

TOBACCO REGULATIONS AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley G. Last

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill establishes new requirements for the licensing of a tobacco retailer and amends the definition of smoking.

Highlighted Provisions:

This bill:

- ▶ amends municipal and county business license practices for a retail tobacco specialty business;
- ▶ amends the definition of smoking in the Utah Indoor Clean Air Act;
- ▶ requires a tobacco retailer to obtain a permit from the local health department;
- ▶ establishes requirements for a tobacco retail permit application;
- ▶ establishes the standards that a local health department shall apply when determining whether to issue a permit to a tobacco retailer;
- ▶ incorporates civil penalties for tobacco sales to underage persons into the provisions relating to a tobacco retail permit;
- ▶ provides penalties for violations of tobacco permitting requirements; and
- ▶ changes the fee provisions for certain tax commission licenses for cigarettes, tobacco products, and electronic cigarette products.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **10-8-41.6**, as enacted by Laws of Utah 2012, Chapter 154

32 **17-50-333**, as enacted by Laws of Utah 2012, Chapter 154

33 **26-38-2**, as last amended by Laws of Utah 2017, Chapter 455

34 **59-14-201**, as last amended by Laws of Utah 2013, Chapter 148

35 **59-14-803**, as enacted by Laws of Utah 2015, Chapter 132

36 **76-10-105.1**, as last amended by Laws of Utah 2015, Chapters 66 and 132

37 **77-39-101**, as last amended by Laws of Utah 2010, Chapters 114 and 276

38 ENACTS:

39 **26-62-101**, Utah Code Annotated 1953

40 **26-62-103**, Utah Code Annotated 1953

41 **26-62-201**, Utah Code Annotated 1953

42 **26-62-202**, Utah Code Annotated 1953

43 **26-62-203**, Utah Code Annotated 1953

44 **26-62-204**, Utah Code Annotated 1953

45 **26-62-205**, Utah Code Annotated 1953

46 **26-62-301**, Utah Code Annotated 1953

47 **26-62-303**, Utah Code Annotated 1953

48 **26A-1-128**, Utah Code Annotated 1953

49 RENUMBERS AND AMENDS:

50 **26-62-102**, (Renumbered from 26-42-102, as last amended by Laws of Utah 2015,
51 Chapter 132)

52 **26-62-302**, (Renumbered from 26-42-104, as last amended by Laws of Utah 2008,
53 Chapter 382)

54 **26-62-304**, (Renumbered from 26-42-105, as enacted by Laws of Utah 1998, Chapter
55 319)

56 **26-62-305**, (Renumbered from 26-42-103, as last amended by Laws of Utah 2015,
57 Chapter 132)

58 **26-62-306**, (Renumbered from 26-42-106, as enacted by Laws of Utah 1998, Chapter
59 319)

60 **26-62-307**, (Renumbered from 26-42-107, as last amended by Laws of Utah 2015,
61 Chapter 132)

62 REPEALS:

63 **26-42-101**, as enacted by Laws of Utah 1998, Chapter 319

64 **59-14-203.5**, as last amended by Laws of Utah 2011, Chapter 96

65 **59-14-301.5**, as last amended by Laws of Utah 2011, Chapter 96



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

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

69 **10-8-41.6. Regulation of retail tobacco specialty business.**

70 (1) As used in this section:

71 (a) "Community location" means:

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

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

74 (iii) a trade or technical school;

75 (iv) a church;

76 (v) a public library;

77 (vi) a public playground;

78 (vii) a public park;

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

80 (ix) a public recreational facility; ~~or~~

81 (x) a public arcade~~[-];~~ or

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

83 (b) "Department" means the Department of Health, created in Section 26-1-4.
84 (c) "Local health department" means the same as that term is defined in Section
85 26A-1-102.
86 (d) "Permittee" means a person licensed under this section to conduct business as a
87 retail tobacco specialty business.

88 ~~[(b)]~~ (e) "Retail tobacco specialty business" means a commercial establishment in
89 which:

90 (i) the sale of tobacco products accounts for more than 35% of the total [annual]
91 quarterly gross receipts for the establishment;

92 ~~[(ii) food and beverage products, excluding gasoline sales, is less than 45% of the total~~
93 ~~annual gross receipts for the establishment; and]~~

94 ~~[(iii) the establishment is not licensed as a pharmacy under Title 58, Chapter 17b,~~
95 ~~Pharmacy Practice Act.]~~

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

98 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
99 tobacco products; or

100 (iv) the retail space features a self-service display for tobacco products.

101 (f) "Self-service display" means the same as that term is defined in Section
102 76-10-105.1.

103 ~~[(e)]~~ (g) "Tobacco product" means:

104 (i) any cigar, cigarette, or electronic cigarette, as those terms are defined in Section
105 76-10-101;

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

107 (A) chewing tobacco; or

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

109 and

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

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

113 ~~[(3)(a) Except as provided in Subsection (7), and beginning July 1, 2012, a~~
114 ~~municipality shall require an entity to be licensed as a retail tobacco specialty business to~~
115 ~~conduct business as a retail tobacco specialty business in a municipality.]~~

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

119 (b) A municipality may only issue a retail tobacco specialty business license to [~~an~~
120 ~~entity~~] a person if the [~~entity~~] person complies with the provisions of [~~Subsection~~] Subsections
121 (4) and (5).

122 ~~[(4) Except as provided in Subsection (7), and beginning July 1, 2012, a business entity~~
123 ~~that conducts a retail tobacco specialty business in a municipality shall be licensed by the~~
124 ~~municipality as a retail tobacco specialty business.]~~

125 ~~[(5)]~~ (4) (a) [A] Except as provided in Subsection (7), a municipality may not issue a
126 license [to] for a person to conduct business as a retail tobacco specialty business if [it] the
127 retail tobacco specialty business is located within:

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

133 (b) For purposes of Subsection ~~[(5)]~~ (4)(a), the proximity requirements shall be
134 measured in a straight line from the nearest entrance of the retail tobacco specialty business to
135 the nearest property boundary of [~~the community location, or agricultural or residential use~~] a
136 location described in Subsections (4)(a)(i) through (iii), without regard to intervening structures

137 or zoning districts.

