

Michael K. McKell proposes the following substitute bill:

Specialized Product 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 specialized products.

Highlighted Provisions:

This bill:

- defines terms;
- creates a license for persons that sell specialized products to be administered by the Department of Agriculture and Food (department);
- requires specialized product retailers to provide a list of specialized products offered for sale to the department;
- requires applicants for a specialized product retailer license to provide ownership information;
- prohibits issuing a license if certain individuals involved with the specialized product retailer 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;
- criminalizes the criminally negligent sale of tobacco, electronic cigarettes, and nicotine to minors; and
- amends provisions related to underage tobacco sales.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **26B-1-310**, as last amended by Laws of Utah 2025, First Special Session, Chapter 932 **76-9-1102**, as renumbered and amended by Laws of Utah 2025, Chapter 17333 **76-9-1116**, as renumbered and amended by Laws of Utah 2025, Chapter 17334 **77-39-101**, as last amended by Laws of Utah 2025, Chapters 114, 173

35 ENACTS:

36 **4-45a-101**, Utah Code Annotated 195337 **4-45a-102**, Utah Code Annotated 195338 **4-45a-103**, Utah Code Annotated 195339 **4-45a-104**, Utah Code Annotated 195340 **4-45a-105**, Utah Code Annotated 195341 **59-14-106**, Utah Code Annotated 1953

42

43 *Be it enacted by the Legislature of the state of Utah:*44 Section 1. Section **4-45a-101** is enacted to read:45 **CHAPTER 45a. Specialized Product Regulation**46 **4-45a-101 . Definitions.**47 As used in this section:48 (1) "Conventional food" means:49 (a) an article used for food or drink for human or animal consumption or the components
50 of the article; or51 (b) chewing gum or chewing gum components.52 (2)(a) "Crime involving a nicotine containing product" means an offense described in
53 any of the following sections:54 (i) Section 76-9-1102, Illegal sale of clove cigarette;55 (ii) Section 76-9-1103, Permitting minors to use tobacco or electronic cigarette
56 product in place of business;57 (iii) Section 76-9-1104, Providing tobacco product, electronic cigarette product, or
58 nicotine product to a minor;59 (iv) Section 76-9-1105, Providing tobacco paraphernalia to a minor;60 (v) Section 76-9-1107, Requirement of direct, face-to-face sale -- Restrictions on
61 remote sales;62 (vi) Section 76-9-1108, Illegal presence of a minor inside a retail tobacco specialty

- 63 business;
- 64 (vii) Section 76-9-1112, Illegal provision of smokeless tobacco or electronic cigarette
- 65 product;
- 66 (viii) Section 76-9-1113, Illegal distribution of a tobacco product on school property;
- 67 (ix) Section 76-9-1114, Illegal distribution of a flavored electronic cigarette product;
- 68 (x) Section 76-9-1115, Illegal distribution of electronic cigarette product without
- 69 premarket authorization; or
- 70 (xi) Section 76-9-1116, Unlawful sale of a tobacco product, electronic cigarette
- 71 product, or nicotine product.
- 72 (b) "Crime involving a nicotine containing product" includes a conviction for an offense
- 73 previously in statute in this state that is the same or substantially similar to an offense
- 74 described in Subsection (2)(a).
- 75 (3) "Electronic cigarette product" means the same as that term is defined in Section
- 76 76-9-1101.
- 77 (4) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco specialty
- 78 business.
- 79 (5) "License" means the license described in Section 4-45a-102.
- 80 (6) "Licensee" means a specialized product retailer licensed under Section 4-45a-102.
- 81 (7) "Nicotine product" means the same as that term is defined in Section 76-9-1101.
- 82 (8) "Product list" means a list of specialized products sold by a licensee.
- 83 (9) "Self-service display" means the same as that term is defined in Section 76-9-1107.
- 84 (10)(a) "Specialized product" means any product intended to be ingested, inhaled,
- 85 absorbed, or introduced into the human body that is:
- 86 (i) a cannabinoid product as defined in Section 4-41-102;
- 87 (ii) a kratom product as defined in Section 4-45-102;
- 88 (iii) a tobacco product that is not tobacco paraphernalia;
- 89 (iv) a nicotine product;
- 90 (v) an electronic cigarette substance as defined in Section 76-9-1101;
- 91 (vi) a prefilled electronic cigarette as defined in Section 76-9-1101; or
- 92 (vii) a product containing a substance:
- 93 (A) not generally recognized as safe for use in a conventional food product under
- 94 applicable federal food additive regulations; and
- 95 (B) that is known or intended to have psychoactive, euphoric, analgesic, sedative,
- 96 or intoxicating effects.

