

**Representative Jennifer Dailey-Provost** proposes the following substitute bill:

**RETAIL TOBACCO AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jennifer Dailey-Provost**

Senate Sponsor: Evan J. Vickers

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**LONG TITLE**

**General Description:**

This bill amends provisions relating to the sale of certain tobacco products.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ amends the definition of a retail tobacco specialty business to include any retailer that sells a flavored electronic cigarette product;
- ▶ repeals preemption of certain local ordinances relating to tobacco products;
- ▶ authorizes regulation and testing of manufacturer sealed electronic cigarette substances;
- ▶ requires a tobacco retailer to maintain certain records;
- ▶ allows a political subdivision or a state agency to adopt an ordinance, regulation, or rule affecting the sale of certain electronic cigarette products;
- ▶ prohibits a manufacturer, wholesaler, or retailer from providing certain discounts or giveaways for tobacco products; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None



26 **Other Special Clauses:**

27 This bill provides a coordination clause.

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **10-8-41.6**, as last amended by Laws of Utah 2018, Chapter 231

31 **17-50-333**, as last amended by Laws of Utah 2018, Chapter 231

32 **26-57-103**, as enacted by Laws of Utah 2015, Chapter 132

33 **76-10-105.1 (Superseded 07/01/20)**, as last amended by Laws of Utah 2018, Chapter

34 231

35 **76-10-105.1 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232

36 **76-10-111**, as last amended by Laws of Utah 2010, Chapter 114

37 **76-10-112**, as enacted by Laws of Utah 1989, Chapter 193

38 ENACTS:

39 **26-62-206**, Utah Code Annotated 1953

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

41 **10-8-41.6**, as last amended by Laws of Utah 2018, Chapter 231

42 **17-50-333**, as last amended by Laws of Utah 2018, Chapter 231



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

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

46 **10-8-41.6. Regulation of retail tobacco specialty business.**

47 (1) As used in this section:

48 (a) "Community location" means:

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

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

51 (iii) a trade or technical school;

52 (iv) a church;

53 (v) a public library;

54 (vi) a public playground;

55 (vii) a public park;

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

57 (ix) a public recreational facility;

58 (x) a public arcade; or

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

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

61 (c) "Electronic cigarette product" means the same as that term is defined in Section  
62 [59-14-802](#).

63 (d) (i) "Flavored electronic cigarette product" means an electronic cigarette product  
64 that has a taste or smell that is distinguishable by an ordinary consumer either before or during  
65 use or consumption of the electronic cigarette product.

66 (ii) "Flavored electronic cigarette product" includes an electronic cigarette product that  
67 has a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic  
68 beverage, herb, mint, menthol, or spice.

69 (iii) "Flavored electronic cigarette product" does not include an electronic cigarette  
70 product that has a taste or smell of only tobacco.

71 [~~(e)~~] (e) "Local health department" means the same as that term is defined in Section  
72 [26A-1-102](#).

73 [~~(f)~~] (f) "Permittee" means a person licensed under this section to conduct business as  
74 a retail tobacco specialty business.

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

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

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

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

83 (iv) the retail space features a self-service display for tobacco products[~~;~~]; or

84 (v) any flavored electronic cigarette product is sold.

85 [~~(h)~~] (h) "Self-service display" means the same as that term is defined in Section  
86 [76-10-105.1](#).

87 [~~(i)~~] (i) "Tobacco product" means:

88 (i) any cigar, cigarette, or electronic cigarette, as those terms are defined in Section  
89 76-10-101;

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

91 (A) chewing tobacco; or

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

93 and

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

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

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

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

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

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

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

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

108 (A) agriculture use; or

109 (B) residential use.

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

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

118 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter

119 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in  
120 which the retail tobacco specialty business is located; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

155 (B) zoning ordinances;

156 (C) building codes; and

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

159 Section 2. Section **17-50-333** is amended to read:

160 **17-50-333. Regulation of retail tobacco specialty business.**

161 (1) As used in this section:

162 (a) "Community location" means:

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

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

165 (iii) a trade or technical school;

166 (iv) a church;

167 (v) a public library;

168 (vi) a public playground;

169 (vii) a public park;

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

171 (ix) a public recreational facility;

172 (x) a public arcade; or

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

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

175 (c) "Electronic cigarette product" means the same as that term is defined in Section  
176 [59-14-802](#).

177 (d) (i) "Flavored electronic cigarette product" means an electronic cigarette product  
178 that has a taste or smell that is distinguishable by an ordinary consumer either before or during  
179 use or consumption of the electronic cigarette product.

