

## SB0189S01 compared with SB0189

~~{deleted text}~~ shows text that was in SB0189 but was deleted in SB0189S01.

inserted text shows text that was not in SB0189 but was inserted into SB0189S01.

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Senator Evan J. Vickers proposes the following substitute bill:

### TOBACCO RETAILER AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Evan J. Vickers**

House Sponsor: Paul Ray

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#### LONG TITLE

##### General Description:

This bill amends provisions relating to tobacco retailers.

##### Highlighted Provisions:

This bill:

- ▶ amends provisions relating to a retail tobacco specialty business that is within a certain distance from a school;
- ▶ modifies the requirements for a tobacco retail permit;
- ▶ clarifies provisions relating to who may be in a retail tobacco specialty business;
- ▶ creates restrictions on the sale or transfer of a retail tobacco specialty business; and
- ▶ modifies penalties for selling a tobacco product, electronic cigarette product, or a nicotine product to an individual who is younger than 21 years old ~~{, and}~~.

~~{ → adds nicotine products to provisions relating to the sale, use, and possession of~~

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~~tobacco products and electronic cigarette products.~~

### ‡Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

**10-8-41.6**, as last amended by Laws of Utah 2020, Sixth Special Session, Chapter 18

**17-50-333**, as last amended by Laws of Utah 2020, Sixth Special Session, Chapter 18

~~{ **26-62-202**, as last amended by Laws of Utah 2020, Sixth Special Session, Chapter 18~~

‡ **26-62-205**, as last amended by Laws of Utah 2020, Chapters 302, 347

~~{ **26-62-301**, as last amended by Laws of Utah 2020, Chapter 347~~

~~— **26-62-303**, as enacted by Laws of Utah 2018, Chapter 231~~

‡ **26-62-304**, as last amended by Laws of Utah 2020, Chapters 302, 347

**26-62-305**, as last amended by Laws of Utah 2020, Chapters 302, 347 and last amended  
by Coordination Clause, Laws of Utah 2020, Chapter 302

**26-62-306**, as last amended by Laws of Utah 2020, Chapter 347

**26-62-401**, as enacted by Laws of Utah 2020, Chapter 302

**76-10-105.1**, as last amended by Laws of Utah 2020, Chapters 302 and 347

~~{ **76-10-111**, as last amended by Laws of Utah 2020, Chapters 302 and 347~~

~~— **76-10-114**, as enacted by Laws of Utah 2020, Chapter 302~~

~~— **76-10-115**, as enacted by Laws of Utah 2020, Chapter 302~~

#### ‡REPEALS:

**26-62-402**, as enacted by Laws of Utah 2020, Chapter 302

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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;

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- (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) "Flavored electronic cigarette product" means the same as that term is defined in Section 76-10-101.
- (e) "Licensee" means a person licensed under this section to conduct business as a retail tobacco specialty business.
- (f) "Local health department" means the same as that term is defined in Section 26A-1-102.
- (g) "Nicotine product" means the same as that term is defined in Section 76-10-101.
- (h) "Retail tobacco specialty business" means a commercial establishment in which:
- (i) 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, or 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, or nicotine products;
  - (iv) the commercial establishment:
    - (A) holds itself out as a retail tobacco specialty business; and
    - (B) causes a reasonable person to believe the commercial establishment is a retail tobacco specialty business;

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

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

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

(j) "Tobacco product" means:

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

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

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

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

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

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

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

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

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

(A) agriculture use; or

(B) residential use.

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

(5) A 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:

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(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 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 a nicotine product.

(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 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 federal law or federal regulations restricting the sale and distribution of tobacco products or electronic cigarette products to protect children and adolescents;

(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) A retail tobacco specialty business is exempt from Subsection (4) if:

(i) on or before December 31, 2018, the retail tobacco specialty business was issued a license to conduct business as a retail tobacco specialty business; and

(ii) the retail tobacco specialty business is operating in a municipality in accordance with all applicable laws except for the requirement in Subsection (4)~~[-and]~~.

~~[(iii) beginning July 1, 2021, the retail tobacco specialty business is not located within 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.]~~

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

(i) the license described in Subsection (7)(a)(i) 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 the license described in Subsection (7)(a)(i).