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

142 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
143 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in
144 which the retail tobacco specialty business is located; and

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

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

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

150 (i) requires a municipality to issue a [~~business license to a~~] retail tobacco specialty
151 business license; or

152 (ii) prohibits a municipality from adopting more restrictive requirements on a person
153 seeking a license or renewal of a license to conduct business as a retail tobacco specialty
154 business [~~than provided for in this section~~].

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

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

159 (ii) if a licensee violates the regulations restricting the sale and distribution of
160 cigarettes and smokeless tobacco to protect children and adolescents issued by the United
161 States Food and Drug Administration, 21 C.F.R. Part 1140; [~~or~~]

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

164 ~~[(iii)]~~ (iv) under any other ~~[provisions]~~ provision of state law or local ordinance.

165 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has
166 a business license and is operating ~~[lawfully]~~ in a municipality in accordance with all
167 applicable laws except for the requirement in Subsection (4), on or before ~~[May 8, 2012]~~
168 December 31, 2015, is exempt from ~~[Subsections (4) and (5)]~~ Subsection (4).

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

171 (i) the retail tobacco specialty business license is renewed continuously without
172 ~~[relapse]~~ lapse or permanent revocation;

173 (ii) the retail tobacco specialty business ~~[is]~~ does not ~~[closed]~~ close for business or
174 otherwise ~~[suspends]~~ suspend the sale of tobacco products for more than 60 consecutive days;

175 (iii) the retail tobacco specialty business does not substantially change the business
176 premises or ~~[its]~~ business operation; and

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

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

180 (B) zoning ordinances[;];

181 (C) building codes[;]; and ~~[the]~~

182 (D) the requirements of a retail tobacco specialty business license issued ~~[prior to May~~
183 8, 2012] before December 31, 2015.

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

185 **17-50-333. Regulation of retail tobacco specialty business.**

186 (1) As used in this section:

187 (a) "Community location" means:

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

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

190 (iii) a trade or technical school;

- 191 (iv) a church;
- 192 (v) a public library;
- 193 (vi) a public playground;
- 194 (vii) a public park;
- 195 (viii) a youth center or other space used primarily for youth oriented activities;
- 196 (ix) a public recreational facility; ~~[or]~~
- 197 (x) a public arcade~~[-];~~ or
- 198 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
- 199 (b) "Department" means the Department of Health, created in Section [26-1-4](#).
- 200 (c) "Licensee" means a person licensed under this section to conduct business as a
- 201 retail tobacco specialty business.
- 202 (d) "Local health department" means the same as that term is defined in Section
- 203 [26A-1-102](#).
- 204 ~~[(b)]~~ (e) "Retail tobacco specialty business" means a commercial establishment in
- 205 which:
- 206 (i) the sale of tobacco products accounts for more than 35% of the total ~~[annual]~~
- 207 quarterly gross receipts for the establishment;
- 208 ~~[(ii) food and beverage products, excluding gasoline sales, is less than 45% of the total~~
- 209 ~~annual gross receipts for the establishment; and]~~
- 210 ~~[(iii) the establishment is not licensed as a pharmacy under Title 58, Chapter 17b,~~
- 211 ~~Pharmacy Practice Act.]~~
- 212 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
- 213 storage of tobacco products;
- 214 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
- 215 tobacco products; or
- 216 (iv) the retail space features a self-service display for tobacco products.
- 217 (f) "Self-service display" means the same as that term is defined in Section

218 [76-10-105.1.](#)

219 ~~[(e)]~~ (g) "Tobacco product" means:

220 (i) any cigar, cigarette, or electronic cigarette as those terms are defined in Section

221 [76-10-101](#);

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

223 (A) chewing tobacco; or

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

225 and

226 (iii) tobacco paraphernalia as that term is defined in Section [76-10-104.1](#).

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

229 ~~[(3) (a) Except as provided in Subsection (7), and beginning July 1, 2012, a county
230 shall require an entity to be licensed as a retail tobacco specialty business to conduct business
231 as a retail tobacco specialty business in a county.]~~

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

235 (b) A county may only issue a retail tobacco specialty business license to ~~[an entity]~~ a
236 person if the ~~[entity]~~ person complies with the provisions of ~~[Subsection]~~ Subsections (4) and
237 (5).

238 ~~[(4) Except as provided in Subsection (7), and beginning July 1, 2012, a business entity
239 that conducts a retail tobacco specialty business in a county shall be licensed by the county as a
240 retail tobacco specialty business.]~~

241 ~~[(5)]~~ (4) (a) [A] Except as provided in Subsection (7), a county may not issue a license
242 [to] for a person to conduct business as a retail tobacco specialty business if [it] the retail
243 tobacco specialty business is located within:

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

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

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

247 (A) agriculture use; or

248 (B) residential use.

249 (b) For purposes of Subsection ~~[(5)]~~ (4)(a), the proximity requirements shall be
250 measured in a straight line from the nearest entrance of the retail tobacco specialty business to
251 the nearest property boundary of ~~[the community location, or agricultural or residential use]~~ a
252 location described in Subsections (4)(a)(i) through (iii), without regard to intervening structures
253 or zoning districts.

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

258 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
259 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in
260 which the retail tobacco specialty business is located; and

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

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

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

266 (i) requires a county to issue a ~~[business license to a]~~ retail tobacco specialty business
267 license; or

268 (ii) prohibits a county from adopting more restrictive requirements on a person seeking
269 a license or renewal of a license to conduct business as a retail tobacco specialty business ~~[than~~
270 provided for in this section].

271 (b) A county may suspend or revoke a retail tobacco specialty business license issued

272 under this section:

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

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

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

280 ~~[(iii)]~~ (iv) under any other ~~[provisions]~~ provision of state law or local ordinance.

281 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has
282 a business license and is operating ~~[lawfully]~~ in a county in accordance with all applicable laws
283 except for the requirement in Subsection (4), on or before ~~[May 8, 2012]~~ December 31, 2015,
284 is exempt from ~~[Subsections (4) and (5)]~~ Subsection (4).

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

287 (i) the retail tobacco specialty business license is renewed continuously without
288 ~~[relapse]~~ lapse or permanent revocation;

289 (ii) the retail tobacco specialty business ~~[is]~~ does not ~~[closed]~~ close for business or
290 otherwise ~~[suspends]~~ suspend the sale of tobacco products for more than 60 consecutive days;

291 (iii) the retail tobacco specialty business does not substantially change the business
292 premises or ~~[its]~~ business operation; and

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

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

296 (B) zoning ordinances[;];

297 (C) building codes[;]; and [the]

298 (D) the requirements of a retail tobacco specialty business license issued ~~[prior to May~~

299 ~~8, 2012]~~ before December 31, 2015.