180 (ii) "Flavored electronic cigarette product" includes an electronic cigarette product that

181 has a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic  
182 beverage, herb, mint, menthol, or spice.

183 (iii) "Flavored electronic cigarette product" does not include an electronic cigarette  
184 product that has a taste or smell of only electronic cigarette.

185 [~~e~~] (e) "Licensee" means a person licensed under this section to conduct business as a  
186 retail tobacco specialty business.

187 [~~d~~] (f) "Local health department" means the same as that term is defined in Section  
188 26A-1-102.

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

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

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

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

197 (iv) the retail space features a self-service display for tobacco products[-]; or

198 (v) any flavored electronic cigarette product is sold.

199 [~~f~~] (h) "Self-service display" means the same as that term is defined in Section  
200 76-10-105.1.

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

202 (i) any cigar, cigarette, or electronic cigarette as those terms are defined in Section  
203 76-10-101;

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

205 (A) chewing tobacco; or

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

207 and

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

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

211 (3) (a) A person may not operate a retail tobacco specialty business in a county unless

212 the person obtains a license from the county in which the retail tobacco specialty business is  
213 located.

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

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

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

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

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

- 232 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter  
233 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in  
234 which the retail tobacco specialty business is located; and
- 235 (ii) a valid license to sell tobacco products from the State Tax Commission.

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

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

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



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

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

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

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

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

253 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has  
254 a business license and is operating in a county in accordance with all applicable laws except for  
255 the requirement in Subsection (4), on or before December 31, 2015, is exempt from Subsection  
256 (4).

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

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

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

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

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

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

268 (B) zoning ordinances;

269 (C) building codes; and

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

272 Section 3. Section **26-57-103** is amended to read:

273 **26-57-103. Electronic cigarette products -- Labeling -- Manufacturing and**

274 **quality control standards -- Advertising.**

275 (1) The department shall, in consultation with a local health department, as defined in  
276 Section [26A-1-102](#), and with input from members of the public, establish, no later than January  
277 1, 2016, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
278 Rulemaking Act, standards for electronic cigarette substance:

- 279 (a) labeling;  
280 (b) nicotine content;  
281 (c) packaging; and  
282 (d) product quality.

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

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

- 289 (a) labeling;  
290 (b) nicotine content;  
291 (c) packaging; and  
292 (d) product quality.

293 (3) (a) Beginning on July 1, 2016, a person may not sell an electronic cigarette  
294 substance unless the electronic cigarette substance complies with the standards established by  
295 the department under Subsection (1).

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

299 (4) (a) Beginning on July 1, 2016, a local health department may not enact a rule or  
300 regulation regarding electronic cigarette substance labeling, nicotine content, packaging, or  
301 product quality that is not ~~[identical to]~~ at least as stringent as the standards established by the  
302 department under ~~[Subsection (1)]~~ Subsections (1) and (2).

303 (b) ~~[Except as provided in Subsection (4)(c), a]~~ A local health department may enact a  
304 rule or regulation regarding electronic cigarette substance manufacturing.

305 ~~[(c) A local health department may not enact a rule or regulation regarding a~~  
306 ~~manufacturer sealed electronic cigarette substance.]~~

307 (5) Beginning on July 1, 2016, a person may not advertise an electronic cigarette  
308 product:

309 (a) as a tobacco cessation device;

310 (b) if the person is not licensed to sell an electronic cigarette product under Section  
311 [59-14-803](#); or

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

314 Section 4. Section **26-62-206** is enacted to read:

315 **26-62-206. Permit requirements for the sale of tobacco products.**

316 (1) A tobacco retailer shall:

317 (a) for each sale of a tobacco product, provide the customer with an itemized receipt  
318 for each sale of a tobacco product that separately identifies:

319 (i) the name of the tobacco product;

320 (ii) the amount charged for each tobacco product; and

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

322 (b) maintain an itemized transaction log for each sale of a tobacco product that  
323 separately identifies:

324 (i) the name of the tobacco product;

325 (ii) the amount charged for each tobacco product; and

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

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

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

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

332 Section 5. Section **76-10-105.1 (Superseded 07/01/20)** is amended to read:

333 **76-10-105.1 (Superseded 07/01/20). Requirement of direct, face-to-face sale of**  
334 **cigarettes, tobacco, and electronic cigarettes -- Minors not allowed in tobacco specialty**  
335 **shop -- Penalties.**

336 (1) As used in this section:

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

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

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

341 (A) vending machine; or

342 (B) self-service display.

343 (c) (i) "Flavored electronic cigarette" means an electronic cigarette that has a taste or  
344 smell that is distinguishable by an ordinary consumer either before or during use or  
345 consumption of the electronic cigarette.

