

Jennifer Dailey-Provost proposes the following substitute bill:

Nicotine Sales Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer Dailey-Provost

Senate Sponsor: Michael K. McKell

LONG TITLE

General Description:

This bill amends provisions related to products containing nicotine.

Highlighted Provisions:

This bill:

- defines terms;
- creates a license for retail tobacco specialty businesses administered by the Department of Agriculture and Food (department);
- requires retail tobacco specialty businesses to provide a list of specialized products offered for sale to the department;
- requires applicants for a retail tobacco specialty business license to provide ownership information;
- prohibits issuing a license if certain individuals involved in the retail tobacco specialty business have violated certain criminal laws;
- requires the State Tax Commission to revoke certain tobacco and nicotine licenses if the licensee stores or sells illegally obtained controlled substances;
- prohibits advertising of electronic cigarette products and nicotine products in certain locations;
- creates fees and penalties related to the license; and
- criminalizes the criminally negligent sale of tobacco, electronic cigarettes, and nicotine to minors.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

29 AMENDS:

30 **26B-1-310**, as last amended by Laws of Utah 2025, First Special Session, Chapter 9

31 **76-9-1102**, as renumbered and amended by Laws of Utah 2025, Chapter 173

32 **76-9-1116**, as renumbered and amended by Laws of Utah 2025, Chapter 173

33 **77-39-101**, as last amended by Laws of Utah 2025, Chapters 114, 173

34 ENACTS:

35 **4-45a-101**, Utah Code Annotated 1953

36 **4-45a-102**, Utah Code Annotated 1953

37 **4-45a-103**, Utah Code Annotated 1953

38 **4-45a-104**, Utah Code Annotated 1953

39 **4-45a-105**, Utah Code Annotated 1953

40 **59-14-106**, Utah Code Annotated 1953

41

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

43 Section 1. Section **4-45a-101** is enacted to read:

44 **CHAPTER 45a. Specialized Product Regulation**

45 **4-45a-101 . Definitions.**

46 As used in this section:

47 (1) "Conventional food" means:

48 (a) an article used for food or drink for human or animal consumption or the components
49 of the article; or

50 (b) chewing gum or chewing gum components.

51 (2)(a) "Crime involving a nicotine containing product" means an offense described in
52 any of the following sections:

53 (i) Section 76-9-1102, Illegal sale of clove cigarette;

54 (ii) Section 76-9-1103, Permitting minors to use tobacco or electronic cigarette
55 product in place of business;

56 (iii) Section 76-9-1104, Providing tobacco product, electronic cigarette product, or
57 nicotine product to a minor;

58 (iv) Section 76-9-1105, Providing tobacco paraphernalia to a minor;

59 (v) Section 76-9-1107, Requirement of direct, face-to-face sale -- Restrictions on
60 remote sales;

61 (vi) Section 76-9-1108, Illegal presence of a minor inside a retail tobacco specialty
62 business;