300 Section 3. Section **26-38-2** is amended to read:

301 **26-38-2. Definitions.**

302 As used in this chapter:

303 (1) "E-cigarette":

304 (a) means any electronic oral device:

305 (i) that provides an aerosol or a vapor of nicotine or other substance; and

306 (ii) which simulates smoking through its use or through inhalation of the device; and

307 (b) includes an oral device that is:

308 (i) composed of a heating element, battery, or electronic circuit; and

309 (ii) marketed, manufactured, distributed, or sold as:

310 (A) an e-cigarette;

311 (B) e-cigar;

312 (C) e-pipe; or

313 (D) any other product name or descriptor, if the function of the product meets the

314 definition of Subsection (1)(a).

315 (2) "Non-tobacco shisha" means any product that:

316 (a) does not contain tobacco or nicotine; and

317 (b) is smoked or intended to be smoked in a hookah or water pipe.

318 [~~2~~] (3) "Place of public access" means any enclosed indoor place of business,

319 commerce, banking, financial service, or other service-related activity, whether publicly or

320 privately owned and whether operated for profit or not, to which persons not employed at the

321 place of public access have general and regular access or which the public uses, including:

322 (a) buildings, offices, shops, elevators, or restrooms;

323 (b) means of transportation or common carrier waiting rooms;

324 (c) restaurants, cafes, or cafeterias;

325 (d) taverns as defined in Section [32B-1-102](#), or cabarets;

- 326 (e) shopping malls, retail stores, grocery stores, or arcades;
- 327 (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical
- 328 sites, auditoriums, or arenas;
- 329 (g) barber shops, hair salons, or laundromats;
- 330 (h) sports or fitness facilities;
- 331 (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and
- 332 breakfast" lodging facilities, and other similar lodging facilities, including the lobbies,
- 333 hallways, elevators, restaurants, cafeterias, other designated dining areas, and restrooms of any
- 334 of these;
- 335 (j) (i) any child care facility or program subject to licensure or certification under this
- 336 title, including those operated in private homes, when any child cared for under that license is
- 337 present; and
- 338 (ii) any child care, other than child care as defined in Section [26-39-102](#), that is not
- 339 subject to licensure or certification under this title, when any child cared for by the provider,
- 340 other than the child of the provider, is present;
- 341 (k) public or private elementary or secondary school buildings and educational
- 342 facilities or the property on which those facilities are located;
- 343 (l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or
- 344 religious organization when used solely by the organization members or their guests or
- 345 families;
- 346 (m) any facility rented or leased for private functions from which the general public is
- 347 excluded and arrangements for the function are under the control of the function sponsor;
- 348 (n) any workplace that is not a place of public access or a publicly owned building or
- 349 office but has one or more employees who are not owner-operators of the business;
- 350 (o) any area where the proprietor or manager of the area has posted a conspicuous sign
- 351 stating "no smoking", "thank you for not smoking", or similar statement; and
- 352 (p) a holder of a bar establishment license, as defined in Section [32B-1-102](#).

353 ~~[(3)]~~ (4) "Publicly owned building or office" means any enclosed indoor place or
354 portion of a place owned, leased, or rented by any state, county, or municipal government, or
355 by any agency supported by appropriation of, or by contracts or grants from, funds derived
356 from the collection of federal, state, county, or municipal taxes.

357 (5) "Shisha" means any product that:

358 (a) contains tobacco or nicotine; and

359 (b) is smoked or intended to be smoked in a hookah or water pipe.

360 ~~[(4)]~~ (6) "Smoking" means:

361 (a) the possession of any lighted or heated tobacco product in any form;

362 (b) inhaling, exhaling, burning, or ~~[heating a substance containing tobacco or nicotine~~
363 ~~intended for inhalation through a]~~ carrying any lighted or heated cigar, cigarette, pipe, or
364 hookah[;] that contains:

365 (i) tobacco or any plant product intended for inhalation;

366 (ii) shisha or non-tobacco shisha;

367 (iii) nicotine;

368 (iv) a natural or synthetic tobacco substitute; or

369 (v) a natural or synthetic flavored tobacco product;

370 (c) ~~[except as provided in Section 26-38-2.6;]~~ using an e-cigarette; or

371 (d) using an oral smoking device intended to circumvent the prohibition of smoking in
372 this chapter.

373 Section 4. Section **26-62-101** is enacted to read:

374 **CHAPTER 62. TOBACCO RETAIL PERMIT**

375 **Part 1. General Provisions**

376 **26-62-101. Title.**

377 This chapter is known as "Tobacco Retail Permit."

378 Section 5. Section **26-62-102**, which is renumbered from Section 26-42-102 is
379 renumbered and amended to read:

380 ~~[26-42-102].~~ **26-62-102. Definitions.**

381 As used in this chapter:

382 ~~[(1) "Commission" means the Utah State Tax Commission.]~~

383 (1) "Community location" means the same as that term is defined:

384 (a) as it relates to a municipality, in Section [10-8-41.6](#); and

385 (b) as it relates to a county, in Section [17-50-333](#).

386 (2) "Employee" means an employee of a ~~[licensee]~~ tobacco retailer.

387 (3) "Enforcing agency" means the state Department of Health, or any local health
388 department enforcing the provisions of this chapter.

389 ~~[(4) "Licensee" means a person licensed:]~~

390 ~~[(a) under Section [59-14-201](#) to sell cigarettes at retail;]~~

391 ~~[(b) under Section [59-14-301](#) to sell tobacco products at retail; or]~~

392 ~~[(c) under Section [59-14-803](#) to sell an electronic cigarette product.]~~

393 (4) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco
394 specialty business.

395 (5) "Local health department" means the same as that term is defined in Section
396 [26A-1-102](#).

397 (6) "Permit" means a tobacco retail permit issued under this chapter.

398 (7) "Retail tobacco specialty business" means the same as that term is defined:

399 (a) as it relates to a municipality, in Section [10-8-41.6](#); and

400 (b) as it relates to a county, in Section [17-50-333](#).