346 (ii) "Flavored electronic cigarette" includes an electronic cigarette that has a taste or  
347 smell of any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb,  
348 menthol, or spice.

349 (iii) "Flavored electronic cigarette" does not include an electronic cigarette that has a  
350 taste or smell of only tobacco.

351 [~~(e)~~] (d) "Retailer" means a person who:

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

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

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

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

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

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

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

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

- 367 (3) The face-to-face sale requirement in Subsection (2) does not apply to:
- 368 (a) a mail-order, telephone, or Internet sale made in compliance with Section
- 369 59-14-509;
- 370 (b) a sale from a vending machine or self-service display that is located in an area of a
- 371 retailer's facility:
- 372 (i) that is distinct and separate from the rest of the facility; and
- 373 (ii) where the retailer only allows an individual who complies with Subsection (4) to be
- 374 present; or
- 375 (c) a sale at a tobacco specialty shop.
- 376 (4) An individual who is less than 19 years old may not enter or be present at a tobacco
- 377 specialty shop unless the individual is:
- 378 (a) accompanied by a parent or legal guardian;
- 379 (b) present at the tobacco shop for a bona fide commercial purpose other than to
- 380 purchase a cigarette, tobacco, or an electronic cigarette; or
- 381 (c) 18 years old or older and an active duty member of the United States Armed Forces,
- 382 as demonstrated by a valid, government-issued military identification card.
- 383 (5) A parent or legal guardian who accompanies, under Subsection (4)(a), an individual
- 384 into an area described in Subsection (3)(b), or into a tobacco specialty shop, may not allow the
- 385 individual to purchase a cigarette, tobacco, or an electronic cigarette.
- 386 (6) A violation of Subsection (2) or (4) is a:
- 387 (a) class C misdemeanor on the first offense;
- 388 (b) class B misdemeanor on the second offense; and
- 389 (c) class A misdemeanor on the third and all subsequent offenses.
- 390 (7) An individual who violates Subsection (5) is guilty of providing tobacco to a minor
- 391 under Section 76-10-104.
- 392 (8) (a) ~~Any~~ An ordinance, regulation, or rule adopted by the governing body of a
- 393 political subdivision of the state or by a state agency that affects the sale, placement, or display
- 394 of cigarettes, tobacco, or electronic cigarettes that is not essentially identical to ~~the provisions~~
- 395 ~~of~~ this section and Section 76-10-102 is superseded.
- 396 (b) Subsection (8)(a) does not apply to:
- 397 (i) the adoption or enforcement of a land use ordinance by a municipal or county

398 government[-]; and

399 (ii) an ordinance, regulation, or rule relating to the sale, placement of a flavored  
400 electronic cigarette.

401 Section 6. Section **76-10-105.1 (Effective 07/01/20)** is amended to read:

402 **76-10-105.1 (Effective 07/01/20). Requirement of direct, face-to-face sale of**  
403 **cigarettes, tobacco, and electronic cigarettes -- Minors not allowed in tobacco specialty**  
404 **shop -- Penalties.**

405 (1) As used in this section:

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

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

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

410 (A) vending machine; or

411 (B) self-service display.

412 (c) (i) "Flavored electronic cigarette" means an electronic cigarette that has a taste or  
413 smell that is distinguishable by an ordinary consumer either before or during use or  
414 consumption of the electronic cigarette.

415 (ii) "Flavored electronic cigarette" includes an electronic cigarette that has a taste or  
416 smell of any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb,  
417 menthol, or spice.

418 (iii) "Flavored electronic cigarette" does not include an electronic cigarette that has a  
419 taste or smell of only tobacco.

420 [~~(c)~~] (d) "Retailer" means a person who:

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

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

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

428 [~~(e)~~] (f) "Tobacco" means any product, except a cigarette, made of or containing

429 tobacco.

430           [(f)] (g) "Tobacco specialty shop" means a "retail tobacco specialty business" as that  
431 term is defined:

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

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

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

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

437           (a) a mail-order, telephone, or Internet sale made in compliance with Section  
438 59-14-509;

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

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

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

444           (c) a sale at a tobacco specialty shop.

445           (4) (a) An individual who is less than the age specified in Subsection (4)(b) may not  
446 enter or be present at a tobacco specialty shop unless the individual is:

447           (i) accompanied by a parent or legal guardian;

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

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

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

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

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

455           (5) A parent or legal guardian who accompanies, under Subsection (4)(a)(i), an

456 individual into an area described in Subsection (3)(b), or into a tobacco specialty shop, may not  
457 allow the individual to purchase a cigarette, tobacco, or an electronic cigarette.

