

TOBACCO REGULATIONS AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley G. Last

Senate Sponsor: _____

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;
- ▶ 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:

None

Utah Code Sections Affected:



28 AMENDS:

- 29 **10-8-41.6**, as enacted by Laws of Utah 2012, Chapter 154
- 30 **17-50-333**, as enacted by Laws of Utah 2012, Chapter 154
- 31 **26-38-2**, as last amended by Laws of Utah 2017, Chapter 455
- 32 **26-42-102**, as last amended by Laws of Utah 2015, Chapter 132
- 33 **26-42-103**, as last amended by Laws of Utah 2015, Chapter 132
- 34 **26-42-104**, as last amended by Laws of Utah 2008, Chapter 382
- 35 **26-42-105**, as enacted by Laws of Utah 1998, Chapter 319
- 36 **26-42-106**, as enacted by Laws of Utah 1998, Chapter 319
- 37 **26-42-107**, as last amended by Laws of Utah 2015, Chapter 132
- 38 **59-14-201**, as last amended by Laws of Utah 2013, Chapter 148
- 39 **59-14-803**, as enacted by Laws of Utah 2015, Chapter 132
- 40 **76-10-105.1**, as last amended by Laws of Utah 2015, Chapters 66 and 132
- 41 **77-39-101**, as last amended by Laws of Utah 2010, Chapters 114 and 276

42 ENACTS:

- 43 **26-62-101**, Utah Code Annotated 1953
- 44 **26-62-102**, Utah Code Annotated 1953
- 45 **26-62-103**, Utah Code Annotated 1953
- 46 **26-62-201**, Utah Code Annotated 1953
- 47 **26-62-202**, Utah Code Annotated 1953
- 48 **26-62-203**, Utah Code Annotated 1953
- 49 **26-62-204**, Utah Code Annotated 1953
- 50 **26-62-205**, Utah Code Annotated 1953
- 51 **26-62-301**, Utah Code Annotated 1953
- 52 **26-62-302**, Utah Code Annotated 1953
- 53 **26-62-303**, Utah Code Annotated 1953
- 54 **26-62-304**, Utah Code Annotated 1953
- 55 **26-62-305**, Utah Code Annotated 1953
- 56 **26-62-306**, Utah Code Annotated 1953
- 57 **26-62-307**, Utah Code Annotated 1953
- 58 **26A-1-128**, Utah Code Annotated 1953

59 REPEALS:

60 [59-14-203.5](#), as last amended by Laws of Utah 2011, Chapter 96

61 [59-14-301.5](#), as last amended by Laws of Utah 2011, Chapter 96

62

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

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

65 **10-8-41.6. Regulation of retail tobacco specialty business.**

66 (1) As used in this section:

67 (a) "Community location" means:

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

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

70 (iii) a trade or technical school;

71 (iv) a church;

72 (v) a public library;

73 (vi) a public playground;

74 (vii) a public park;

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

76 (ix) a public recreational facility; ~~[or]~~

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

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

79 (b) "Department" means the Department of Health, created in Section [26-1-4](#).

80 (c) "Local health department" means the same as that term is defined in Section

81 [26A-1-102](#).

82 (d) "Permittee" means a person licensed under this section to conduct business as a

83 retail tobacco specialty business.

84 ~~[(b)]~~ (e) "Retail tobacco specialty business" means a commercial establishment in

85 which:

86 ~~[(i) the sale of tobacco products accounts for more than 35% of the total annual gross~~

87 ~~receipts for the establishment;]~~

88 ~~[(ii) food and beverage products, excluding gasoline sales, is less than 45% of the total~~

89 ~~annual gross receipts for the establishment; and]~~

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

92 (i) the name of the business evidences the business as a retail tobacco specialty
93 business;

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

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

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

99 (f) "Self-service display" means the same as that term is defined in Section
100 76-10-105.1.