401 ~~[(5)]~~ (8) ["License to sell tobacco" or "license"] "Tax commission license" means a
402 license issued by the State Tax Commission under:

403 (a) ~~[under]~~ Section [59-14-201](#) to sell cigarettes at retail;

404 (b) ~~[under]~~ Section [59-14-301](#) to sell tobacco products at retail; or

405 (c) ~~[under]~~ Section [59-14-803](#) to sell an electronic cigarette product.

406 ~~[(6) "Tobacco" means:]~~

- 407 ~~[(a) a cigarette or a tobacco product, as defined in Section 59-14-102; or]~~
- 408 ~~[(b) an electronic cigarette product, as defined in Section 59-14-802.]~~
- 409 (9) "Tobacco product" means:
- 410 (a) a cigar, cigarette, or electronic cigarette as those terms are defined in Section
- 411 76-10-101;
- 412 (b) a tobacco product as that term is defined in Section 59-14-102, including:
- 413 (i) chewing tobacco; or
- 414 (ii) any substitute for a tobacco product, including flavoring or additives to tobacco; or
- 415 (c) tobacco paraphernalia as that term is defined in Section 76-10-104.1.
- 416 (10) "Tobacco retailer" means a person that is required to obtain a tax commission
- 417 license.

418 Section 6. Section **26-62-103** is enacted to read:

419 **26-62-103. Regulation of tobacco retailers.**

420 The regulation of a tobacco retailer is an exercise of the police powers of the state, and

421 through delegation, to other governmental entities.

422 Section 7. Section **26-62-201** is enacted to read:

423 **Part 2. Permit Requirements**

424 **26-62-201. Permitting requirement.**

425 (1) (a) Beginning July 1, 2018, a tobacco retailer shall hold a valid tobacco retail

426 permit issued in accordance with this chapter by the local health department with jurisdiction

427 over the physical location where the tobacco retailer operates.

428 (b) A tobacco retailer without a valid permit may not:

429 (i) place tobacco products in public view;

430 (ii) display any advertisement related to tobacco products that promotes the sale,

431 distribution, or use of those products; or

432 (iii) sell, offer for sale, or offer to exchange for any form of consideration, tobacco or

433 tobacco products.

434 (2) A local health department may issue a permit under this chapter for a tobacco
435 retailer in the classification of:

436 (a) a general tobacco retailer; or

437 (b) a retail tobacco specialty business.

438 (3) A permit under this chapter is:

439 (a) valid only for one physical location, including a vending machine;

440 (b) valid only at one fixed business address; and

441 (c) if multiple tobacco retailers are at the same address, separately required for each
442 tobacco retailer.

443 (4) Notwithstanding the requirement in Subsection (1), a person that holds a tax
444 commission license that was valid on July 1, 2018:

445 (a) may operate without a permit under this chapter until December 31, 2018; and

446 (b) shall obtain a permit from a local health department under this chapter before
447 January 1, 2019.

448 Section 8. Section **26-62-202** is enacted to read:

449 **26-62-202. Permit application.**

450 (1) A local health department shall issue a permit under this chapter for a tobacco
451 retailer if the local health department determines that the applicant:

452 (a) accurately provided all information required under Subsection (3) and, if applicable,
453 Subsection (4); and

454 (b) meets all requirements for a permit under this chapter.

455 (2) An applicant for a permit shall:

456 (a) submit an application described in Subsection (3) to the local health department
457 with jurisdiction over the area where the tobacco retailer is located; and

458 (b) pay all applicable fees described in Section [26-62-203](#).

459 (3) The application for a permit shall include:

460 (a) the name, address, and telephone number of each proprietor;

461 (b) the name and mailing address of each proprietor authorized to receive
462 permit-related communication and notices;

463 (c) the business name, address, and telephone number of the single, fixed location for
464 which a permit is sought;

465 (d) evidence that the location for which a permit is sought has a valid tax commission
466 license;

467 (e) information regarding whether, in the past 24 months, any proprietor of the tobacco
468 retailer has been determined to have violated, or has been a proprietor at a location that has
469 been determined to have violated:

470 (i) a provision of this chapter;
471 (ii) Chapter 38, Utah Indoor Clean Air Act;
472 (iii) Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic Chemical
473 Solvents;

474 (iv) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
475 (v) regulations restricting the sale and distribution of cigarettes and smokeless tobacco
476 issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140; or
477 (vi) any other provision of state law or local ordinance regarding the sale, marketing, or
478 distribution of tobacco products; and

479 (f) the dates of all violations disclosed under this Subsection (3).

480 (4) (a) In addition to the information described in Subsection (3), an applicant for a
481 retail tobacco specialty business permit shall include evidence showing whether the business is
482 located within:

483 (i) 1,000 feet of a community location;
484 (ii) 600 feet of another retail tobacco specialty business; or
485 (iii) 600 feet of property used or zoned for agricultural or residential use.

486 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in
487 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest

488 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard
489 to intervening structures or zoning districts.

490 (5) The department or a local health department may not deny a permit to a retail
491 tobacco specialty business under Subsection (4) if the person obtained a license to operate the
492 retail tobacco specialty business before December 31, 2015, from:

493 (a) a municipality under Section [10-8-41.6](#); or

494 (b) a county under Section [17-50-333](#).

495 (6) (a) The department shall establish by rule made in accordance with Title 63G,
496 Chapter 3, Utah Administrative Rulemaking Act, a permit process for local health departments
497 in accordance with this chapter.

498 (b) The permit process established by the department under Subsection (6)(a) may not
499 require any information in an application that is not required by this section.

500 Section 9. Section **26-62-203** is enacted to read:

501 **26-62-203. Permit term and fees.**

502 (1) (a) The term of a permit issued under this chapter to a retail tobacco specialty
503 business is one year.

504 (b) The term of a permit issued under this chapter to a general tobacco retailer is two
505 years.

506 (2) (a) A local health department may not issue a permit under this chapter until the
507 applicant has paid a permit fee to the local health department of:

508 (i) \$30 for a new permit;

509 (ii) \$20 for a permit renewal; or

510 (iii) \$30 for reinstatement of a permit that has been revoked, suspended, or allowed to
511 expire.

512 (b) A local health department that collects fees under Subsection (2)(a) shall use the
513 fees to administer the permit requirements under this chapter.

514 (c) In addition to the fee described in Subsection (2)(a), a local health department may

515 establish and collect a fee to perform a plan review for a retail tobacco specialty business
516 permit.

517 (3) A permit holder may apply for a renewal of a permit no earlier than 30 days before
518 the day on which the permit expires.