(c) A retail tobacco specialty business that does not qualify for an exemption under Subsection (7)(a) is exempt from Subsection (4) if:

(i) on or before December 31, 2018, the retail tobacco specialty business was issued a general tobacco retailer permit or a retail tobacco specialty business permit 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) the retail tobacco specialty business is operating in the municipality in accordance with all applicable laws except for the requirement in Subsection (4)~~]; and~~].

~~[(iii) beginning July 1, 2022, the retail tobacco specialty business is not located within 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.]~~

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

(i) on or before December 31, 2020, the retail tobacco specialty business receives a retail tobacco specialty business permit from the local health department having jurisdiction over the area in which the retail tobacco specialty business is located;

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(ii) the permit described in Subsection (7)(d)(i) is renewed continuously without lapse or permanent revocation;

(iii) 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; [~~and~~]

(iv) the retail tobacco specialty business does not substantially change the business premises or business operation as the business existed when the retail tobacco specialty business received a permit under Subsection (7)(d)(i); and

~~(iv)~~ (v) 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 the retail tobacco permit described in Subsection (7)(d)(i).

Section 2. 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

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76-10-101.

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

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

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

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

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

(i) 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, or 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, or nicotine products;

(iv) the commercial establishment:

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

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

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

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

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

(j) "Tobacco product" means:

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

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

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

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

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

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

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

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

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

(5) 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:

(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 a tobacco product; or

(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 a nicotine product.

(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

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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 federal law or federal regulations restricting the sale and distribution of tobacco products or electronic cigarette products to protect children and adolescents;

(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) A retail tobacco specialty business is exempt from Subsection (4) if:

(i) on or before December 31, 2018, the retail tobacco specialty business was issued a license to conduct business as a retail tobacco specialty business; and

(ii) the retail tobacco specialty business is operating in a county in accordance with all applicable laws except for the requirement in Subsection (4)~~;~~and.

~~[(iii) beginning July 1, 2021, the retail tobacco specialty business is not located within 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.]~~

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

(i) the license described in Subsection (7)(a)(i) 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;

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(C) building codes; and

(D) the requirements of the license described in Subsection (7)(a)(i).

(c) A retail tobacco specialty business that does not qualify for an exemption under Subsection (7)(a) is exempt from Subsection (4) if:

(i) on or before December 31, 2018, the retail tobacco specialty business was issued a general tobacco retailer permit or a retail tobacco specialty business permit 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) the retail tobacco specialty business is operating in the county in accordance with all applicable laws except for the requirement in Subsection (4)~~[-and]~~.

~~[(iii) beginning July 1, 2022, the retail tobacco specialty business is not located within 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.]~~

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

(i) on or before December 31, 2020, the retail tobacco specialty business receives a retail tobacco specialty business permit from the local health department having jurisdiction over the area in which the retail tobacco specialty business is located;

(ii) the permit described in Subsection (7)(d)(i) is renewed continuously without lapse or permanent revocation;

(iii) 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; ~~[and]~~

(iv) the retail tobacco specialty business does not substantially change the business premises or business operation as the business existed when the retail tobacco specialty business received a permit under Subsection (7)(d)(i); and

~~[(iv)]~~ (v) 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

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(D) the requirements of the retail tobacco permit described in Subsection (7)(d)(i).

Section 3. Section ~~{26-62-202}~~; 26-62-205 is amended to read:

~~{~~ ~~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) a provision of the Federal Food, Drug, and Cosmetic Act, Subchapter IX, 21 U.S.C. Sec. 387 et seq.;~~

~~\_\_\_\_\_ [(v)] (vi) regulations restricting the sale and distribution of cigarettes and smokeless~~

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~~tobacco issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140; or  
—— [(vi)] (vii) any other provision of state law or local ordinance regarding the sale,  
marketing, or distribution of a tobacco product, an electronic cigarette product, or a nicotine  
product; and~~

~~—— (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 meets  
the requirements described in Subsection 10-8-41.6(7) or 17-50-333(7).~~

~~—— (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 4. Section ~~26-62-205~~ is amended to read:~~

