Chapter 62
Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit

Part 1
General Provisions

26-62-101 Title.
This chapter is known as "Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit."

Amended by Chapter 347, 2020 General Session

26-62-102 Definitions.
As used in this chapter:
(1) "Community location" means the same as that term is defined:
   (a) as it relates to a municipality, in Section 10-8-41.6; and
   (b) as it relates to a county, in Section 17-50-333.
(2) "Electronic cigarette product" means the same as that term is defined in Section 76-10-101.
(3) "Employee" means an employee of a tobacco retailer.
(4) "Enforcing agency" means the state Department of Health, or any local health department enforcing the provisions of this chapter.
(5) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco specialty business.
(6) "Local health department" means the same as that term is defined in Section 26A-1-102.
(7) "Nicotine product" means the same as that term is defined in Section 76-10-101.
(8) "Owner" means a person holding a 20% ownership interest in the business that is required to obtain a permit under this chapter.
(9) "Permit" means a tobacco retail permit issued under this chapter.
(10)
   (a) "Proof of age" means:
      (i) a valid identification card issued under Title 53, Chapter 3, Part 8, Identification Card Act;
      (ii) a valid identification that:
         (A) is substantially similar to an identification card issued under Title 53, Chapter 3, Part 8, Identification Card Act;
         (B) is issued in accordance with the laws of a state other than Utah in which the identification is issued;
         (C) includes date of birth; and
         (D) has a picture affixed;
      (iii) a valid driver license certificate that is issued under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of the state in which the valid driver license is issued;
      (iv) a valid United States military identification card that:
         (A) includes date of birth; and
         (B) has a picture affixed; or
      (v) a valid passport.
   (b) "Proof of age" does not include a valid driving privilege card issued in accordance with Section 53-3-207.
(11) "Retail tobacco specialty business" means the same as that term is defined:
   (a) as it relates to a municipality, in Section 10-8-41.6; and
   (b) as it relates to a county, in Section 17-50-333.
(12) "Tax commission license" means a license issued by the State Tax Commission under:
   (a) Section 59-14-201 to sell a cigarette at retail;
   (b) Section 59-14-301 to sell a tobacco product at retail; or
   (c) Section 59-14-803 to sell an electronic cigarette product or a nicotine product.
(13) "Tobacco product" means:
   (a) a tobacco product as defined in Section 76-10-101; or
   (b) tobacco paraphernalia as defined in Section 76-10-101.
(14) "Tobacco retailer" means a person that is required to obtain a tax commission license.

Amended by Chapter 302, 2020 General Session
Amended by Chapter 347, 2020 General Session

26-62-103 Regulation of tobacco retailers.
   The regulation of a tobacco retailer is an exercise of the police powers of the state, and through
delegation, to other governmental entities.

Enacted by Chapter 231, 2018 General Session

Part 2
Permit Requirements

26-62-201 Permitting requirement.
   (1)
   (a) A tobacco retailer shall hold a valid tobacco retail permit issued in accordance with this
       chapter by the local health department with jurisdiction over the physical location where the
       tobacco retailer operates.
   (b) A tobacco retailer without a valid permit may not:
       (i) place a tobacco product, an electronic cigarette product, or a nicotine product in public view;
       (ii) display any advertisement related to a tobacco product, an electronic cigarette product, or a
            nicotine product that promotes the sale, distribution, or use of those products; or
       (iii) sell, offer for sale, or offer to exchange for any form of consideration, tobacco, a tobacco
            product, an electronic cigarette product, or a nicotine product.
   (2) A local health department may issue a permit under this chapter for a tobacco retailer in the
       classification of:
       (a) a general tobacco retailer; or
       (b) a retail tobacco specialty business.
   (3) A permit under this chapter is:
       (a) valid only for one physical location, including a vending machine;
       (b) valid only at one fixed business address; and
       (c) if multiple tobacco retailers are at the same address, separately required for each tobacco
           retailer.

Amended by Chapter 347, 2020 General Session
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) regulations restricting the sale and distribution of cigarettes and smokeless tobacco issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140; or
      (vi) 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.