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

102 (i) any cigar, cigarette, or electronic cigarette as those terms are defined in Section
103 76-10-101;

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

105 (A) chewing tobacco; or

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

107 and

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

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

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

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

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

120 ~~[(4) Except as provided in Subsection (7), and beginning July 1, 2012, a business entity~~

121 ~~that conducts a retail tobacco specialty business in a municipality shall be licensed by the~~
122 ~~municipality as a retail tobacco specialty business.]~~

123 ~~[(5)]~~ (4) (a) ~~[A]~~ Except as provided in Subsection (7), a municipality may not issue a
124 license ~~[to]~~ for a person to conduct business as a retail tobacco specialty business if ~~[it]~~ the
125 retail tobacco specialty business is located within:

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

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

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

140 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
141 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in
142 which the retail tobacco specialty business is located; and

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

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

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

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

150 (ii) prohibits a municipality from adopting more restrictive requirements on a person
151 seeking a license or renewal of a license to conduct business as a retail tobacco specialty

152 business [~~than provided for in this section~~].

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

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

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

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

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

163 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business [~~that~~
164 ~~has a business license and is operating lawfully in a municipality on or before May 8, 2012, is~~
165 ~~exempt from Subsections (4) and (5):~~] is exempt from Subsection (4) if:

166 (i) the person obtained the license to operate the retail tobacco specialty business
167 before July 1, 2018;

168 (ii) the retail tobacco specialty business is operating lawfully in the municipality that
169 issued the retail tobacco specialty business license; and

170 (iii) the retail tobacco specialty business was operating lawfully when the license
171 described in Subsection (7)(a)(i) was issued.

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

174 (i) the retail tobacco specialty business license is renewed continuously without relapse
175 or permanent revocation;

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

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

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

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

183 (B) zoning ordinances[;];
 184 (C) building codes[;]; and [~~the~~]
 185 (D) the requirements of a retail tobacco specialty business license issued [prior to]
 186 before May 8, 2012.

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

188 **17-50-333. Regulation of retail tobacco specialty business.**

189 (1) As used in this section:

190 (a) "Community location" means:

- 191 (i) a public or private kindergarten, elementary, middle, junior high, or high school;
- 192 (ii) a licensed child-care facility or preschool;
- 193 (iii) a trade or technical school;
- 194 (iv) a church;
- 195 (v) a public library;
- 196 (vi) a public playground;
- 197 (vii) a public park;
- 198 (viii) a youth center or other space used primarily for youth oriented activities;
- 199 (ix) a public recreational facility; [~~or~~]
- 200 (x) a public arcade[;]; or
- 201 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.

202 (b) "Department" means the Department of Health, created in Section [26-1-4](#).

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

205 (d) "Local health department" means the same as that term is defined in Section
 206 [26A-1-102](#).

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

209 [~~(i) the sale of tobacco products accounts for more than 35% of the total annual gross~~
 210 ~~receipts for the establishment;~~]

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

213 [~~(iii) the establishment is not licensed as a pharmacy under Title 58, Chapter 17b,~~

214 ~~Pharmacy Practice Act.]~~

215 (i) the name of the business evidences the business as a retail tobacco specialty
216 business;

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

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

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

222 (f) "Self-service display" means the same as that term is defined in Section
223 76-10-105.1.

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

225 (i) any cigar, cigarette, or electronic cigarette as those terms are defined in Section
226 76-10-101;

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

228 (A) chewing tobacco; or

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

230 and

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

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

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

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

240 (b) A county may only issue a retail tobacco specialty business license to ~~[an entity]~~ a
241 person if the ~~[entity]~~ person complies with the provisions of ~~[Subsection]~~ Subsections (4) and
242 (5).

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

245 ~~retail tobacco specialty business.]~~

246 ~~[(5)] (4) (a) [A] Except as provided in Subsection (7), a county may not issue a license~~
 247 ~~[to] for a person to conduct business as a retail tobacco specialty business if [it] the retail~~
 248 ~~tobacco specialty business is located within:~~

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

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

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

- 263 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
 264 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in
 265 which the retail tobacco specialty business is located; and
- 266 (ii) a valid license to sell tobacco products from the State Tax Commission.
- 267 (b) A person that was licensed to conduct business as a retail tobacco specialty
 268 business in a county before July 1, 2018, shall obtain a permit from a local health department
 269 under Title 26, Chapter 62, Tobacco Retail Permit, on or before January 1, 2019.

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

- 271 (i) requires a county to issue a ~~[business license to a]~~ retail tobacco specialty business
 272 license; or
- 273 (ii) prohibits a county from adopting more restrictive requirements on a person seeking
 274 a license or renewal of a license to conduct business as a retail tobacco specialty business [than
 275 provided for in this section].