- 63 (vii) Section 76-9-1112, Illegal provision of smokeless tobacco or electronic cigarette
64 product;
- 65 (viii) Section 76-9-1113, Illegal distribution of a tobacco product on school property;
66 (ix) Section 76-9-1114, Illegal distribution of a flavored electronic cigarette product;
67 (x) Section 76-9-1115, Illegal distribution of electronic cigarette product without
68 premarket authorization; or
- 69 (xi) Section 76-9-1116, Unlawful sale of a tobacco product, electronic cigarette
70 product, or nicotine product.
- 71 (b) "Crime involving a nicotine containing product" includes a conviction for an offense
72 previously in statute in this state that is the same or substantially similar to an offense
73 described in Subsection (2)(a).
- 74 (3) "Electronic cigarette product" means the same as that term is defined in Section
75 76-9-1101.
- 76 (4) "License" means the license described in Section 4-45a-102.
- 77 (5) "Licensee" means a retail tobacco specialty business licensed under Section 4-45a-102.
- 78 (6) "Nicotine product" means the same as that term is defined in Section 76-9-1101.
- 79 (7) "Product list" means a list of specialized products sold by a licensee.
- 80 (8) "Retail tobacco specialty business" means a commercial establishment in which:
- 81 (a) sales of tobacco products, electronic cigarette products, and nicotine products
82 account for more than 35% of the total quarterly gross receipts for the establishment;
- 83 (b) 20% or more of the public retail floor space is allocated to the offer, display, or
84 storage of tobacco products, electronic cigarette products, or nicotine products;
- 85 (c) 20% or more of the total shelf space is allocated to the offer, display, or storage of
86 tobacco products, electronic cigarette products, or nicotine products;
- 87 (d) the commercial establishment:
- 88 (i) holds itself out as a retail tobacco specialty business; and
- 89 (ii) causes a reasonable person to believe the commercial establishment is a retail
90 tobacco specialty business; or
- 91 (e) the retail space features a self-service display for tobacco products, electronic
92 cigarette products, or nicotine products.
- 93 (9) "Self-service display" means the same as that term is defined in Section 76-9-1107.
- 94 (10)(a) "Specialized product" means any product intended to be ingested, inhaled,
95 absorbed, or introduced into the human body that is:
- 96 (i) a cannabinoid product as defined in Section 4-41-102;

- 97 (ii) a kratom product as defined in Section 4-45-102;
 98 (iii) a tobacco product that is not tobacco paraphernalia;
 99 (iv) a nicotine product;
 100 (v) an electronic cigarette substance as defined in Section 76-9-1101;
 101 (vi) a prefilled electronic cigarette as defined in Section 76-9-1101; or
 102 (vii) a product containing a substance:
- 103 (A) not generally recognized as safe for use in a conventional food product under
 104 applicable federal food additive regulations; and
 105 (B) that is known or intended to have psychoactive, euphoric, analgesic, sedative,
 106 or intoxicating effects.
- 107 (b) "Specialized product" includes a product described in Subsection (10)(a) even if the
 108 product complies with the federal Dietary Supplement Health and Education Act, 21
 109 U.S.C. Sec. 321(ff) et seq.
- 110 (c) "Specialized product" does not include a conventional food product that does not
 111 contain any substance or product type described in Subsection (10)(a).
- 112 (11) "Tobacco product" means:
- 113 (a) a tobacco product as defined in Section 76-9-1101; or
 114 (b) tobacco paraphernalia as defined in Section 76-9-1101.
- 115 Section 2. Section **4-45a-102** is enacted to read:
- 116 **4-45a-102 . License.**
- 117 (1) A retail tobacco specialty business may not operate in the state unless the retail tobacco
 118 specialty business obtains a license from the department.
- 119 (2)(a) A fee for a license under this section is \$10,000.
- 120 (b) The term for a license under this section is one year.
- 121 (3) The department may not issue a license to a person under this section unless the person
 122 provides proof that the person:
- 123 (a) is licensed under Section 10-8-41.6 and Section 17-78-1004;
 124 (b) has a valid permit for a retail tobacco specialty business issued under Title 26B,
 125 Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine Products,
 126 by the local health department having jurisdiction over the area in which the retail
 127 tobacco specialty business is located; and
- 128 (c) has each appropriate license from the State Tax Commission for each product the
 129 person will sell that requires a license from the State Tax Commission.
- 130 (4) A person that operates a retail tobacco specialty business without a current and valid