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

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

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

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

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

464 (8) (a) An ordinance, regulation, or rule adopted by the governing body of a political  
465 subdivision of the state or by a state agency that affects the sale, minimum age of sale,  
466 placement, or display of cigarettes, tobacco, or electronic cigarettes that is not essentially  
467 identical to this section and Section 76-10-102 is superseded.

468 (b) Subsection (8)(a) does not apply to:

469 (i) the adoption or enforcement of a land use ordinance by a municipal or county  
470 government[-]; and

471 (ii) an ordinance, regulation, or rule relating to the sale, placement of a flavored  
472 electronic cigarette.

473 Section 7. Section 76-10-111 is amended to read:

474 **76-10-111. Prohibition of gift or free distribution of smokeless tobacco or**  
475 **electronic cigarettes -- Exceptions.**

476 (1) The Legislature finds that:

477 (a) smokeless tobacco, or chewing tobacco, is harmful to the health of individuals who  
478 use those products because research indicates that they may cause mouth or oral cancers;

479 (b) the use of smokeless tobacco among juveniles in this state is increasing rapidly;

480 (c) the use of electronic cigarettes may lead to unhealthy behavior such as the use of  
481 tobacco products; and

482 (d) it is necessary to restrict the gift of the products described in this Subsection (1) in  
483 the interest of the health of the citizens of this state.

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

486 (i) give or distribute without charge any smokeless tobacco, chewing tobacco, or  
487 electronic cigarette in this state[-];

488 (ii) except as provided in Subsection (2)(b), sell, offer for sale, or furnish any  
489 smokeless tobacco, chewing tobacco, or electronic cigarette at less than 90% of the cost of the  
490 product to the manufacturer, wholesaler, or retailer; or



491 (iii) give, distribute, sell, offer for sale, or furnish any smokeless tobacco, chewing  
 492 tobacco, or electronic cigarette for free or at a lower price because the purchaser makes another  
 493 purchase.

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

496 (i) a manufacturer coupon:

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

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

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

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

504 (c) Any person who violates this section is guilty of a class C misdemeanor for the first  
 505 offense, and is guilty of a class B misdemeanor for any subsequent offense.

506 (3) ~~[(a)]~~ Smokeless tobacco, chewing tobacco, or an electronic cigarette may be  
 507 distributed to adults without charge at professional conventions where the general public is  
 508 excluded.

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

512 Section 8. Section **76-10-112** is amended to read:

513 **76-10-112. Prohibition of distribution of cigarettes or other tobacco products --**  
 514 **Exceptions.**

515 (1) (a) Except as provided in Subsection ~~[(2)]~~ (3), it is unlawful for a manufacturer,  
 516 wholesaler, or retailer to:

517 (i) give or distribute cigarettes or other tobacco products in this state without charge~~[-];~~

518 (ii) except as provided in Subsection (2)(b), sell, offer for sale, or furnish any cigarettes  
 519 or other tobacco products at less than the cost of the product to the manufacturer, wholesaler,  
 520 or retailer; or

521 (iii) give, distribute, sell, offer for sale, or furnish any cigarettes or other tobacco

522 products for free or at a lower price because the purchaser makes another purchase.

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

525 (i) a manufacturer coupon:

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

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

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

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

533 (2) Any person who violates this [subsection] section is guilty of a class C  
534 misdemeanor for the first offense and a class B misdemeanor for any subsequent offense.

535 ~~[(2)]~~ (3) Cigarettes and other tobacco products may be distributed to adults without  
536 charge at professional conventions where the general public is excluded.

537 ~~[(3) The prohibition described in Subsection (1) does not apply to retailers;~~  
538 ~~manufacturers, or distributors who give cigarettes or other tobacco products to persons of legal~~  
539 ~~age upon their purchase of cigarettes or other tobacco products.]~~

540 **Section 9. Coordinating H.B. 118 with S.B. 37 -- Technical amendments.**

541 If this H.B. 118 and S.B. 37, Electronic Cigarette and Other Nicotine Product  
542 Amendments, both pass and become law, it is the intent of the Legislature that the Office of  
543 Legislative Research and General Counsel shall prepare the Utah Code database for publication  
544 by amending:

545 (1) Subsection [10-8-41.6\(1\)\(c\)](#) to read:

546 "(c) "Electronic cigarette product" means the same as that term is defined in Section  
547 [76-10-101.](#)"; and

548 (2) Subsection [17-50-333\(1\)\(c\)](#) to read:

549 "(c) "Electronic cigarette product" means the same as that term is defined in Section  
550 [76-10-101.](#)"