276 (b) A county may suspend or revoke a retail tobacco specialty business license issued
277 under this section:

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

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

283 (iii) upon the recommendation of the department or a local health department under
284 Title 26, Chapter 62, Tobacco Retail Permit; or
285 ~~[(iii)]~~ (iv) under any other ~~[provisions]~~ provision of state law or local ordinance.

286 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business ~~[that~~
287 ~~has a business license and is operating lawfully in a county on or before May 8, 2012, is~~
288 ~~exempt from Subsections (4) and (5)].~~ is exempt from Subsection (4) if:

289 (i) the person obtained the license to operate the retail tobacco specialty business
290 before July 1, 2018;

291 (ii) the retail tobacco specialty business is operating lawfully in the county that issued
292 the retail tobacco specialty business license; and

293 (iii) the retail tobacco specialty business was operating lawfully when the license
294 described in Subsection (7)(a)(i) was issued.

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

297 (i) the retail tobacco specialty business license is renewed continuously without relapse
298 or permanent revocation;

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

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

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

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

306 (B) zoning ordinances[;];

307 (C) building codes~~[,]~~; and ~~[the]~~
308 (D) the requirements of a retail tobacco specialty business license issued ~~[prior to]~~
309 before May 8, 2012.

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

311 **26-38-2. Definitions.**

312 As used in this chapter:

313 (1) "E-cigarette":

314 (a) means any electronic oral device:

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

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

317 (b) includes an oral device that is:

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

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

320 (A) an e-cigarette;

321 (B) e-cigar;

322 (C) e-pipe; or

323 (D) any other product name or descriptor, if the function of the product meets the
324 definition of Subsection (1)(a).

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

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

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

328 ~~[(2)]~~ (3) "Place of public access" means any enclosed indoor place of business,
329 commerce, banking, financial service, or other service-related activity, whether publicly or
330 privately owned and whether operated for profit or not, to which persons not employed at the
331 place of public access have general and regular access or which the public uses, including:

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

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

334 (c) restaurants, cafes, or cafeterias;

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

336 (e) shopping malls, retail stores, grocery stores, or arcades;

337 (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical

- 338 sites, auditoriums, or arenas;
- 339 (g) barber shops, hair salons, or laundromats;
- 340 (h) sports or fitness facilities;
- 341 (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and
342 breakfast" lodging facilities, and other similar lodging facilities, including the lobbies,
343 hallways, elevators, restaurants, cafeterias, other designated dining areas, and restrooms of any
344 of these;
- 345 (j) (i) any child care facility or program subject to licensure or certification under this
346 title, including those operated in private homes, when any child cared for under that license is
347 present; and
- 348 (ii) any child care, other than child care as defined in Section 26-39-102, that is not
349 subject to licensure or certification under this title, when any child cared for by the provider,
350 other than the child of the provider, is present;
- 351 (k) public or private elementary or secondary school buildings and educational
352 facilities or the property on which those facilities are located;
- 353 (l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or
354 religious organization when used solely by the organization members or their guests or
355 families;
- 356 (m) any facility rented or leased for private functions from which the general public is
357 excluded and arrangements for the function are under the control of the function sponsor;
- 358 (n) any workplace that is not a place of public access or a publicly owned building or
359 office but has one or more employees who are not owner-operators of the business;
- 360 (o) any area where the proprietor or manager of the area has posted a conspicuous sign
361 stating "no smoking", "thank you for not smoking", or similar statement; and
- 362 (p) a holder of a bar establishment license, as defined in Section 32B-1-102.
- 363 ~~(4)~~ (4) "Publicly owned building or office" means any enclosed indoor place or
364 portion of a place owned, leased, or rented by any state, county, or municipal government, or
365 by any agency supported by appropriation of, or by contracts or grants from, funds derived
366 from the collection of federal, state, county, or municipal taxes.
- 367 (5) "Shisha" means any product that:
- 368 (a) contains tobacco or nicotine; and