- 131 license described in Subsection (1) is subject to a \$50,000 civil fine.
- 132 (5) The department shall deposit fees collected under this section into the Qualified Patient
- 133 Enterprise Fund described in Section 26B-1-310.
- 134 Section 3. Section **4-45a-103** is enacted to read:
- 135 **4-45a-103 . Applicants.**
- 136 (1) An applicant for a license shall provide the name and address of any individual who has:
- 137 (a) for a publicly traded company, a financial or voting interest of 10% or greater in the
- 138 retail tobacco specialty business;
- 139 (b) for a privately held company, a financial or voting interest in the retail tobacco
- 140 specialty business; or
- 141 (c) the power to direct or cause the management or control of the retail tobacco specialty
- 142 business.
- 143 (2) The department may not issue a license to an applicant if an individual described in
- 144 Subsection (1) has been convicted under state or federal law of:
- 145 (a) a felony in the preceding 10 years;
- 146 (b) a crime involving a nicotine containing product; or
- 147 (c) after December 3, 2018, a misdemeanor or felony for drug distribution.
- 148 Section 4. Section **4-45a-104** is enacted to read:
- 149 **4-45a-104 . Registration of products.**
- 150 (1)(a) A licensee shall provide the department a product list.
- 151 (b) At least seven days before selling a specialized product not on the product list, a
- 152 licensee shall notify the department and provide an updated product list that includes
- 153 the additional specialized product.
- 154 (c) For any product on a product list or that is being added to a product list under
- 155 Subsection (1)(b), the licensee shall provide the department with access to the
- 156 ingredient list for the specialized product.
- 157 (d) The department may remove specialized products from a product list if the
- 158 possession or sale of the specialized product violates state law.
- 159 (2) A licensee may not sell a specialized product that is not on the product list provided to
- 160 the department.
- 161 (3) If requested by the department to provide a specialized product for inspection or testing,
- 162 a licensee shall provide the requested specialized product to the department.
- 163 (4)(a) A licensee that sells a product in violation of Subsection (2) is subject to a \$1,000
- 164 fine for each product sold in violation of Subsection (2).

- 165 (b) In addition to the monetary fine described in Subsection (4)(a), a licensee is subject
 166 to the following for violations of Subsection (2):
 167 (i) for a first violation, a public reprimand posted on the department's website;
 168 (ii) for a second violation, a 30-day license suspension;
 169 (iii) for a third violation, a 60-day license suspension;
 170 (iv) for a fourth violation, a 90-day license suspension; and
 171 (v) for a fifth violation, revocation of the license.

172 Section 5. Section **4-45a-105** is enacted to read:

173 **4-45a-105 . Rulemaking.**

174 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 175 department shall make rules to implement this chapter.

176 Section 6. Section **26B-1-310** is amended to read:

177 **26B-1-310 . Qualified Patient Enterprise Fund -- Creation -- Revenue neutrality**
 178 **-- Uniform fee.**

179 (1) There is created an enterprise fund known as the "Qualified Patient Enterprise Fund."

180 (2) The fund created in this section is funded from:

- 181 (a) money the department deposits into the fund under Chapter 4, Part 2, Cannabinoid
 182 Research and Medical Cannabis;
 183 (b) appropriations the Legislature makes to the fund; and
 184 (c) the interest described in Subsection (3).

185 (3) Interest earned on the fund shall be deposited into the fund.

186 (4)(a) ~~[Money]~~ Except as provided in Subsection (4)(b), money deposited into the fund
 187 may only be used by:

188 ~~[(a)]~~ (i) the department to accomplish the department's responsibilities described in
 189 Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis;

190 ~~[(b)]~~ (ii) the Center for Medical Cannabis Research created in Section 53H-4-206 to
 191 accomplish the Center for Medical Cannabis Research's responsibilities; and

192 ~~[(c)]~~ (iii) the Department of Agriculture and Food for the one time purchase of
 193 equipment to meet the requirements described in Section 4-41a-204.1.

194 (b) For money deposited under Section 4-45a-102, the department shall:

195 (i) use 10% of the money for tobacco and nicotine prevention purposes; and

196 (ii) provide the remainder of the money to the Department of Agriculture and Food to:

197 (A) expand and improve testing services at the state lab; and

198 (B) enforce Title 4, Chapter 45a, Specialized Product Regulation.

199 (5) The department shall set fees authorized under Chapter 4, Part 2, Cannabinoid Research
 200 and Medical Cannabis, in amounts that the department anticipates are necessary, in total,
 201 to cover the department's cost to implement Chapter 4, Part 2, Cannabinoid Research
 202 and Medical Cannabis.

