette substance or container that the electronic cigarette manufacturer does not intend for a consumer to open or refill; or
 - (b) a prefilled electronic cigarette as that term is defined in Section 76-10-101.
- ~~[(12)]~~ (13) "Nicotine" means the same as that term is defined in Section 76-10-101.
- ~~[(13)]~~ (14) "Nicotine product" means the same as that term is defined in Section 76-10-101.
- ~~[(14)]~~ (15) "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.

~~[(15)]~~ (16) "Owner" means a person holding a 20% ownership interest in the business that is required to obtain a permit under this part.

~~[(16)]~~ (17) "Permit" means a tobacco retail permit issued under Section 26B-7-507.

~~[(17)]~~ (18) "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;

(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 26B-2-401, 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 the members' 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.

~~[(18)]~~ (19)(a) "Proof of age" means:

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

(ii) a valid identification that:

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

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

(C) includes date of birth; and

(D) has a picture affixed;

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

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

(A) includes date of birth; and

(B) has a picture affixed; or

(v) a valid passport.

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

~~[(19)]~~ (20) "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.

~~[(20)]~~ (21) "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.

~~[(21)]~~ (22) "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.

~~[(22)]~~ (23) "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 electronic cigarette; or

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

~~[(23)]~~ (24) "Tax commission license" means a license issued by the State Tax Commission under:

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

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

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

~~[(24)]~~ (25) "Tobacco product" means:

(a) a tobacco product as defined in Section 76-10-101; or

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

~~[(25)]~~ (26) "Tobacco retailer" means a person that is required to obtain a tax commission license.

Section 3. Section **26B-7-509** is amended to read:

26B-7-509 . Permit term and fees.

(1)(a) The term of a permit issued to a retail tobacco specialty business is one year.

(b) The term of a permit issued to a general tobacco retailer is two years.

(2)(a) A local health department may not issue a permit until the applicant has paid a permit fee to the local health department of:

(i) ~~[\$30]~~ \$200 for a new permit;

(ii) ~~[\$20]~~ \$175 for a permit renewal; or

(iii) ~~[\$30]~~ \$200 for reinstatement of a permit that has been revoked, suspended, or allowed to expire.

(b) A local health department that collects fees under Subsection (2)(a) shall use the fees to administer and enforce the permit requirements described in Sections 26B-7-506 through 26B-7-521.

(c) In addition to the fee described in Subsection (2)(a), a local health department may establish and collect a fee to perform a plan review for a retail tobacco specialty business permit.

(3) A permit holder may apply for a renewal of a permit no earlier than 30 days before the day on which the permit expires.

(4) A tobacco retailer that fails to renew a permit before the permit expires may apply to reinstate the permit by submitting to the local health department:

(a) the information required in Subsection 26B-7-508(3) and, if applicable, Subsection 26B-7-508(4);

(b) the fee for the reinstatement of a permit; and

(c) a signed affidavit affirming that the tobacco retailer has not violated the prohibitions in Subsection 26B-7-507(1)(b) after the permit expired.

Section 4. Section **26B-7-518** is amended to read:

26B-7-518 . Penalties.

(1)(a) If an enforcing agency determines that a person has violated the terms of a permit issued under this part, the enforcing agency may impose the penalties described in this section.

(b) [~~If~~] Except as provided in Subsections (1)(c) and (1)(d), if multiple violations are found in a single inspection by an enforcing agency or a single investigation by a law enforcement agency ~~→~~ **, including** ~~←~~ [~~under Section 77-39-101~~]

, the enforcing agency shall treat the

multiple violations as one single violation under Subsections (2), (3), [~~and~~](4), and (7).

(c) Fines described in Subsections (4)(a)(ii), (4)(b)(ii), (7)(a)(ii), and (7)(b)(ii) shall compound for each product sold including if products are sold to multiple individuals.

(d) If an investigation determines there is a violation of Subsections (3) and (7), the enforcing agency shall assess all penalties described in Subsections (3) and (7) individually.