### ‡ **26-62-205. Permit requirements for a retail tobacco specialty business.**

~~(1)~~ (1) A retail tobacco specialty business shall:

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

~~[(2)]~~ (b) except as provided in Subsection 76-10-105.1(4), prohibit any individual from  
entering the business if the individual is under 21 years old; and

~~[(3)]~~ (c) prominently display at the retail tobacco specialty business a sign on the

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public entrance of the business that communicates:

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

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

(2) A retail tobacco specialty business may not:

(a) employ an individual under 21 years old to sell a tobacco product, an electronic cigarette product, or a nicotine product; or

(b) permit an employee under 21 years old to sell a tobacco product, an electronic cigarette product, or a nicotine product.

Section ~~{5}~~4. Section ~~{26-62-301}~~26-62-304 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 Chemical Solvents;~~

~~— (4) a provision of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;~~

~~— (5) a provision of the Federal Food, Drug, and Cosmetic Act, Subchapter IX, 21 U.S.C. Sec. 387 et seq.;~~

~~— [(5)] (6) 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)] (7) any other provision of state law or local ordinance regarding the sale, marketing, or distribution of a tobacco product, an electronic cigarette product, or a nicotine product.~~

~~— Section 6. Section 26-62-303 is amended to read:~~

~~— **26-62-303. Inspection of retail tobacco businesses.**~~

~~— The department or a local health department may inspect a tobacco retailer to determine whether the tobacco retailer:~~

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- ~~\_\_\_\_\_ (1) continues to meet the qualifications for the permit issued under this chapter;~~  
~~\_\_\_\_\_ (2) if applicable, continues to meet the requirements for a retail tobacco specialty business license issued under Section 10-8-41.6 or Section 17-50-333;~~  
~~\_\_\_\_\_ (3) engaged in a pattern of unlawful activity under Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;~~  
~~\_\_\_\_\_ (4) violated a provision of the Federal Food, Drug, and Cosmetic Act, Subchapter IX, 21 U.S.C. Sec. 387 et seq.;~~  
~~\_\_\_\_\_ [(4)] (5) violated any of the regulations 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~~  
~~\_\_\_\_\_ [(5)] (6) has violated any other provision of state law or local ordinance.~~  
~~\_\_\_\_\_ Section 7. Section 26-62-304 is amended to read:~~

‡ **26-62-304. 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 76-10-114 at the same location and within the same time period as the location and time period alleged in the civil hearing for violation of this chapter for sale of a tobacco product, an electronic cigarette product, or a nicotine product to an individual under 21 years old is prima facie evidence of a violation of this chapter.

(2) If the tobacco retailer is convicted of violating Section 76-10-114, the enforcing agency:

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

(b) [~~may~~] shall revoke or suspend a permit in accordance with Section 26-62-305 [~~or 26-62-402~~].

Section ~~{8}~~5. Section **26-62-305** is amended to read:

**26-62-305. Penalties.**

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

(b) If multiple violations are found in a single inspection by an enforcing agency or

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investigation by a law enforcement agency under Section 77-39-101, the enforcing agency shall treat the multiple violations as one single violation under Subsections (2), (3), and (4), and the enforcing agency shall impose the penalty described in Subsection (2).

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

(a) on the first violation:

(i) impose a fine of \$5,000; and

(ii) 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; and

(ii) revoke the permit for the tobacco retailer.

(3) If a violation of the permit under Section 26-62-301 is found in an inspection by an enforcing agency under the provisions of this chapter, and the violation does not involve the sale of a tobacco product, an electronic cigarette product, or a nicotine product to an individual under 21 years old, the enforcing agency shall:

(a) on a first violation at a retail location, impose a penalty of [~~no more than~~] \$500;

(b) on a second violation at the same retail location that occurs within one year of a previous violation, impose a penalty of [~~no more than~~] \$750;

(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~~] 120 days after the day on which the third violation occurs; [~~or~~] and

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

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

(i) impose a penalty of [~~no more than \$1,000~~] \$1,500;

(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 a violation is found in an investigation of a general tobacco retailer by a law~~

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~~enforcement agency 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, the enforcing agency shall:]~~

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

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

~~[(i) impose a fine not exceeding \$5,000; and]~~

~~[(ii) revoke the permit for the general tobacco retailer:]~~

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

~~[(5)] (4) (a) [Except when a transfer described in Subsection (6) occurs, a] 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 Section 26-62-402]; or~~

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

~~(b) A person whose permit:~~

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

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

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

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

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(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 ~~9~~6. 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~~] a 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 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 ~~10~~7. Section **26-62-401** is amended to read:

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

(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.