- 369 (b) is smoked or intended to be smoked in a hookah or water pipe.
 370 [~~(4)~~] (6) "Smoking" means:
 371 (a) the possession of any lighted or heated tobacco product in any form;
 372 (b) inhaling, exhaling, burning, or [~~heating a substance containing tobacco or nicotine~~
 373 ~~intended for inhalation through a~~] carrying any lighted or heated cigar, cigarette, pipe, or
 374 hookah[;] that contains:
 375 (i) tobacco or any plant product intended for inhalation;
 376 (ii) shisha or non-tobacco shisha;
 377 (iii) nicotine;
 378 (iv) a natural or synthetic tobacco substitute; or
 379 (v) a natural or synthetic flavored tobacco product;
 380 (c) [~~except as provided in Section 26-38-2.6;~~] using an e-cigarette; or
 381 (d) using an oral smoking device intended to circumvent the prohibition of smoking in
 382 this chapter.

383 Section 4. Section **26-42-102** is amended to read:

384 **26-42-102. Definitions.**

385 As used in this chapter:

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

387 [~~(2)~~] (1) "Employee" means an employee of a [licensee] permittee.

388 [~~(3)~~] (2) "Enforcing agency" means the [state Department of Health,] department or
 389 any local health department enforcing the provisions of this chapter.

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

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

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

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

394 [~~(5) "License to sell tobacco" or "license" means a license issued:~~]

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

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

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

398 (3) "Local health department" means the same as that term is defined in Section
 399 26A-1-102.

400 (4) "Permittee" means a tobacco retailer to whom a local health department issues a
 401 permit under Chapter 62, Tobacco Retail Permit.

402 ~~[(6)]~~ (5) "Tobacco" means:

403 (a) a cigarette or a tobacco product, as those terms are defined in Section 59-14-102; or

404 (b) an electronic cigarette product, as that term is defined in Section 59-14-802.

405 (6) "Tobacco retail permit" means a permit issued under Chapter 62, Tobacco Retail
 406 Permit.

407 Section 5. Section 26-42-103 is amended to read:

408 **26-42-103. Violations and penalties.**

409 (1) If, following an investigation or issuance of a citation or information under Section
 410 77-39-101, an enforcing agency determines under Section 26-42-104 that a [licensee] permittee
 411 or any employee of a permittee has sold tobacco to [~~a person~~] an individual younger than 19
 412 years of age, as prohibited by Section 76-10-104, the enforcing agency may impose upon the
 413 [licensee] permittee the following administrative penalties:

414 (a) upon the first violation, a penalty of [~~not more than \$300~~] \$500;

415 (b) upon a second violation at the same retail location, and within 12 months [~~of~~] after
 416 the first violation, a penalty of [~~not more than \$750~~] \$1,000; and

417 (c) upon a third or subsequent violation at the same retail location and within 12
 418 months [~~of~~] after the first violation, a penalty of [~~not more than \$1,000~~] \$2,000.

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

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

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

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

428 ~~[(4) When the commission revokes a license under Subsection (3)(b), the commission~~
 429 ~~may not issue to the licensee, or to the business entity using the license that is revoked, a~~
 430 ~~license under Section 59-14-202, 59-14-301, or 59-14-803 to sell tobacco at the location for~~

431 which the license was issued for one year after:]

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

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

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

439 (2) The department or a local health department may suspend or revoke a permit issued
440 under Chapter 62, Tobacco Retail Permit, if a fourth violation occurs at the same retail location
441 within 24 months after the day on which the first violation occurred.

442 Section 6. Section **26-42-104** is amended to read:

443 **26-42-104. Enforcement by state and local health departments.**

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

- 447 (1) notifying [~~licensees~~] a permittee of alleged violations of Section **26-42-103**;
- 448 (2) conducting hearings;
- 449 (3) determining violations of this chapter; and
- 450 (4) imposing civil [~~monetary~~] administrative penalties.

451 Section 7. Section **26-42-105** is amended to read:

452 **26-42-105. Hearing -- Evidence of criminal conviction.**

453 (1) At a civil hearing conducted under Section **26-42-104**, evidence of the final
454 criminal conviction of a [~~licensee~~] permittee or employee for violation of Section **76-10-104** at
455 the same location and within the same time period as the location and time period alleged in
456 the civil hearing for violation of Section **26-42-103** is prima facie evidence of a violation of
457 Section **26-42-103**.