(2) Except as provided in Subsections (3), [~~and~~](4), and (7), if a violation is found in an investigation by a law enforcement agency ~~→~~ **, including** [~~under~~

Section 77-39-101 [~~]~~ ~~←~~ **or an inspection**

by an enforcing agency, the enforcing agency shall:

- (a) on a first violation at a retail location, impose a penalty of \$1,000;
- (b) on a second violation at the same retail location that occurs within one year of a previous violation, impose a penalty of \$1,500;
- (c) on a third violation at the same retail location that occurs within two years after two previous violations, impose:
 - (i) a suspension of the permit for 30 consecutive business days within 60 days after the day on which the third violation occurs; or
 - (ii) a penalty of \$2,000; and
- (d) on a fourth or subsequent violation within two years of three previous violations:
 - (i) impose a penalty of \$2,000;
 - (ii) revoke a permit of the retailer; and
 - (iii) 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.

(3) If $\hat{H} \rightarrow [\cdot]$ a violation is found in an investigation of $[\cdot] \leftarrow \hat{H}$ a general

tobacco retailer $\hat{H} \rightarrow [\{\}]$ by a law

enforcement agency, including under Section 77-39-101, for the sale of

a tobacco product, an

electronic cigarette product, or a nicotine product to an individual under 21 years old

and the violation is committed by the owner of the general tobacco retailer[]

~~sells a~~ $\leftarrow \hat{H}$

$\hat{H} \rightarrow [\text{tobacco product to an individual under 21 years old}] \leftarrow \hat{H}$, the enforcing agency shall:

- (a) on a first violation, impose a fine of \$2,000 on the general tobacco retailer; and
- (b) on the second violation for the same general tobacco retailer within one year of the first violation:
 - (i) impose a fine of \$5,000; and
 - (ii) revoke the permit for the general tobacco retailer.

(4) If $\hat{H} \rightarrow [\top]$ a violation is found in an investigation of $[\top] \leftarrow \hat{H}$ a retail

tobacco specialty business $\hat{H} \rightarrow [f]$ by a

law enforcement agency, including under Section 77-39-101, for the sale

of a tobacco product, an

electronic cigarette product, or a nicotine product to an individual under 21 years old[7] ←H

Ĥ→ [sells a tobacco product to an individual under 21 years old] ←Ĥ , the enforcing agency

shall:

(a) on the first violation:

(i) impose a fine of [~~\$5,000~~] \$10,000; [~~and~~]

(ii) impose an additional fine of \$1,000 for each product sold up to \$100,000; and

[~~(ii)~~] (iii) immediately suspend the permit for 30 consecutive days; and

(b) on the second violation at the same retail location within two years of the first violation:

(i) impose a fine of [~~\$10,000~~] \$20,000; [~~and~~]

(ii) impose an additional fine of \$1,000 for each product sold up to \$100,000; and

[~~(ii)~~] (iii) revoke the permit for the retail tobacco specialty business.

(5)(a) Except when a transfer described in Subsection (6) occurs, a local health department may not issue a permit to:

(i) a tobacco retailer for whom a permit is suspended or revoked under Subsection (2) or (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 (2), (3), or (4).

(b) A person whose permit:

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

(ii) is revoked under this section 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.

(6) Violations of this part, 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.

(7) If a general tobacco retailer or retail tobacco specialty business is found to be selling a flavored electronic cigarette product, the enforcing agency Ĥ→ [shall] ←Ĥ :

(a) on the first violation:

(i) ~~It~~ **shall** ~~it~~ impose a fine of \$10,000;

(ii) ~~It~~ **shall** ~~it~~ impose an additional fine of \$1,000 for each product sold up to \$100,000; and

(iii) ~~It~~ **may** ~~it~~ immediately suspend the permit for 30 consecutive days; and

(b) on the second violation at the same retail location within two years of the first violation ~~It~~ **shall** ~~it~~ :

(i) impose a fine of \$20,000;

(ii) impose an additional fine of \$1,000 for each product sold up to \$100,000; and

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

Section 5. Section **26B-7-521** is amended to read:

26B-7-521 . Verification of proof of age -- Verification of identification.

(1) As used in this section:

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

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

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

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

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

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

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

(b) Beginning July 1, 2025, a retail tobacco specialty business shall use an identification verification system.