519 (4) A tobacco retailer that fails to renew a permit before the permit expires may apply
520 to reinstate the permit by submitting to the local health department:

521 (a) the information required in Subsection 26-62-202(3) and, if applicable, Subsection
522 26-62-202(4);

523 (b) the fee for the reinstatement of a permit; and

524 (c) a signed affidavit affirming that the tobacco retailer has not violated the
525 prohibitions in Subsection 26-62-201(1)(b) after the permit expired.

526 Section 10. Section **26-62-204** is enacted to read:

527 **26-62-204. Permit nontransferable.**

528 (1) A permit is nontransferable.

529 (2) If the information described in Subsection 26-62-202(3) changes, a tobacco retailer:

530 (a) may not renew the permit; and

531 (b) shall apply for a new permit no later than 15 days after the information in
532 Subsection 26-62-202(3) changes.

533 Section 11. Section **26-62-205** is enacted to read:

534 **26-62-205. Permit requirements for a retail tobacco specialty business.**

535 A retail tobacco specialty business shall:

536 (1) except as provided in Subsection 76-10-105.1(4), prohibit any individual under 19
537 years of age from entering the business; and

538 (2) prominently display at the retail tobacco specialty business a sign on the public
539 entrance of the business that communicates the prohibition in Subsection 76-10-105.1(4).

540 Section 12. Section **26-62-301** is enacted to read:

541 **Part 3. Enforcement**

542 **26-62-301. Permit violation.**

543 A person is in violation of the permit issued under this chapter if the person violates:

544 (1) a provision of this chapter;

545 (2) a provision of licensing laws under Section 10-8-41.6 or Section 17-50-333;

546 (3) a provision of Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic
547 Chemical Solvents;

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

549 (5) a regulation restricting the sale and distribution of cigarettes and smokeless tobacco
550 issued by the United States Food and Drug Administration under 21 C.F.R. Part 1140; or

551 (6) any other provision of state law or local ordinance regarding the sale, marketing, or
552 distribution of tobacco products.

553 Section 13. Section **26-62-302**, which is renumbered from Section 26-42-104 is
554 renumbered and amended to read:

555 ~~[26-42-104].~~ **26-62-302. Enforcement by state and local health**
556 **departments.**

557 The ~~[state Department of Health and the]~~ department and local health departments shall
558 enforce this chapter under the procedures of Title 63G, Chapter 4, Administrative Procedures
559 Act, as an informal adjudicative proceeding, including:

560 (1) notifying ~~[licensees]~~ a tobacco retailer of alleged violations of ~~[Section 26-42-103]~~
561 this chapter;

562 (2) conducting hearings;

563 (3) determining violations of this chapter; and

564 (4) imposing civil ~~[monetary]~~ administrative penalties.

565 Section 14. Section **26-62-303** is enacted to read:

566 **26-62-303. Inspection of retail tobacco businesses.**

567 The department or a local health department may inspect a tobacco retailer to determine
568 whether the tobacco retailer:

- 569 (1) continues to meet the qualifications for the permit issued under this chapter;
- 570 (2) if applicable, continues to meet the requirements for a retail tobacco specialty
- 571 business license issued under Section 10-8-41.6 or Section 17-50-333;
- 572 (3) engaged in a pattern of unlawful activity under Title 76, Chapter 10, Part 16,
- 573 Pattern of Unlawful Activity Act;
- 574 (4) violated any of the regulations restricting the sale and distribution of cigarettes and
- 575 smokeless tobacco issued by the United States Food and Drug Administration under 21 C.F.R.
- 576 Part 1140; or
- 577 (5) has violated any other provision of state law or local ordinance.

578 Section 15. Section **26-62-304**, which is renumbered from Section 26-42-105 is
579 renumbered and amended to read:

580 ~~[26-42-105].~~ **26-62-304. Hearing -- Evidence of criminal conviction.**

581 (1) At a civil hearing conducted under Section ~~[26-42-104]~~ 26-62-302, evidence of the
582 final criminal conviction of a [~~licensee~~] tobacco retailer or employee for violation of Section
583 76-10-104 at the same location and within the same time period as the location and time period
584 alleged in the civil hearing for violation of [~~Section 26-42-103]~~ this chapter for sale of tobacco
585 products to a person under the age of 19 is prima facie evidence of a violation of [~~Section~~
586 26-42-103] this chapter.

587 (2) If the [~~licensee has been~~] tobacco retailer is convicted of violating Section
588 76-10-104 [~~prior to a finding of a violation of Section 26-42-103, the licensee~~], the enforcing
589 agency:

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

592 (b) may revoke or suspend a permit in accordance with Section 26-62-305.

593 Section 16. Section **26-62-305**, which is renumbered from Section 26-42-103 is
594 renumbered and amended to read:

595 ~~[26-42-103].~~ **26-62-305. Penalties.**

596 (1) (a) If, following an inspection by an enforcing agency, or an investigation or
597 issuance of a citation or information under Section 77-39-101, an enforcing agency determines
598 [~~under Section 26-42-104 that a licensee or any employee has sold tobacco to a person younger~~
599 ~~than 19 years of age, as prohibited by Section 76-10-104;~~] that a person has violated the terms
600 of a permit issued under this chapter, the enforcing agency may impose [~~upon the licensee the~~
601 ~~following administrative penalties:~~] the penalties described in this section.

602 (b) If multiple violations are found in a single inspection or investigation, only one
603 violation shall count toward the penalties described in this section.