458 (2) If the [~~licensee~~] permittee has been convicted of violating Section **76-10-104** prior
459 to a finding of a violation of Section **26-42-103**, the [~~licensee~~] permittee may not be assessed a
460 monetary penalty under this chapter for the same offense for which the conviction was
461 obtained.

462 Section 8. Section **26-42-106** is amended to read:

463 **26-42-106. Recognition of permittee's training program.**

464 (1) In determining the amount of the monetary penalty to be imposed for an employee's
465 violation of Section **26-42-103**, the hearing officer shall reduce the penalty by at least 50% if
466 ~~he~~ the hearing officer determines:

467 (a) the ~~licensee~~ permittee has implemented a documented employee training program;
468 and

469 (b) the employee has completed that training program within 30 days ~~of commencing~~
470 after the employee commences duties of selling tobacco products.

471 (2) (a) If the hearing officer determines under Subsection (1), regarding a first offense
472 at a location, that the ~~licensee~~ permittee has not implemented a documented training program
473 with a written curriculum for employees at that location regarding compliance with this
474 chapter, the hearing officer may suspend all or a portion of the monetary penalty, contingent
475 upon the ~~licensee's~~ permittee's initiating a training program for employees at that location
476 within 30 days after the hearing date.

477 (b) If the hearing officer determines at a subsequent hearing that the ~~licensee~~
478 permittee has not implemented the training program within the time period required under
479 Subsection (2)(a), the suspended monetary penalty shall be promptly imposed, unless the
480 ~~licensee~~ permittee demonstrates good cause for granting an extension of time for
481 implementation of the training program.

482 Section 9. Section **26-42-107** is amended to read:

483 **26-42-107. Allocation of civil penalties.**

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

485 (1) if a local health department conducts an adjudicative proceeding under Section
486 **26-42-104**, the penalty shall be paid to the treasurer of the county in which the violation was
487 committed, and transferred to:

488 (a) the local health department if it conducts a civil hearing under Section **26-42-104**
489 alone; or

490 (b) in equal portions to the local health department and the other agencies that
491 participated in the hearing process; and

492 (2) if the ~~state Department of Health~~ department conducts a civil hearing under

493 Section [26-42-104](#), the penalty shall be deposited in the state's General Fund, and may be
 494 appropriated by the Legislature to the [~~state Department of Health~~] department for use in
 495 enforcement of this chapter[~~; and~~].

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

499 Section 10. Section **26-62-101** is enacted to read:

500 CHAPTER 62. TOBACCO RETAIL PERMIT

501 Part 1. General Provisions

502 **26-62-101. Title.**

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

504 Section 11. Section **26-62-102** is enacted to read:

505 **26-62-102. Definitions.**

506 As used in this chapter:

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

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

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

510 (2) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco
 511 specialty business.

512 (3) "Local health department" means the same as that term is defined in Section
 513 [26A-1-102](#).

514 (4) "Permit" means a tobacco retail permit issued under this chapter.

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

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

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

518 (6) "Tax commission license" means a license issued by the State Tax Commission
 519 under:

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

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

522 (c) Section [59-14-803](#) to sell an electronic cigarette product at retail.

523 (7) "Tobacco product" means:

524 (a) any cigar, cigarette, or electronic cigarette as those terms are defined in Section
525 76-10-101;

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

527 (i) chewing tobacco; or

528 (ii) any substitute for a tobacco product, including flavoring or additives to tobacco; or

529 (c) tobacco paraphernalia as that term is defined in Section 76-10-104.1.

530 (8) "Tobacco retailer" means a person that is required to obtain a tax commission
531 license to sell a tobacco product.

532 Section 12. Section **26-62-103** is enacted to read:

533 **26-62-103. Regulation of tobacco retailers.**

534 The regulation of a tobacco retailer is an exercise of the police powers of the state, and
535 through delegation, to other governmental entities.

536 Section 13. Section **26-62-201** is enacted to read:

537 **Part 2. Permit Requirements**

538 **26-62-201. Permitting requirement.**

539 (1) (a) Beginning July 1, 2018, a tobacco retailer shall hold a valid tobacco retail
540 permit issued in accordance with this chapter by the local health department with jurisdiction
541 over the physical location where the tobacco retailer operates.