203 (6) The department may impose a uniform fee on each medical cannabis transaction in a
 204 medical cannabis pharmacy in an amount that, subject to Subsection (5), the department
 205 sets in accordance with Section 63J-1-504.

206 Section 7. Section **59-14-106** is enacted to read:

207 **59-14-106 . Revocation of license for controlled substance sale and distribution.**

208 (1) As used in this section:

209 (a) "Controlled substance" means the same as that term is defined in Section 58-37-2.

210 (b) "Licensee" means a person that holds a license under Section 59-14-201, 59-14-301,
 211 or 59-14-803.

212 (2) As a condition for each license issued under this chapter, a licensee agrees to not store,
 213 sell, or attempt to sell illegally obtained controlled substances.

214 (3) The tax commission shall revoke each license described in Section 59-14-201,
 215 59-14-301, and 59-14-803 that a licensee holds if the tax commission receives notice
 216 that a licensee has been charged with a criminal offense involving possession with intent
 217 to distribute, distribution, or sale of a controlled substance.

218 Section 8. Section **76-9-1102** is amended to read:

219 **76-9-1102 . Cigarette or tobacco advertising violation.**

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

221 (2) Except as provided in Subsection (4), an actor commits cigarette or tobacco advertising
 222 violation if the actor displays on a billboard, streetcar sign, streetcar, bus, placard, or on
 223 any other object or place of display, an advertisement of cigarettes, electronic cigarette
 224 products, cigarette papers, cigars, chewing tobacco, nicotine products, or smoking
 225 tobacco or any disguise or substitute of cigarettes, cigarette papers, tobacco, or cigars.

226 (3) A violation of Subsection (2) is a class B misdemeanor.

227 (4)(a) A dealer of cigarettes, electronic cigarette products, cigarette papers, tobacco,
 228 cigars, nicotine products, or a substitute for cigarettes, cigarette papers, tobacco, or
 229 cigars may have a sign on the front of the dealer's place of business stating that the
 230 dealer is a dealer of cigarettes, electronic cigarette products, cigarette papers,
 231 tobacco, cigars, nicotine products, or a substitute for cigarettes, cigarette papers,
 232 tobacco, or cigars.

233 (b) This section does not prohibit the advertisement of an item listed in Subsection (4)(a)
234 in a newspaper, magazine or periodical printed or circulating in this state.

235 Section 9. Section **76-9-1116** is amended to read:

236 **76-9-1116 . Unlawful sale of a tobacco product, electronic cigarette product, or**
237 **nicotine product.**

238 (1)(a) As used in this section:

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

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

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

243 (2) An actor commits unlawful sale of a tobacco product, electronic cigarette product, or
244 nicotine product if the actor:

245 (a) is an employee; and

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

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

250 (a) on a first violation:

251 (i) an infraction; and

252 (ii) subject to:

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

254 (B) compensatory service; or

255 (b) on a subsequent violation:

256 (i) a class C misdemeanor; and

257 (ii) subject to:

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

259 (B) compensatory service.

260 Section 10. Section **77-39-101** is amended to read:

261 **77-39-101 . Investigation of sales of alcohol, tobacco products, electronic**
262 **cigarette products, nicotine products, and cannabinoid products to underage individuals.**

263 (1) As used in this section:

264 (a) "Cannabinoid product" means the same as that term is defined in Section 4-41-102.

265 (b) "Electronic cigarette product" means the same as that term is defined in Section
266 76-9-1101.