604 [~~(a) upon the first violation, a penalty of not more than \$300;~~]

605 [~~(b) upon a second violation at the same retail location, and within 12 months of the~~
606 ~~first violation, a penalty of not more than \$750; and]~~

607 [~~(c) upon a third or subsequent violation at the same retail location and within 12~~
608 ~~months of the first violation, a penalty of not more than \$1,000.]~~

609 [(2) ~~The enforcing agency shall notify the commission in writing of any order or order~~
610 ~~of default finding a violation of Subsection (1) which is a third or fourth violation.]~~

611 [(3) ~~The commission, upon receipt of the written notification under Subsection (2),~~
612 ~~shall take action under Section 59-14-203.5 or 59-14-301.5 against the license to sell tobacco:]~~

613 [~~(a) by suspending the licensee's license to sell tobacco at that location for not more~~
614 ~~than 30 days, upon receipt of notification of a third violation under Subsection (1)(c); and]~~

615 [~~(b) by revoking the license to sell tobacco at that location held by the licensee,~~
616 ~~including any license under suspension, upon receipt of notification of a fourth violation under~~
617 ~~Subsection (1)(c).]~~

618 [(4) ~~When the commission revokes a license under Subsection (3)(b), the commission~~
619 ~~may not issue to the licensee, or to the business entity using the license that is revoked, a~~
620 ~~license under Section 59-14-202, 59-14-301, or 59-14-803 to sell tobacco at the location for~~
621 ~~which the license was issued for one year after:]~~

622 [~~(a) the day on which the time for filing an appeal of the revocation ends; or]~~

623 ~~[(b) if the revocation is appealed, the day on which the decision to uphold the~~
624 ~~revocation becomes final.]~~

625 ~~[(5) This section does not prevent any bona fide purchaser of the business, who is not a~~
626 ~~sole proprietor, director, corporate officer, or partner or other holder of significant interest in~~
627 ~~the entity selling the business, from immediately applying for and obtaining a license to sell~~
628 ~~tobacco.]~~

629 (2) (a) The administrative penalty for a first violation at a retail location is a penalty of
630 not more than \$500.

631 (b) The administrative penalty for a second violation at the same retail location that
632 occurs within one year of a previous violation is a penalty of not more than \$750.

633 (c) The administrative penalty for a third or subsequent violation at the same retail
634 location that occurs within two years after two or more previous violations is:

635 (i) a suspension of the retail tobacco business permit for 30 consecutive business days
636 within 60 days after the day on which the third or subsequent violation occurs; or

637 (ii) a penalty of not more than \$1,000.

638 (3) The department or a local health department may:

639 (a) revoke a permit if a fourth violation occurs within two years of three previous
640 violations;

641 (b) in addition to a monetary penalty imposed under Subsection (2), suspend the permit
642 if the violation is due to a sale of tobacco products to a person under 19 years of age; and

643 (c) if applicable, recommend to a municipality or county that a retail tobacco specialty
644 business license issued under Section [10-8-41.6](#) or [17-50-333](#) be suspended or revoked.

645 (4) (a) Except when a transfer described in Subsection (5) occurs, a local health
646 department may not issue a permit to:

647 (i) a tobacco retailer for whom a permit is suspended or revoked under Subsection (3);

648 or

649 (ii) a tobacco retailer that has the same proprietor, director, corporate officer, partner,

650 or other holder of significant interest as another tobacco retailer for whom a permit is
 651 suspended or revoked under Subsection (3).

652 (b) A person whose permit:

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

656 (ii) is revoked may not apply for a new permit for any tobacco retailer for a period of
 657 24 months after the day on which an enforcing agency revokes the permit.

658 (5) Violations of this chapter, Section 10-8-41.6, or Section 17-50-333 that occur at a
 659 tobacco retailer location shall stay on the record for that tobacco retailer location unless:

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

661 (b) the new proprietor provides documentation to the local health department that the
 662 new proprietor is acquiring the tobacco retailer in an arm's length transaction from the previous
 663 proprietor.

664 Section 17. Section **26-62-306**, which is renumbered from Section 26-42-106 is
 665 renumbered and amended to read:

666 ~~[26-42-106].~~ **26-62-306. Recognition of tobacco retailer training program.**

667 (1) In determining the amount of the monetary penalty to be imposed for an employee's
 668 violation of [~~Section 26-42-103, the~~] this chapter, a hearing officer shall reduce the civil
 669 penalty [by at least 50% if he] by at least 50% if the hearing officer determines that:

670 (a) the [~~licensee~~] tobacco retailer has implemented a documented employee training
 671 program; and

672 (b) the [~~employee has~~] employees have completed that training program within 30 days
 673 [~~of commencing~~] after the day on which each employee commences the duties of selling
 674 tobacco products.

675 (2) (a) [~~Hf~~] For the first offense at a location, if the hearing officer determines under
 676 Subsection (1)[, regarding a first offense at a location, that the] that the tobacco retailer licensee

677 has not implemented a documented training program with a written curriculum for employees
678 at that location regarding compliance with this chapter, the hearing officer may suspend all or a
679 portion of the [~~monetary penalty, contingent upon the licensee's initiating a training program~~
680 ~~for employees at that location within 30 days after the hearing date.~~] penalty if:

681 (i) the tobacco retailer agrees to initiate a training program for employees at that
682 location; and

683 (ii) the training program begins within 30 days after the hearing officer makes a
684 determination under this Subsection (2)(a).

685 (b) If the hearing officer determines at a subsequent hearing that the [~~licensee~~] tobacco
686 retailer has not implemented the training program within the time period required under
687 Subsection (2)(a)(ii), the hearing officer shall promptly impose the suspended monetary penalty
688 [~~shall be promptly imposed~~], unless the [~~licensee~~] tobacco retailer demonstrates good cause for
689 [~~granting~~] an extension of time for implementation of the training program.

690 Section 18. Section ~~26-62-307~~, which is renumbered from Section 26-42-107 is
691 renumbered and amended to read:

692 [~~26-42-107~~]. **26-62-307. Allocation of civil penalties.**

693 Civil monetary penalties collected under this chapter shall be allocated as follows:

694 (1) if a local health department conducts an adjudicative proceeding under Section
695 [~~26-42-104~~] 26-62-302, the penalty shall be paid to the treasurer of the county in which the
696 violation was committed, and transferred to[:(a)] the local health department [~~if it conducts a~~
697 ~~civil hearing under Section 26-42-104 alone; or~~]; and

698 [~~(b) in equal portions to the local health department and the other agencies that~~
699 ~~participated in the hearing process;~~]

700 (2) if the [~~state Department of Health~~] department conducts a civil hearing under
701 Section [~~26-42-104~~] 26-62-302, the penalty shall be deposited in the state's General Fund, and
702 may be appropriated by the Legislature to the [~~state Department of Health~~] department for use
703 in enforcement of this chapter[; ~~and~~].