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

543 (i) place tobacco products in public view;

544 (ii) display any advertisement related to tobacco products that promotes the sale,
545 distribution, or use of those products; or

546 (iii) sell, offer for sale, or offer to exchange for any form of consideration, tobacco or
547 tobacco products.

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

550 (a) a general tobacco retailer; or

551 (b) a retail tobacco specialty business.

552 (3) A permit under this chapter is:

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

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

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

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

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

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

562 Section 14. Section **26-62-202** is enacted to read:

563 **26-62-202. Permit application.**

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

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

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

569 (2) An applicant for a permit shall:

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

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

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

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

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

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

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

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

584 (i) a provision of this chapter;

585 (ii) Chapter 38, Utah Indoor Clean Air Act;

586 (iii) Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic Chemical
587 Solvents;
588 (iv) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
589 (v) regulations restricting the sale and distribution of cigarettes and smokeless tobacco
590 issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140; or
591 (vi) any other provision of state law or local ordinance regarding the sale, marketing, or
592 distribution of tobacco products; and
593 (f) the dates of all violations disclosed under this Subsection (3).
594 (4) (a) In addition to the information described in Subsection (3), an applicant for a
595 retail tobacco specialty business permit shall include evidence showing whether the business is
596 located within:
597 (i) 1,000 feet of a community location;
598 (ii) 600 feet of another retail tobacco specialty business; or
599 (iii) 600 feet of property used or zoned for agricultural or residential use.
600 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in
601 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
602 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard
603 to intervening structures or zoning districts.
604 (5) (a) The department shall establish by rule made in accordance with Title 63G,
605 Chapter 3, Utah Administrative Rulemaking Act, a permit process for local health departments
606 in accordance with this chapter.
607 (b) The permit process established by the department under Subsection (5)(a) may not
608 require any information in an application that is not required by this section.
609 Section 15. Section **26-62-203** is enacted to read:
610 **26-62-203. Permit term and fees.**
611 (1) (a) The term of a permit issued under this chapter to a retail tobacco specialty
612 business is one year.
613 (b) The term of a permit issued under this chapter to a general tobacco retailer is two
614 years.
615 (2) (a) A local health department may not issue a permit under this chapter until the
616 applicant has paid a permit fee to the local health department of:

617 (i) \$30 for a new permit;
 618 (ii) \$20 for a permit renewal; or
 619 (iii) \$30 for reinstatement of a permit that has been revoked, suspended, or allowed to
 620 expire.

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

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

625 (4) A tobacco retailer that fails to renew a permit before the permit expires shall
 626 submit:

627 (a) the information required in Subsection [26-62-202\(3\)](#) and, if applicable, Subsection
 628 [26-62-202\(4\)](#);

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

630 (c) a signed affidavit affirming that the tobacco retailer has not violated the
 631 prohibitions in Subsection [26-62-201\(1\)\(b\)](#) after the permit expired.

632 Section 16. Section **26-62-204** is enacted to read:

633 **26-62-204. Permit nontransferable.**

634 (1) A permit is nontransferable.

635 (2) If the information described in Subsection [26-62-202\(3\)](#) changes, a tobacco retailer:

636 (a) may not renew the permit; and

637 (b) shall apply for a new permit no later than 15 days after the information in

638 Subsection [26-62-202\(3\)](#) changes.

639 Section 17. Section **26-62-205** is enacted to read:

640 **26-62-205. Permit requirements for a retail tobacco specialty business.**

641 A retail tobacco specialty business shall:

642 (1) except as provided in Subsection [76-10-105.1\(4\)](#), prohibit any individual under 19
 643 years of age from entering the business; and

644 (2) prominently display at the retail tobacco specialty business a sign on the public
 645 entrance of the business that communicates the prohibition in Subsection [76-10-105.1\(4\)](#).