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

(b) Information obtained under this section:

(i) shall be kept for at least 180 days; and

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

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

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

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

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

- ~~[(i) accompanied by a parent or legal guardian who provides proof of age; or]~~
- ~~[(ii) (i)(A)]~~ present at the retail tobacco specialty business solely for the purpose of providing a commercial service to the retail tobacco specialty business, including making a commercial delivery;
- ~~[(B)] (ii)~~ monitored by the proprietor of the retail tobacco specialty business or an employee of the retail tobacco specialty business; and
- ~~[(C)] (iii)~~ not permitted to make any purchase or conduct any commercial transaction other than the service described in Subsection ~~Ĥ~~ → ~~[(6)(b)(ii)(A)]~~ ~~(6)(b)(i)~~ ← ~~Ĥ~~ .

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

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

Section 6. Section **59-14-810** is amended to read:

59-14-810 . Electronic cigarette product registry.

- (1) Beginning on August 1, 2024, every manufacturer of an electronic cigarette product that is sold in this state, whether directly or through a distributor, wholesaler, retailer, or similar intermediary or intermediaries, shall certify under penalty of perjury on a form and in the manner prescribed by the commission, that:
 - (a) the manufacturer agrees to comply with this section; and
 - (b) the electronic cigarette product is a premarket authorized or pending electronic cigarette product as defined in Section 76-10-101 and will not be illegal to be sold in the state as of January 1, 2025.
- (2) When submitting the certification a manufacturer shall submit a form that separately lists each electronic cigarette product that is sold in this state.
- (3)(a) Each certification form shall include:
 - (i) the name of the electronic cigarette product, nicotine content level by percentage, and any flavors contained in the product;
 - (ii)(A) a copy of the order granting a premarket tobacco product application of the electronic cigarette product by the United States Food and Drug Administration under 21 U.S.C. Sec. 387j(c)(1)(A)(i); or

- 384 (B) evidence that the premarket tobacco product application for the electronic
385 cigarette product or nicotine product was submitted to the United States Food
386 and Drug Administration before September 9, 2020, and a final authorization
387 or order has not yet taken effect;
- 388 (iii) a nonrefundable \$1,000 fee for an electronic cigarette product that is being added
389 to the registry in the first instance; and
- 390 (iv) information described in Subsection (10) if applicable.
- 391 (b) The commission shall make the materials submitted under Subsection (3)(a)
392 available to the Department of Health and Human Services for review and approval.
- 393 (c) A manufacturer required to submit a certification form under this section shall notify
394 the commission and the Department of Health and Human Services in a manner
395 prescribed by the commission within 30 days of any material change making the
396 certification form no longer accurate, including:
- 397 (i) the issuance or denial of a marketing authorization or other order by the United
398 States Food and Drug Administration under 21 U.S.C. Sec. 387j; or
- 399 (ii) any other order or action by the United States Food and Drug Administration or
400 any court that affects the ability of the electronic cigarette product to be
401 introduced or delivered into interstate commerce for commercial distribution in
402 the United States.
- 403 (d) On or before January 31 of each year and in a manner prescribed by the commission,
404 a manufacturer shall:
- 405 (i) recertify that the information contained in the certification is correct and accurate;
- 406 (ii) correct or amend information if necessary; and
- 407 (iii) pay a \$250 nonrefundable fee for each electronic cigarette product on the registry
408 that is manufactured by the manufacturer.
- 409 (e) A manufacturer may amend a certification, including to add additional electronic
410 cigarette products to the registry, if all requirements of this section are met.
- 411 (f) The commission shall:
- 412 (i) provide an electronic notification to a manufacturer that has not submitted a
413 recertification under Subsection (3)(d); and
- 414 (ii) remove a manufacturer or an electronic cigarette product that is not recertified
415 from the registry by March 15.
- 416 (4)(a) The Department of Health and Human Services shall review materials described
417 in Subsection (3)(a) and notify the commission regarding whether an electronic

cigarette product should be included in the registry.

(b) On or before October 1, 2024, the commission shall make publicly available on the commission's website a registry that lists each electronic cigarette product manufacturer and each electronic cigarette product for which certification forms have been approved by the Department of Health and Human Services.