704 ~~[(3) if the civil penalty involves suspension or revocation of a license to sell tobacco~~
705 ~~under Section 59-14-203.5, 59-14-301.5, or 59-14-803, half of the penalty shall be paid to the~~
706 ~~commission, and the other half shall be allocated under Subsection (1) or (2), as appropriate.]~~

707 Section 19. Section **26A-1-128** is enacted to read:

708 **26A-1-128. Tobacco permits -- Enforcement.**

709 A local health department:

710 (1) shall enforce the requirements of Title 26, Chapter 62, Tobacco Retail Permit;

711 (2) may enforce licensing requirements for entities that hold a business license to sell
712 tobacco products under Section 10-8-41.6 or Section 17-50-333; and

713 (3) may recommend to a municipality or county that the business license of a retail
714 tobacco specialty business be suspended or revoked for a violation of Section 10-8-41.6,
715 Section 17-50-333, or Title 26, Chapter 62, Tobacco Retail Permit.

716 Section 20. Section **59-14-201** is amended to read:

717 **59-14-201. License -- Application of part -- Fee -- Bond -- Exceptions.**

718 (1) It is unlawful for any person in this state to manufacture, import, distribute, barter,
719 sell, exchange, or offer cigarettes for sale without first having obtained a license issued by the
720 commission under Section 59-14-202.

721 (2) Except for the tax rates described in Subsection 59-14-204(2), this part does not
722 apply to a cigarette produced from a cigarette rolling machine.

723 (3) (a) A license may not be issued for the sale of cigarettes until the applicant has paid
724 a license fee of \$30 or a license renewal fee of \$20, as appropriate.

725 (b) The fee for reinstatement of a license that has been revoked, suspended, or allowed
726 to expire is \$30.

727 (c) Notwithstanding Subsections (3)(a) and (b), the commission may not charge a fee
728 for a license under this section for a retailer, as defined in Section 59-14-102.

729 (4) (a) A license may not be issued until the applicant files a bond with the
730 commission. The commission shall determine the form and the amount of the bond, the

731 minimum amount of which shall be \$500. The bond shall be executed by the applicant as
732 principal, with a corporate surety, payable to the state and conditioned upon the faithful
733 performance of all the requirements of this chapter, including the payment of all taxes,
734 penalties, and other obligations.

735 (b) An applicant is not required to post a bond if the applicant:

736 (i) purchases during the license year only products that have the proper state stamp
737 affixed as required by this chapter; and

738 (ii) files an affidavit with the applicant's application attesting to this fact.

739 Section 21. Section **59-14-803** is amended to read:

740 **59-14-803. License to sell electronic cigarette products.**

741 (1) Except as provided in Subsection (2), a person may not sell, offer to sell, or
742 distribute an electronic cigarette product in Utah without first obtaining a license to sell an
743 electronic cigarette product from the commission under this section.

744 (2) A person that holds a valid license to sell cigarettes under Section [59-14-201](#), or a
745 person that holds a valid license to sell tobacco products under Section [59-14-301](#), may,
746 without obtaining a separate license to sell an electronic cigarette product under this part, sell,
747 offer to sell, or distribute an electronic cigarette product in Utah in accordance with this part.

748 (3) ~~[Except as provided in Subsection (6), the]~~ The commission shall issue a license to
749 sell an electronic cigarette product to a person that ~~[:(a)]~~ submits an application, on a form
750 created by the commission, that includes:

751 ~~[(i)]~~ (a) the person's name;

752 ~~[(ii)]~~ (b) the address of the facility where the person will sell an electronic cigarette
753 product; and

754 ~~[(iii)]~~ (c) any other information the commission requires to implement this chapter~~;~~
755 ~~and].~~

756 ~~[(b) pays a fee:]~~

757 ~~[(i) in the amount of \$30; or]~~

758 ~~[(ii) if renewing the person's license, in the amount of \$20.]~~

759 (4) A license described in Subsection (3) is:

760 (a) valid only at one fixed business address;

761 (b) valid for three years;

762 (c) valid only for a physical location; and

763 (d) renewable if a licensee meets the criteria for licensing described in Subsection (3).

764 ~~[(5) The commission shall, after notifying a licensee, revoke a license described in~~

765 ~~Subsection (3) if an enforcing agency determines the licensee has violated a provision of:]~~

766 ~~[(a) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; or]~~

767 ~~[(b) Title 26, Chapter 57, Electronic Cigarette Regulation Act.]~~

768 ~~[(6) If the commission revokes a person's license to sell an electronic cigarette product~~

769 ~~under Subsection (5), the commission may not issue a license to sell an electronic cigarette~~

770 ~~product, a license to sell cigarettes under Section 59-14-201, or a license to sell tobacco under~~

771 ~~Section 59-14-301 to the person until one year after:]~~

772 ~~[(a) the day on which the time for filing an appeal of the revocation ends, as~~

773 ~~determined by the enforcing agency; or]~~

774 ~~[(b) if the person appeals the enforcing agency's decision to revoke the license to sell~~

775 ~~an electronic cigarette product, the day on which the enforcing agency's decision to uphold the~~

776 ~~revocation is final:]~~

777 ~~[(7) If the commission revokes a person's license under Subsection (5), the commission~~

778 ~~shall also revoke the person's license to sell cigarettes under Section 59-14-201, if any, and the~~

779 ~~person's license to sell tobacco under Section 59-14-301, if any:]~~

780 ~~[(8) (5) The commission may make rules in accordance with Title 63G, Chapter 3,~~

781 ~~Utah Administrative Rulemaking Act, to establish the additional information described in~~

782 ~~Subsection (3)[(a)(iii)](c) that a person must provide in the application described in Subsection~~

783 ~~(3)[(a)].~~

784 ~~[(9) (6) It is a class B misdemeanor for a person to violate Subsection (1).~~

785 (7) The commission may not charge a fee for a license under this section.

786 Section 22. Section **76-10-105.1** is amended to read:

787 **76-10-105.1. Requirement of direct, face-to-face sale of cigarettes, tobacco, and**
788 **electronic cigarettes -- Minors not allowed in tobacco specialty shop -- Penalties.**

789 (1) As used in this section:

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

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

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

794 (A) vending machine; or

795 (B) self-service display.

796 (c) "Retailer" means a person who:

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

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

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

804 (e) "Tobacco" means any product, except a cigarette, made of or containing tobacco.

805 (f) "Tobacco specialty shop" means [~~a retailer with a physical location that derives at~~
806 ~~least 80% of its total sales from the sale of cigarettes, tobacco, or electronic cigarettes.~~] a "retail
807 tobacco specialty business" as that term is defined:

808 (i) as it relates to a municipality, in Section [10-8-41.6](#); and

809 (ii) as it relates to a county, in Section [17-50-333](#).