97 (b) "Specialized product" includes a product described in Subsection (10)(a) even if the
98 product complies with the federal Dietary Supplement Health and Education Act, 21
99 U.S.C. Sec. 321(ff) et seq.

100 (c) "Specialized product" does not include a conventional food product that does not
101 contain any substance or product type described in Subsection (10)(a).

102 (11) "Specialized product retailer" means a person that sells a specialized product.

103 (12) "Tobacco product" means:

104 (a) a tobacco product as defined in Section 76-9-1101; or

105 (b) tobacco paraphernalia as defined in Section 76-9-1101.

106 (13) "Tobacco retailer" means a person that is required to obtain a State Tax Commission
107 license for the sale of an electronic cigarette product, nicotine product, or tobacco
108 product.

109 Section 2. Section **4-45a-102** is enacted to read:

110 **4-45a-102 . License.**

111 (1) A specialized product retailer may not sell a specialized product in the state unless the
112 specialized product retailer obtains a license from the department.

113 (2) The department shall charge the following fees to obtain a license under this chapter:

114 (a) \$2,500 for a retail tobacco specialty business;

115 (b) \$600 for any retailer that sells:

116 (i) a cannabinoid product as defined in Section 4-41-102;

117 (ii) a kratom product as defined in Section 4-45-102; or

118 (iii) a product containing a substance:

119 (A) not generally recognized as safe for use in a conventional food product under
120 applicable federal food additive regulations; and

121 (B) that is known or intended to have psychoactive, euphoric, analgesic, sedative,
122 or intoxicating effects; and

123 (c) \$300 for a general tobacco retailer not described in Subsection (2)(b).

124 (3) The term for a license under this section is one year.

125 (4) The department may not issue a license to a person under this section unless the person
126 provides proof that the person has obtained the applicable license, registration, or
127 permit, required by law for each specialized product type that the person sells which
128 may include:

129 (a) a license for a retail tobacco specialty business described in Section 10-8-41.6 and
130 Section 17-78-1004;

- 131 (b) a valid permit for a tobacco retailer issued under Title 26B, Chapter 7, Part 5,
 132 Regulation of Smoking, Tobacco Products, and Nicotine Products, by the local health
 133 department having jurisdiction over the area in which the tobacco retailer is located;
 134 and
- 135 (c) each appropriate license from the State Tax Commission for each product the person
 136 will sell that requires a license from the State Tax Commission.
- 137 (5) A person that operates a specialized product retailer without a current and valid license
 138 described in Subsection (1) is subject to a \$50,000 civil fine.
- 139 (6) A person that operates as a retail tobacco specialty business without the current and
 140 valid licenses required by law to be a retail tobacco specialty business is subject to a
 141 \$50,000 civil fine.
- 142 (7) The department shall deposit fees collected under this section into the Qualified Patient
 143 Enterprise Fund described in Section 26B-1-310.

144 Section 3. Section **4-45a-103** is enacted to read:

145 **4-45a-103 . Applicants.**

- 146 (1) An applicant for a license shall provide the name and address of any individual who has:
 147 (a) for a publicly traded company, a financial or voting interest of 10% or greater in the
 148 specialized product retailer;
 149 (b) for a privately held company, a financial or voting interest in the specialized product
 150 retailer; or
 151 (c) the power to direct or cause the management or control of the specialized product
 152 retailer.
- 153 (2) The department may not issue a license to an applicant if an individual described in
 154 Subsection (1) has been convicted under state or federal law of:
 155 (a) a felony in the preceding 10 years;
 156 (b) a crime involving a nicotine containing product; or
 157 (c) after December 3, 2018, a misdemeanor or felony for drug distribution.

158 Section 4. Section **4-45a-104** is enacted to read:

159 **4-45a-104 . Registration of products.**

- 160 (1)(a) A licensee shall provide the department a product list.
 161 (b) At least seven days before selling a specialized product not on the product list, a
 162 licensee shall notify the department and provide an updated product list that includes
 163 the additional specialized product.
 164 (c) For any product on a product list or that is being added to a product list under

- 165 Subsection (1)(b), the licensee shall provide the department with access to the
 166 ingredient list for the specialized product.
- 167 (d) The department may remove specialized products from a product list if the
 168 possession or sale of the specialized product violates state law.
- 169 (2) A licensee may not sell a specialized product that is not on the product list provided to
 170 the department.
- 171 (3) If requested by the department to provide a specialized product for inspection or testing,
 172 a licensee shall provide the requested specialized product to the department.
- 173 (4)(a) A licensee that sells a product in violation of Subsection (2) is subject to a \$1,000
 174 fine for each product sold in violation of Subsection (2).
- 175 (b) In addition to the monetary fine described in Subsection (4)(a), a licensee is subject
 176 to the following for violations of Subsection (2):
- 177 (i) for a first violation, a public reprimand posted on the department's website;
 178 (ii) for a second violation, a 30-day license suspension;
 179 (iii) for a third violation, a 60-day license suspension;
 180 (iv) for a fourth violation, a 90-day license suspension; and
 181 (v) for a fifth violation, revocation of the license.