(c) An electronic cigarette product may not be listed on the registry unless the Department of Health and Human Services determines the requirements of Subsection (3)(a) are met.

(5)(a) If the Department of Health and Human Services obtains information that an electronic cigarette product should not be listed in the registry, the Department of Health and Human Services shall provide the manufacturer notice and an opportunity to cure deficiencies before notifying the commission to remove the manufacturer or products from the registry.

(b) Except as provided in Subsection (5)(c), the Department of Health and Human Services shall comply with Title 63G, Chapter 4, Administrative Procedures Act, before notifying the commission to remove an electronic cigarette product or manufacturer from the registry.

(c) Subsection (5)(b) does not apply to a manufacturer failing:

- (i) to ~~deecertify~~ recertify an electronic cigarette product;
- (ii) to provide fees and documentation described in Subsection (3)(a) or (3)(d); or
- (iii) to comply with Subsection (10).

(6)(a) If a product is removed from the registry, each retailer, distributor, and wholesaler shall have 30 days from the day on which the product is removed from the registry to remove the product from any inventory and return the product to the manufacturer for disposal.

(b) After the period described in Subsection (6)(a), any electronic cigarette product of a manufacturer identified in the notice of removal are contraband and are subject to penalties under Subsection (8) ~~and seizure, forfeiture, and destruction under Section 26A-1-131~~.

(7)(a) Beginning on January 1, 2025, a person may not sell or offer for retail sale an electronic cigarette product in this state that is not included in the registry.

(b) A manufacturer may not sell, either directly or through a distributor, wholesaler, retailer, or similar intermediary or intermediaries, an electronic cigarette product in this state that is not included in the registry.

- (8)(a) A wholesaler, distributor, or retailer who sells or offers for retail sale an electronic cigarette product in this state that is not included in the registry shall be subject to a civil penalty of:
- (i) \$1,000 for each product offered for sale in violation of this section; and
 - (ii) \$100 per day until the offending product is removed from the market or until the offending product is properly listed on the registry.
- (b) The commission shall suspend the person's license issued under Section 59-14-803 for a violation of Subsection (8)(a) as follows:
- (i) for a second violation within a 12-month period, at least 14 days;
 - (ii) for a third violation within a 12-month period, at least 60 days; or
 - (iii) for a fourth violation within a 12-month period, at least one year.
- (c) A manufacturer whose electronic cigarette products are not listed in the registry and are sold in this state, whether directly or through a distributor, wholesaler, retailer, or similar intermediary or intermediaries, is subject to a civil penalty of:
- (i) \$1,000 for each product offered for retail sale in violation of this section; and
 - (ii) \$100 per day until the offending product is removed from the market or until the offending product is properly listed on the registry.
- (d) A manufacturer that falsely represents any information required by a certification form described in this section shall be guilty of a class C misdemeanor for each false representation.
- (e) A repeated violation of this section shall constitute a deceptive act or practice as provided in Sections 13-11-4 and 13-11a-3 and shall be subject to any remedies or penalties available for a violation of those sections.
- (9)(a) To assist in ensuring compliance and enforcement of this section and Section 26A-1-131, the commission shall disclose to the following entities, upon request, any information obtained under this section:
- (i) the Department of Health and Human Services;
 - (ii) a local health department; ~~[-or]~~
 - ~~(iii) a law enforcement agency; or~~
 - ~~[(iii)]~~ (iv) the attorney general.
- (b) The commission and attorney general shall share with each other information received under this section, or corresponding laws of other states.
- (10)(a) ~~[(+)]~~ The commission may not list a nonresident manufacturer of an electronic cigarette product in the registry unless:

- 486 [(A)] (i) the nonresident manufacturer has registered to do business in the state as a
487 foreign corporation or business entity; or
- 488 [(B)] (ii) the nonresident manufacturer appoints and maintains without interruption
489 the services of an agent in this state to receive any service of process on behalf of
490 the manufacturer.
- 491 (b) The nonresident manufacturer shall provide the name, address, and telephone
492 number of the agent to the commission.
- 493 (c)(i) A nonresident manufacturer shall provide notice to the commission 30 days
494 before the termination of the authority of an agent and shall further provide proof
495 to the satisfaction of the commission of the appointment of a new agent no less
496 than five calendar days prior to the termination of an existing agent appointment.
- 497 (ii) In the event an agent terminates an agency appointment, the manufacturer shall
498 notify the commission of the termination within five calendar days and shall
499 include proof to the satisfaction of the commission of the appointment of a new
500 agent.
- 501 (11) Before May 31 of each year, the commission and the Department of Health and
502 Human Services shall provide a report to the Revenue and Taxation Interim Committee
503 and the Health and Human Services Interim Committee regarding:
- 504 (a) the status of the registry;
- 505 (b) manufacturers and products included in the registry;
- 506 (c) revenue and expenditures related to administration of this section; and
- 507 (d) enforcement activities undertaken under this section and Section 26A-1-131.
- 508 (12) All fees and penalties collected under this section shall be used for administration and
509 enforcement of this section and Section 26A-1-131 and deposited into the account
510 created in Section 59-14-807.
- 511 (13) The commission, in consultation with the Department of Health and Human Services,
512 may make rules in accordance with Title 63G, Chapter 3, Utah Administrative
513 Rulemaking Act, to implement this section.
- 514 Section 7. Section **76-10-104** is amended to read:
- 515 **76-10-104 . Providing a cigar, a cigarette, an electronic cigarette product, a**
516 **nicotine product, or tobacco to a minor -- Penalties.**
- 517 (1) As used in this section "provides":
- 518 (a) includes selling, giving, furnishing, sending, or causing to be sent; and
- 519 (b) does not include the acts of the United States Postal Service or other common carrier

when engaged in the business of transporting and delivering packages for others or the acts of a person, whether compensated or not, who transports or delivers a package for another person without any reason to know of the package's content.

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

- (a) a class [€] B misdemeanor on the first offense; and
[~~(b)~~] ~~a class B misdemeanor on the second offense; and~~
[~~(c)~~] (b) a class A misdemeanor on any subsequent offense.

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

Section 8. Section **76-10-104.1** is amended to read:

76-10-104.1 . Providing tobacco paraphernalia to a minor -- Penalties.

- (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)(a) It is unlawful for an individual to knowingly, intentionally, recklessly, or with criminal negligence provide tobacco paraphernalia to an individual under 21 years old.

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

Section 9. Section **76-10-105.1** is amended to read:

76-10-105.1 . Requirement of direct, face-to-face sale of a tobacco product, an electronic cigarette product, or a nicotine product -- Minors not allowed in tobacco specialty shop -- Penalties.

- (1) As used in this section:

- (a)(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~~]

- 554 (B) self-service display[-] ; or
555 (C) a drive through.
- 556 (b) "Retailer" means a person who:
557 (i) sells a tobacco product, an electronic cigarette product, or a nicotine product to an
558 individual for personal consumption; or
559 (ii) operates a facility with a vending machine that sells a tobacco product, an
560 electronic cigarette product, or a nicotine product.
- 561 (c) "Self-service display" means a display of a tobacco product, an electronic cigarette
562 product, or a nicotine product to which the public has access without the intervention
563 of a retailer or retailer's employee.
- 564 (2) Except as provided in Subsection (3), a retailer may sell a tobacco product, an electronic
565 cigarette product, or a nicotine product only in a face-to-face exchange.
- 566 (3) The face-to-face sale requirement in Subsection (2) does not apply to:
567 (a) a mail-order, telephone, or Internet sale made in compliance with Section 59-14-509;
568 or
569 (b) a sale from a vending machine or self-service display that is located in an area of a
570 retailer's facility:
571 (i) that is distinct and separate from the rest of the facility; and
572 (ii) where the retailer only allows an individual who complies with Subsection (4) to
573 be present[~~;-or~~] .
574 [~~(e) a sale at a retail tobacco specialty business.~~]
- 575 (4) An individual who is under 21 years old may not enter or be present at a retail tobacco
576 specialty business unless the individual is:
577 [~~(a) accompanied by a parent or legal guardian; or~~]
578 [~~(b)~~] (a)(i) present at the retail tobacco specialty business solely for the purpose of
579 providing a service to the retail tobacco specialty business, including making a
580 delivery;
581 [~~(iii)~~] (b) not permitted to make any purchase or conduct any commercial transaction
582 other than the service described in Subsection [~~(4)(b)(i)~~] (4)(a).
583 [~~(ii)~~] (c) monitored by the proprietor of the retail tobacco specialty business or an
584 employee of the retail tobacco specialty business; and
585 [~~(5) A parent or legal guardian who accompanies, under Subsection (4)(a), an individual~~
586 ~~into an area described in Subsection (3)(b) or into a retail tobacco specialty business~~
587 ~~may not allow the individual to purchase a tobacco product, an electronic cigarette~~

product, or a nicotine product.]