Amended by Chapter 18, 2020 Special Session 6

26-62-203 Permit term and fees.
(1) (a) The term of a permit issued under this chapter to a retail tobacco specialty business is one year.
(b) The term of a permit issued under this chapter to a general tobacco retailer is two years.
(2) (a) A local health department may not issue a permit under this chapter until the applicant has paid a permit fee to the local health department of:
   (i) $30 for a new permit;
   (ii) $20 for a permit renewal; or
   (iii) $30 for reinstatement of a permit that has been revoked, suspended, or allowed to expire.
(b) A local health department that collects fees under Subsection (2)(a) shall use the fees to administer the permit requirements under this chapter.
(c) In addition to the fee described in Subsection (2)(a), a local health department may establish and collect a fee to perform a plan review for a retail tobacco specialty business permit.
(3) A permit holder may apply for a renewal of a permit no earlier than 30 days before the day on which the permit expires.
(4) A tobacco retailer that fails to renew a permit before the permit expires may apply to reinstate the permit by submitting to the local health department:
   (a) the information required in Subsection 26-62-202(3) and, if applicable, Subsection 26-62-202(4);
   (b) the fee for the reinstatement of a permit; and
   (c) a signed affidavit affirming that the tobacco retailer has not violated the prohibitions in Subsection 26-62-201(1)(b) after the permit expired.

Enacted by Chapter 231, 2018 General Session

26-62-204 Permit nontransferable.
(1) A permit is nontransferable.
(2) If the information described in Subsection 26-62-202(3) changes, a tobacco retailer:
   (a) may not renew the permit; and
   (b) shall apply for a new permit no later than 15 days after the information in Subsection 26-62-202(3) changes.

Enacted by Chapter 231, 2018 General Session

26-62-205 Permit requirements for a retail tobacco specialty business.
(1) A retail tobacco specialty business shall:
   (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;
   (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
(c) prominently display at the retail tobacco specialty business a sign on the public entrance of the business that communicates:
   (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
   (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.

Amended by Chapter 348, 2021 General Session

26-62-206 Requirements for the sale of tobacco product, electronic cigarette product, or nicotine product.
(1) A tobacco retailer shall:
   (a) provide the customer with an itemized receipt for each sale of a tobacco product, an electronic cigarette product, or a nicotine product that separately identifies:
      (i) the name of the tobacco product, the electronic cigarette product, or the nicotine product;
      (ii) the amount charged for each tobacco product, electronic cigarette product, or nicotine product; and
      (iii) the date and time of the sale; and
   (b) maintain an itemized transaction log for each sale of a tobacco product, an electronic cigarette product, or a nicotine product that separately identifies:
      (i) the name of the tobacco product, the electronic cigarette product, or the nicotine product;
      (ii) the amount charged for each tobacco product, electronic cigarette product, or nicotine product; and
      (iii) the date and time of the sale.

(2) The itemized transaction log described in Subsection (1)(b) shall be:
   (a) maintained for at least one year after the date of each transaction in the itemized transaction log;
   (b) made available to an enforcing agency or a peace officer at the request of the enforcing agency or the peace officer; and
   (c) in addition to any documentation required under Section 59-1-1406 and Subsection 59-14-805(2).

Enacted by Chapter 347, 2020 General Session

26-62-207 Permit requirements for the sale of tobacco products and electronic cigarette products.
(1) A tobacco retailer shall:
   (a) provide the customer with an itemized receipt for each sale of a tobacco product or an electronic cigarette product that separately identifies:
      (i) the name of the tobacco product or the electronic cigarette product;
      (ii) the amount charged for each tobacco product or electronic cigarette product; and
      (iii) the time and date of the sale; and
(b) maintain an itemized transaction log for each sale of a tobacco product or an electronic cigarette product that separately identifies:
   (i) the name of the tobacco product or the electronic cigarette product;
   (ii) the amount charged for each tobacco product or electronic cigarette product; and
   (iii) the date and time of the sale.
(2) The itemized transaction log described in Subsection (1)(b) shall be:
   (a) maintained for at least one year after the date of each transaction in the itemized transaction log; and
   (b) made available to an enforcing agency or a peace officer at the request of the enforcing agency or the peace officer that is no less restrictive than the provisions in this part.

Enacted by Chapter 302, 2020 General Session

Part 3
Enforcement

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 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) 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.

Amended by Chapter 347, 2020 General Session

26-62-302 Enforcement by state and local health departments.
The department and local health departments shall enforce this chapter under the procedures of Title 63G, Chapter 4, Administrative Procedures Act, as an informal adjudicative proceeding, including:
(1) notifying a tobacco retailer of alleged violations of this chapter;
(2) conducting hearings;
(3) determining violations of this chapter; and
(4) imposing civil administrative penalties.