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

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

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

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

(4).

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

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

(b) Information obtained under this section:

(i) shall be kept for at least 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) [~~the individual is~~] accompanied by a parent or legal guardian who provides proof of age; or

(ii) (A) [~~the individual is~~] present at the retail tobacco specialty [~~shop for a bona fide commercial purpose other than to purchase a tobacco product or an electronic cigarette product.~~] business solely for the purpose of providing a commercial service to the retail tobacco specialty business, including making a commercial delivery;

(B) monitored by the proprietor of the retail tobacco specialty business or an employee of the retail tobacco specialty business; and

(C) not permitted to make any purchase or conduct any commercial transaction other than the service described in Subsection (6)(b)(ii)(A).

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

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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 ~~44~~8. 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
- (B) self-service display.

(b) "Retailer" means a person who:

(i) sells a tobacco product, 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 tobacco product, an electronic cigarette product, or a nicotine product.

(c) "Self-service display" means a display of a tobacco product, an electronic cigarette product, or a nicotine product to which the public has access without the intervention of a retailer or retailer's employee.

(2) Except as provided in Subsection (3), a retailer may sell a tobacco product, 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

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

(c) a sale at a retail tobacco specialty business.

(4) An individual who is under 21 years old may not enter or be present at a retail tobacco specialty business unless the individual is:

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

(b) (i) present at the retail tobacco specialty business [for a bona fide commercial purpose other than to purchase a tobacco product, an electronic cigarette product, or a nicotine product.] solely for the purpose of providing a service to the retail tobacco specialty business, including making a delivery;

(ii) monitored by the proprietor of the retail tobacco specialty business or an employee of the retail tobacco specialty business; and

(iii) not permitted to make any purchase or conduct any commercial transaction other than the service described in Subsection (4)(b)(i).

(5) A parent or legal guardian who accompanies, under Subsection (4)(a), an individual into an area described in Subsection (3)(b) or into a retail tobacco specialty business may not allow the individual to purchase a tobacco product, an electronic cigarette product, or a nicotine product.

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

(a) class C misdemeanor on the first offense;

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

(c) class A misdemeanor on any subsequent offenses.

(7) An individual who violates Subsection (5) is guilty of an offense under Section 76-10-104.

~~{ Section 12. Section 76-10-111 is amended to read:~~

~~76-10-111. Restrictions on sale of smokeless tobacco, electronic cigarette products, or nicotine 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;~~

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~~—— (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, or nicotine product in this state;~~

~~—— (ii) sell, offer for sale, or furnish any electronic cigarette product or nicotine 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 or nicotine product for free or at a lower price because the recipient of the electronic cigarette product or nicotine 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 misdemeanor for the first offense; and~~

~~—— (ii) a class B misdemeanor for any subsequent offense.~~

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

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

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~~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 a tobacco product [or], an electronic cigarette product, or a nicotine product in the course of business to an individual who is under 21 years old.~~

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

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

~~(i) guilty of an infraction; and~~

~~(ii) subject to:~~

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

~~(B) compensatory service; and~~

~~(b) on any subsequent violation:~~

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

~~(ii) subject to:~~

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

~~(B) compensatory service.~~

~~Section 14. Section 76-10-115 is amended to read:~~

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

~~(1) As used in this section:~~

~~(a) "Proof of age" means:~~

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

~~(ii) a valid identification that:~~

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

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

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~~—— (C) includes date of birth; and~~

~~—— (D) has a picture affixed;~~

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

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

~~—— (A) includes date of birth; and~~

~~—— (B) has a picture affixed; or~~

~~—— (v) a valid passport.~~

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

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

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

‡ Section ~~{15}~~9. **Repealer.**

This bill repeals:

Section **26-62-402, Penalties.**