- 267 (c) "Nicotine product" means the same as that term is defined in Section 76-9-1101.
- 268 (d) "Peace officer" means the same as the term is described in Section 53-13-109.
- 269 (e) "Tobacco product" means the same as that term is defined in Section 76-9-1101.
- 270 (2)(a) A peace officer may investigate the possible violation of:
- 271 (i) Section 32B-4-403 by requesting an individual under 21 years old to enter into
- 272 and attempt to purchase or make a purchase of alcohol from a retail establishment;
- 273 (ii) Section 76-9-1103, 76-9-1104, 76-9-1105, or 76-9-1116 by requesting an
- 274 individual under 21 years old to enter into and attempt to purchase or make a
- 275 purchase from a retail establishment of:
- 276 (A) a tobacco product;
- 277 (B) an electronic cigarette product; or
- 278 (C) a nicotine product; or
- 279 (iii) Subsection 4-41-105(2)(a)(iv) by requesting an individual under 21 years old to
- 280 enter into and attempt to purchase or make a purchase of a cannabinoid product
- 281 that contains THC or a THC analog from a retail establishment.
- 282 (b) A peace officer who is present at the site of a proposed purchase shall direct,
- 283 supervise, and monitor the individual requested to make the purchase.
- 284 (c) Immediately following a purchase or attempted purchase or as soon as practical the
- 285 supervising peace officer shall inform the cashier and the proprietor or manager of
- 286 the retail establishment that the attempted purchaser was under the legal age to
- 287 purchase:
- 288 (i) alcohol;
- 289 (ii)(A) a tobacco product;
- 290 (B) an electronic cigarette product; or
- 291 (C) a nicotine product; or
- 292 (iii) a cannabinoid product that contains THC or a THC analog.
- 293 (d) If a citation or information is issued, the citation or information shall be issued
- 294 within seven days after the day on which the purchase occurs.
- 295 (3)(a) If an individual under 18 years old is requested to attempt a purchase, a written
- 296 consent of that individual's parent or guardian shall be obtained before the individual
- 297 participates in any attempted purchase.
- 298 (b) An individual requested by the peace officer to attempt a purchase may:
- 299 (i) be a trained volunteer; or
- 300 (ii) receive payment, but may not be paid based on the number of successful

- 301 purchases of alcohol, tobacco products, electronic cigarette products, nicotine
302 products, or cannabinoid products that contain THC or a THC analog.
- 303 (4) The individual requested by the peace officer to attempt a purchase and anyone
304 accompanying the individual attempting a purchase may use false identification in
305 attempting the purchase if:
- 306 (a) the Department of Public Safety created in Section 53-1-103 provides the false
307 identification;
- 308 (b) the false identification:
- 309 (i) accurately represents the individual's age; and
310 (ii) displays a current photo of the individual; and
- 311 (c) the peace officer maintains possession of the false identification at all times outside
312 the attempt to purchase.
- 313 (5) An individual requested to attempt to purchase or make a purchase pursuant to this
314 section is immune from prosecution, suit, or civil liability for the purchase of, attempted
315 purchase of, or possession of alcohol, a tobacco product, an electronic cigarette product,[-]
316 a nicotine product, or a cannabinoid product that contains THC or a THC analog if a
317 peace officer directs, supervises, and monitors the individual.
- 318 (6)(a) Except as provided in Subsection (6)(b), a purchase attempted under this section
319 shall be conducted within a 12-month period:
- 320 (i) on a random basis at any one retail establishment location, not more often than
321 four times for the attempted purchase of alcohol;
- 322 (ii) a minimum of two times at a retail establishment that sells tobacco products,
323 electronic cigarette products, or nicotine products for the attempted purchase of a
324 tobacco product, an electronic cigarette product, or a nicotine product; and
- 325 (iii) a minimum of one time at a retail establishment that sells a cannabinoid product
326 that contains THC or a THC analog.
- 327 (b) This section does not prohibit an investigation or an attempt to purchase alcohol, a
328 tobacco product, an electronic cigarette product, or a nicotine product under this
329 section if:
- 330 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a
331 tobacco product, an electronic cigarette product,[-] a nicotine product, or a
332 cannabinoid product that contains THC or a THC analog to an individual under
333 the age established by Section 32B-4-403, Section 76-9-1116, or Subsection
334 4-41-105(2)(d); and

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

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

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

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

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

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

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

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

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

349 Section 11. **Effective Date.**

350 This bill takes effect on May 6, 2026.