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

183 **4-45a-105 . Rulemaking.**

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

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

187 **26B-1-310 . Qualified Patient Enterprise Fund -- Creation -- Revenue neutrality**
 188 **-- Uniform fee.**

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

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

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

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

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

- 198 ~~[(a)]~~ (i) the department to accomplish the department's responsibilities described in

- 199 Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis;
 200 ~~[(b)]~~ (ii) the Center for Medical Cannabis Research created in Section 53H-4-206 to
 201 accomplish the Center for Medical Cannabis Research's responsibilities; and
 202 ~~[(e)]~~ (iii) the Department of Agriculture and Food for the one time purchase of
 203 equipment to meet the requirements described in Section 4-41a-204.1.
- 204 (b) For money deposited under Section 4-45a-102, the department shall:
 205 (i) use 10% of the money for tobacco and nicotine prevention purposes; and
 206 (ii) provide the remainder of the money to the Department of Agriculture and Food to:
 207 (A) expand and improve testing services at the state lab; and
 208 (B) enforce Title 4, Chapter 45a, Specialized Product Regulation.
- 209 (5) The department shall set fees authorized under Chapter 4, Part 2, Cannabinoid Research
 210 and Medical Cannabis, in amounts that the department anticipates are necessary, in total,
 211 to cover the department's cost to implement Chapter 4, Part 2, Cannabinoid Research
 212 and Medical Cannabis.
- 213 (6) The department may impose a uniform fee on each medical cannabis transaction in a
 214 medical cannabis pharmacy in an amount that, subject to Subsection (5), the department
 215 sets in accordance with Section 63J-1-504.

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

217 **59-14-106 . Revocation of license for controlled substance sale and distribution.**

- 218 (1) As used in this section:
 219 (a) "Controlled substance" means the same as that term is defined in Section 58-37-2.
 220 (b) "Licensee" means a person that holds a license under Section 59-14-201, 59-14-301,
 221 or 59-14-803.
- 222 (2) As a condition for each license issued under this chapter, a licensee agrees to not store,
 223 sell, or attempt to sell illegally obtained controlled substances.
- 224 (3) The tax commission shall revoke each license described in Section 59-14-201,
 225 59-14-301, and 59-14-803 that a licensee holds if the tax commission receives notice
 226 that a licensee has been charged with a criminal offense involving possession with intent
 227 to distribute, distribution, or sale of a controlled substance.

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

229 **76-9-1102 . Cigarette or tobacco advertising violation.**

- 230 (1) Terms defined in Sections 76-1-101.5 and 76-9-1101 apply to this section.
 231 (2) Except as provided in Subsection (4), an actor commits cigarette or tobacco advertising
 232 violation if the actor displays on a billboard, streetcar sign, streetcar, bus, placard, or on

233 any other object or place of display, an advertisement of cigarettes, electronic cigarette
 234 products, cigarette papers, cigars, chewing tobacco, nicotine products, or smoking
 235 tobacco or any disguise or substitute of cigarettes, cigarette papers, tobacco, or cigars.

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

237 (4)(a) A dealer of cigarettes, electronic cigarette products, cigarette papers, tobacco,
 238 cigars, nicotine products, or a substitute for cigarettes, cigarette papers, tobacco, or
 239 cigars may have a sign on the front of the dealer's place of business stating that the
 240 dealer is a dealer of cigarettes, electronic cigarette products, cigarette papers,
 241 tobacco, cigars, nicotine products, or a substitute for cigarettes, cigarette papers,
 242 tobacco, or cigars.

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

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

246 **76-9-1116 . Unlawful sale of a tobacco product, electronic cigarette product, or**
 247 **nicotine product.**

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

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

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

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

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

255 (a) is an employee; and

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

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

260 (a) on a first violation:

261 (i) an infraction; and

262 (ii) subject to:

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

264 (B) compensatory service; or

265 (b) on a subsequent violation:

266 (i) a class C misdemeanor; and

- 267 (ii) subject to:
- 268 (A) a fine not exceeding \$2,000; or
- 269 (B) compensatory service.
- 270 Section 10. Section **77-39-101** is amended to read:
- 271 **77-39-101 . Investigation of sales of alcohol, tobacco products, electronic**
- 272 **cigarette products, nicotine products, and cannabinoid products to underage individuals.**
- 273 (1) As used in this section:
- 274 (a) "Cannabinoid product" means the same as that term is defined in Section 4-41-102.
- 275 (b) "Electronic cigarette product" means the same as that term is defined in Section
- 276 76-9-1101.
- 277 (c) "Nicotine product" means the same as that term is defined in Section 76-9-1101.
- 278 (d) "Peace officer" means the same as the term is described in Section 53-13-109.
- 279 (e) "Tobacco product" means the same as that term is defined in Section 76-9-1101.
- 280 (2)(a) A peace officer may investigate the possible violation of:
- 281 (i) Section 32B-4-403 by requesting an individual under 21 years old to enter into
- 282 and attempt to purchase or make a purchase of alcohol from a retail establishment;
- 283 (ii) Section 76-9-1103, 76-9-1104, 76-9-1105, or 76-9-1116 by requesting an
- 284 individual under 21 years old to enter into and attempt to purchase or make a
- 285 purchase from a retail establishment of:
- 286 (A) a tobacco product;
- 287 (B) an electronic cigarette product; or
- 288 (C) a nicotine product; or
- 289 (iii) Subsection 4-41-105(2)(a)(iv) by requesting an individual under 21 years old to
- 290 enter into and attempt to purchase or make a purchase of a cannabinoid product
- 291 that contains THC or a THC analog from a retail establishment.
- 292 (b) A peace officer who is present at the site of a proposed purchase shall direct,
- 293 supervise, and monitor the individual requested to make the purchase.
- 294 (c) Immediately following a purchase or attempted purchase or as soon as practical the
- 295 supervising peace officer shall inform the cashier and the proprietor or manager of
- 296 the retail establishment that the attempted purchaser was under the legal age to
- 297 purchase:
- 298 (i) alcohol;
- 299 (ii)(A) a tobacco product;
- 300 (B) an electronic cigarette product; or

- 301 (C) a nicotine product; or
- 302 (iii) a cannabinoid product that contains THC or a THC analog.
- 303 (d) If a citation or information is issued, the citation or information shall be issued
- 304 within seven days after the day on which the purchase occurs.
- 305 (3)(a) If an individual under 18 years old is requested to attempt a purchase, a written
- 306 consent of that individual's parent or guardian shall be obtained before the individual
- 307 participates in any attempted purchase.
- 308 (b) An individual requested by the peace officer to attempt a purchase may:
- 309 (i) be a trained volunteer; or
- 310 (ii) receive payment, but may not be paid based on the number of successful
- 311 purchases of alcohol, tobacco products, electronic cigarette products, nicotine
- 312 products, or cannabinoid products that contain THC or a THC analog.
- 313 (4) The individual requested by the peace officer to attempt a purchase and anyone
- 314 accompanying the individual attempting a purchase may use false identification in
- 315 attempting the purchase if:
- 316 (a) the Department of Public Safety created in Section 53-1-103 provides the false
- 317 identification;
- 318 (b) the false identification:
- 319 (i) accurately represents the individual's age; and
- 320 (ii) displays a current photo of the individual; and
- 321 (c) the peace officer maintains possession of the false identification at all times outside
- 322 the attempt to purchase.
- 323 (5) An individual requested to attempt to purchase or make a purchase pursuant to this
- 324 section is immune from prosecution, suit, or civil liability for the purchase of, attempted
- 325 purchase of, or possession of alcohol, a tobacco product, an electronic cigarette product,[-]
- 326 a nicotine product, or a cannabinoid product that contains THC or a THC analog if a
- 327 peace officer directs, supervises, and monitors the individual.
- 328 (6)(a) Except as provided in Subsection (6)(b), a purchase attempted under this section
- 329 shall be conducted within a 12-month period:
- 330 (i) on a random basis at any one retail establishment location, not more often than
- 331 four times for the attempted purchase of alcohol;
- 332 (ii) a minimum of two times at a retail establishment that sells tobacco products,
- 333 electronic cigarette products, or nicotine products for the attempted purchase of a
- 334 tobacco product, an electronic cigarette product, or a nicotine product; and

335 (iii) a minimum of one time at a retail establishment that sells a cannabinoid product
336 that contains THC or a THC analog.

337 (b) This section does not prohibit an investigation or an attempt to purchase alcohol, a
338 tobacco product, an electronic cigarette product, or a nicotine product under this
339 section if:

340 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a
341 tobacco product, an electronic cigarette product,[-] a nicotine product, or a
342 cannabinoid product that contains THC or a THC analog to an individual under
343 the age established by Section 32B-4-403, Section 76-9-1116, or Subsection
344 4-41-105(2)(d); and

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

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

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

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

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

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

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

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

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

359 **Section 11. Effective Date.**

360 This bill takes effect on May 6, 2026.