Renumbered and Amended by Chapter 231, 2018 General Session

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:
(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 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) has violated any other provision of state law or local ordinance.

Enacted by Chapter 231, 2018 General Session

(1) At a civil hearing conducted under Section 26-62-302, evidence of the final criminal conviction of a tobacco retailer 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) shall assess an additional monetary penalty under this chapter for the same offense for which the conviction was obtained; and
   (b) shall revoke or suspend a permit in accordance with Section 26-62-305.

Amended by Chapter 274, 2022 General Session

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 impose the penalties described in this section.
   (b) If multiple violations are found in a single inspection by an enforcing agency or a single 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).
(2) Except as provided in Subsections (3) and (4), if a violation is found in an investigation by a law enforcement agency under Section 77-39-101 or an inspection by an enforcing agency, the enforcing agency shall:
   (a) on a first violation at a retail location, impose a penalty of $1,000;
   (b) on a second violation at the same retail location that occurs within one year of a previous violation, impose a penalty of $1,500;
   (c) on a third violation at the same retail location that occurs within two years after two previous violations, impose:
      (i) a suspension of the permit for 30 consecutive business days within 60 days after the day on which the third violation occurs; or
      (ii) a penalty of $2,000; and
   (d) on a fourth or subsequent violation within two years of three previous violations:
      (i) impose a penalty of $2,000;
      (ii) revoke a permit of the retailer; and
      (iii) if applicable, recommend to a municipality or county that a retail tobacco specialty business license issued under Section 10-8-41.6 or 17-50-333 be suspended or revoked.
(3) If a violation is found in an investigation of a general tobacco retailer 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 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 $2,000 on the general tobacco retailer; and
(b) on the second violation for the same general tobacco retailer within one year of the first violation:
   (i) impose a fine of $5,000; and
   (ii) revoke the permit for the general tobacco retailer.

(4) If 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:
(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 retail tobacco specialty business.

(5)
(a) Except when a transfer described in Subsection (6) occurs, a local health department may not issue a permit to:
   (i) a tobacco retailer for whom a permit is suspended or revoked under Subsection (2) or (3); or
   (ii) a tobacco retailer that has the same proprietor, director, corporate officer, partner, or other holder of significant interest as another tobacco retailer for whom a permit is suspended or revoked under Subsection (2), (3), or (4).
(b) A person whose permit:
   (i) is suspended under this section may not apply for a new permit for any other tobacco retailer for a period of 12 months after the day on which an enforcing agency suspends the permit; and
   (ii) is revoked under this section may not apply for a new permit for any tobacco retailer for a period of 24 months after the day on which an enforcing agency revokes the permit.

(6) Violations of this chapter, Section 10-8-41.6, or Section 17-50-333 that occur at a tobacco retailer location shall stay on the record for that tobacco retailer location unless:
(a) the tobacco retailer is transferred to a new proprietor; and
(b) the new proprietor provides documentation to the local health department that the new proprietor is acquiring the tobacco retailer in an arm’s length transaction from the previous proprietor.

Amended by Chapter 274, 2022 General Session

26-62-306 Recognition of tobacco retailer training program.
(1) In determining the amount of the monetary penalty to be imposed for 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 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.

Amended by Chapter 348, 2021 General Session

26-62-307 Allocation of civil penalties.
Civil monetary penalties collected under this chapter shall be allocated as follows:
(1) if a local health department conducts an adjudicative proceeding under Section 26-62-302, the penalty shall be paid to the treasurer of the county in which the violation was committed, and transferred to the local health department; and
(2) if the department conducts a civil hearing under Section 26-62-302, the penalty shall be deposited in the state's General Fund, and may be appropriated by the Legislature to the department for use in enforcement of this chapter.

Renumbered and Amended by Chapter 231, 2018 General Session

Part 4
Proof of Age Requirements

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.
(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) accompanied by a parent or legal guardian who provides proof of age; or
   (ii)
      (A) present at the retail tobacco specialty business solely for the purpose of providing a commercial service to the retail tobacco specialty business, including making a commercial delivery;
      (B) 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 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.

Amended by Chapter 348, 2021 General Session