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

- 812 (3) The face-to-face sale requirement in Subsection (2) does not apply to:
- 813 (a) a mail-order, telephone, or Internet sale made in compliance with Section
- 814 59-14-509;
- 815 (b) a sale from a vending machine or self-service display that is located in an area of a
- 816 retailer's facility:
- 817 (i) that is distinct and separate from the rest of the facility; and
- 818 (ii) where the retailer only allows an individual who complies with Subsection (4) to be
- 819 present; or
- 820 (c) a sale at a tobacco specialty shop.
- 821 (4) An individual who is less than 19 years old may not enter or be present at a tobacco
- 822 specialty shop unless the individual is:
- 823 (a) accompanied by a parent or legal guardian;
- 824 (b) present at the tobacco shop for a bona fide commercial purpose other than to
- 825 purchase a cigarette, tobacco, or an electronic cigarette; or
- 826 (c) 18 years old or older and an active duty member of the United States Armed Forces,
- 827 as demonstrated by a valid, government-issued military identification card.
- 828 (5) A parent or legal guardian who accompanies, under Subsection (4)(a), an individual
- 829 into an area described in Subsection (3)(b), or into a tobacco specialty shop, may not allow the
- 830 individual to purchase a cigarette, tobacco, or an electronic cigarette.
- 831 (6) A violation of Subsection (2) or (4) is a:
- 832 (a) class C misdemeanor on the first offense;
- 833 (b) class B misdemeanor on the second offense; and
- 834 (c) class A misdemeanor on the third and all subsequent offenses.
- 835 (7) An individual who violates Subsection (5) is guilty of providing tobacco to a minor
- 836 under Section 76-10-104.
- 837 (8) (a) Any ordinance, regulation, or rule adopted by the governing body of a political
- 838 subdivision of the state or by a state agency that affects the sale, placement, or display of

839 cigarettes, tobacco, or electronic cigarettes that is not essentially identical to the provisions of
840 this section and Section 76-10-102 is superseded.

841 (b) Subsection (8)(a) does not apply to the adoption or enforcement of a land use
842 ordinance by a municipal or county government.

843 Section 23. Section 77-39-101 is amended to read:

844 **77-39-101. Investigation of sales of alcohol, tobacco, and electronic cigarettes to**
845 **underage persons.**

846 (1) As used in this section, "electronic cigarette" is as defined in Section 76-10-101.

847 (2) (a) A peace officer, as defined by Title 53, Chapter 13, Peace Officer
848 Classifications, may investigate the possible violation of:

849 (i) Section 32B-4-403 by requesting an individual under the age of 21 years to enter
850 into and attempt to purchase or make a purchase of alcohol from a retail establishment; or

851 (ii) Section 76-10-104 by requesting an individual under the age of 19 years to enter
852 into and attempt to purchase or make a purchase from a retail establishment of:

853 (A) a cigar;

854 (B) a cigarette;

855 (C) tobacco in any form; or

856 (D) an electronic cigarette.

857 (b) A peace officer who is present at the site of a proposed purchase shall direct,
858 supervise, and monitor the individual requested to make the purchase.

859 (c) Immediately following a purchase or attempted purchase or as soon as practical the
860 supervising peace officer shall inform the cashier and the proprietor or manager of the retail
861 establishment that the attempted purchaser was under the legal age to purchase:

862 (i) alcohol; or

863 (ii) (A) a cigar;

864 (B) a cigarette;

865 (C) tobacco in any form; or

866 (D) an electronic cigarette.

867 (d) If a citation or information is issued, it shall be issued within seven days of the
868 purchase.

869 (3) (a) If an individual under the age of 18 years old is requested to attempt a purchase,
870 a written consent of that individual's parent or guardian shall be obtained prior to that
871 individual participating in any attempted purchase.

872 (b) An individual requested by the peace officer to attempt a purchase may:

873 (i) be a trained volunteer; or

874 (ii) receive payment, but may not be paid based on the number of successful purchases
875 of alcohol, tobacco, or an electronic cigarette.

876 (4) The individual requested by the peace officer to attempt a purchase and anyone
877 accompanying the individual attempting a purchase may not during the attempted purchase
878 misrepresent the age of the individual by false or misleading identification documentation in
879 attempting the purchase.

880 (5) An individual requested to attempt to purchase or make a purchase pursuant to this
881 section is immune from prosecution, suit, or civil liability for the purchase of, attempted
882 purchase of, or possession of alcohol, a cigar, a cigarette, tobacco in any form, or an electronic
883 cigarette if a peace officer directs, supervises, and monitors the individual.

884 (6) (a) Except as provided in Subsection (6)(b), a purchase attempted under this section
885 shall be conducted:

886 (i) on a random basis; and

887 (ii) within a 12-month period at any one retail establishment location not more often
888 than:

889 (A) [~~four~~] two times for the attempted purchase of:

890 (I) a cigar;

891 (II) a cigarette;

892 (III) tobacco in any form; or

893 (IV) an electronic cigarette; and
894 (B) four times for the attempted purchase of alcohol.
895 (b) Nothing in this section shall prohibit an investigation or an attempt to purchase
896 tobacco under this section if:
897 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a
898 cigar, a cigarette, tobacco in any form, or an electronic cigarette to an individual under the age
899 established by Section 32B-4-403 or 76-10-104; and
900 (ii) the supervising peace officer makes a written record of the grounds for the
901 reasonable suspicion.
902 (7) (a) The peace officer exercising direction, supervision, and monitoring of the
903 attempted purchase shall make a report of the attempted purchase, whether or not a purchase
904 was made.
905 (b) The report required by this Subsection (7) shall include:
906 (i) the name of the supervising peace officer;
907 (ii) the name of the individual attempting the purchase;
908 (iii) a photograph of the individual attempting the purchase showing how that
909 individual appeared at the time of the attempted purchase;
910 (iv) the name and description of the cashier or proprietor from whom the individual
911 attempted the purchase;
912 (v) the name and address of the retail establishment; and
913 (vi) the date and time of the attempted purchase.
914 **Section 24. Repealer.**
915 This bill repeals:
916 Section 26-42-101, Title.
917 Section 59-14-203.5, Commission action to suspend or revoke license.
918 Section 59-14-301.5, Commission action to suspend or revoke license.
919 Section 25. **Effective date.**

920

This bill takes effect on July 1, 2018.