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

(a) class [C] B misdemeanor on the first offense; and

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

[(e)] (b) class A misdemeanor on any subsequent offenses.

[(7)] An individual who violates Subsection (5) is guilty of an offense under Section

76-10-104.]

Section 10. 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]~~ a matter of great concern;

(c) the use of electronic 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 at less than the cost, including the amount of any applicable tax, of the product to the manufacturer, wholesaler, or retailer; or

(iii) give, distribute, sell, offer for sale, or furnish any electronic cigarette 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 individual who violates this section is guilty of:
- (i) a class [C] B misdemeanor for the first offense; and
- (ii) a class [B] A misdemeanor for any subsequent offense.
- (3) 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.

Section 11. Section **76-10-112** is amended to read:

76-10-112 . Prohibition of distribution of a tobacco product -- Exceptions.

- (1) Except as provided in Subsection (3), it is unlawful for a manufacturer, wholesaler, or retailer to give or distribute a tobacco product in this state without charge.
- (2) An individual who violates this subsection is guilty of:
- (a) a class [C] B misdemeanor for the first offense; and
- (b) a class [B] A misdemeanor for any subsequent offense.
- (3) A tobacco product may be distributed to an adult without charge at a professional convention where the general public is excluded.
- (4) The prohibition described in Subsection (1) does not apply to a tobacco retailer, a manufacturer, or a distributor that gives a tobacco product to an individual who is 21 years old or older upon the individual's purchase of a tobacco product.

Section 12. Section **76-10-113** is amended to read:

76-10-113 . Prohibition on distribution of flavored electronic cigarette products -- Prohibition of electronic cigarette products without federal authorization.

- (1) Subject to Subsection (2), it is unlawful for a tobacco retailer that is not a retail tobacco specialty business to give, distribute, sell, offer for sale, or furnish a flavored electronic cigarette product to any person.
- (2) Notwithstanding Subsection (1), and beginning on January 1, 2025, it is unlawful for a person to give, distribute, sell, offer for sale, or furnish to any person a flavored electronic cigarette product.

(3) Beginning on January 1, 2025, it is unlawful for a person to give, distribute, sell, offer for sale, or furnish to any person an electronic cigarette product that is not a premarket authorized or pending electronic cigarette product.

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

(a) a class [C] B misdemeanor for the first offense; and

(b) a class [B] A misdemeanor for any subsequent offense.

Section 13. Section **76-10-114** is amended to read:

76-10-114 . Unlawful sale of a tobacco product, electronic cigarette product, or nicotine product.

(1) As used in this section:

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

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

(2) ~~[It is unlawful for an employee to knowingly or intentionally sell or give]~~ An actor commits unlawful sale of a tobacco product, electronic cigarette product, or nicotine product if the actor:

(a) is an employee; and

(b) knowingly, intentionally, recklessly, or with criminal negligence, sells or gives a tobacco product, an electronic cigarette product, or a nicotine product in the course of business to an individual [who is under] younger than 21 years old.

(3) An employee who violates this section is:

(a) on a first violation:

(i) guilty of ~~[an infraction]~~ a class C misdemeanor; and

(ii) subject to:

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

(B) compensatory service; or

(b) on any subsequent violation:

(i) guilty of a class [C] B misdemeanor; and

(ii) subject to:

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

(B) compensatory service.

Section 14. **Effective Date.**

This bill takes effect:

(1) except as provided in Subsection (2), May 7, 2025; or

- (2) if approved by two-thirds of all members elected to each house:
- (a) upon approval by the governor;
 - (b) without the governor's signature, the day following the constitutional time limit of Utah Constitution, Article VII, Section 8; or
 - (c) in the case of a veto, the date of veto override.

Section 15. **Coordinating S.B. 186 with H.B. 21.**

If S.B. 186, Tobacco and Electronic Cigarette Amendments, and H.B. 21, Criminal Code Recodification and Cross References, both pass and become law, the Legislature intends that, on May 7, 2025:

- (1) Subsection 76-9-1104(3) enacted in H.B. 21 be amended to read:
- "(3) A violation of Subsection (2) is:
- (a) a class B misdemeanor on the first offense; or
 - (b) a class A misdemeanor on the second or subsequent offense.";
- (2) Subsection 76-10-105.1(1)(a)(ii) in S.B. 186 and Subsection 76-9-1107(1)(a)(i)(B) in H.B. 21 be amended to read:
- ""Face-to-face exchange" does not include a sale through a[:(A)vending machine; or] [(B)self-service display.] vending machine, self-service display, or drive-through.";
- (3) Subsection 76-9-1107(3) enacted in H.B. 21 be amended to read:
- "(3) A violation of Subsection (2) is:
- (a) a class B misdemeanor on the first offense; or
 - (b) a class A misdemeanor on the second or subsequent offense.";
- (4) Subsection 76-9-1107(4)(b)(ii)(A) enacted in H.B. 21 be deleted and the remaining subsections be renumbered accordingly;
- (5) the following subsections in Section 76-9-1108 enacted in H.B. 21 be deleted and the remaining subsections be renumbered accordingly:
- (a) Subsection 76-9-1108(4)(a); and
 - (b) Subsection 76-9-1108(5);
- (6) Subsection 76-9-1108(3) enacted in H.B. 21 be amended to read:
- "(3) A violation of Subsection (2) is:
- (a) a class B misdemeanor on the first offense; or
 - (b) a class A misdemeanor on the second or subsequent offense.";
- (7) Subsection 76-9-1112(3) enacted in H.B. 21 be amended to read:
- "(3) A violation of Subsection (2) is:
- (a) a class B misdemeanor on the first offense; or

(b) a class A misdemeanor on the second or subsequent offense.";

(8) Section 76-9-1114 (renumbered from Section 76-10-113 in H.B. 21) be amended to read:

"[(1) Subject to Subsection (2), it is unlawful for a tobacco retailer that is not a retail tobacco specialty business to give, distribute, sell, offer for sale, or furnish a flavored electronic cigarette product to any person.]

[(2) Notwithstanding Subsection (1), and beginning on January 1, 2025, it is unlawful for a person to give, distribute, sell, offer for sale, or furnish to any person a flavored electronic cigarette product.]

[(3) Beginning on January 1, 2025, it is unlawful for a person to give, distribute, sell, offer for sale, or furnish to any person an electronic cigarette product that is not a premarket authorized or pending electronic cigarette product.]

[(4) An individual who violates this section is guilty of:]

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

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

(1) Terms defined in Sections 76-1-101.5 and 76-9-1101 apply to this section.

(2) An actor commits illegal distribution of a flavored electronic cigarette product if the actor gives, distributes, sells, offers for sale, or furnishes a flavored electronic cigarette product to any person.

(3) A violation of Subsection (2) is:

(a) a class B misdemeanor on the first offense; or

(b) a class A misdemeanor on the second or subsequent offense.";

(9) Section 76-9-1115 enacted in H.B. 21 be amended to read:

"(1) Terms defined in Sections 76-1-101.5 and 76-9-1101 apply to this section.

(2) ~~It~~ → **[Beginning January 1, 2026, an]** **An** ~~It~~ actor commits illegal distribution of an electronic

cigarette product without federal authorization if the actor gives, distributes, sells, offers for sale, or furnishes to any person an electronic cigarette product that is not a premarket authorized or pending electronic cigarette product.

(3) A violation of Subsection (2) is:

(a) a class B misdemeanor on the first offense; or

(b) a class A misdemeanor on a subsequent offense."; and

(10) the changes to Subsection 76-10-114(2) in S.B. 186 supersede the changes made in Subsection 76-9-1116(2) in H.B. 21.