646 Section 18. Section **26-62-301** is enacted to read:

647 **Part 3. Enforcement**

648 **26-62-301. Permit violation.**

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

650 (1) a provision of this chapter;

651 (2) a provision of licensing laws under Section [10-8-41.6](#) or Section [17-50-333](#);

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

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

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

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

659 Section 19. Section **26-62-302** is enacted to read:

660 **26-62-302. Enforcement by state and local health departments.**

661 The department and local health departments shall enforce this chapter under the
662 procedures of Title 63G, Chapter 4, Administrative Procedures Act, as an informal adjudicative
663 proceeding, including:

664 (1) notifying a tobacco retailer of alleged violations of this chapter;

665 (2) conducting hearings;

666 (3) determining violations of this chapter; and

667 (4) imposing civil administrative penalties.

668 Section 20. Section **26-62-303** is enacted to read:

669 **26-62-303. Inspection of retail tobacco businesses.**

670 The department or a local health department may inspect a tobacco retailer to determine
671 whether the tobacco retailer:

672 (1) continues to meet the qualifications for the permit issued under this chapter;

673 (2) if applicable, continues to meet the requirements for a retail tobacco specialty
674 business license issued under Section [10-8-41.6](#) or Section [17-50-333](#);

675 (3) engaged in a pattern of unlawful activity under Title 76, Chapter 10, Part 16,
676 Pattern of Unlawful Activity Act;

677 (4) violated any of the regulations restricting the sale and distribution of cigarettes and
678 smokeless tobacco issued by the United States Food and Drug Administration under 21 C.F.R.

679 Part 1140; or

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

681 Section 21. Section **26-62-304** is enacted to read:

682 **26-62-304. Hearing -- Evidence of criminal conviction.**

683 (1) At a civil hearing conducted under Section [26-62-302](#), evidence of the final
684 criminal conviction of a tobacco retailer or employee of a tobacco retailer for violation of
685 Section [76-10-104](#) at the same location and within the same time period as the location and
686 time period alleged in the civil hearing for violation of this chapter for the sale of tobacco
687 products to a person under the age of 19 is prima facie evidence of a violation of this chapter.

688 (2) If the tobacco retailer is convicted of violating Section [76-10-104](#), the enforcing
689 agency:

690 (a) may not assess an additional monetary penalty under this chapter for the same
691 offense for which the conviction was obtained; and

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

693 Section 22. Section **26-62-305** is enacted to read:

694 **26-62-305. Penalties.**

695 (1) If, following an investigation or the issuance of a citation or information, the
696 department or a local health department determines that a person violated the terms of a permit
697 issued under this chapter, the department or a local health department may impose the penalties
698 described in this section.

699 (2) (a) The administrative penalty for a first violation is a penalty of \$500.

700 (b) The administrative penalty for a second violation that occurs within 24 months after
701 the day on which the first violation occurs is a penalty of \$1,000.

702 (c) The administrative penalty for a third or subsequent violation that occurs within 24
703 months after the day on which the first violation occurs is:

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

706 (ii) a penalty of \$2,000.

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

708 (a) revoke a permit if, within 24 months after the day on which a first violation of the
709 permit occurred, a fourth violation occurs;

710 (b) suspend a permit and impose a monetary penalty under Subsection (2), if the
711 violation is due to a tobacco sale to a person under 19 years of age; and

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

714 (4) (a) Except as provided in Subsection (5)(b), a local health department may not issue
715 a permit to:

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

718 (ii) a tobacco retailer that has the same proprietor as another tobacco retailer for whom
719 a permit is suspended or revoked under Subsection (3).

720 (b) A person described in Subsection (3) whose permit:

721 (i) is suspended, may not apply for a new permit for any other tobacco retailer for a
722 period of 12 months after the day on which the department or a local health department
723 suspends the permit; and

724 (ii) is revoked, may not apply for a new permit for any tobacco retailer for a period of
725 24 months after the day on which the permit is revoked.

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

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

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

732 Section 23. Section **26-62-306** is enacted to read:

733 **26-62-306. Recognition of tobacco retailer training program.**

734 (1) In determining the amount of the monetary penalty to be imposed for an employee's
735 violation of this chapter, a hearing officer shall reduce the civil penalty by 50% if the hearing
736 officer determines that:

737 (a) the tobacco retailer has implemented a documented employee training program; and

738 (b) the employees have completed that training program within 30 days after the day on
739 which each employee commences the duties of selling tobacco products.

740 (2) (a) For the first offense at a location, if the hearing officer determines under

741 Subsection (1) that the tobacco retailer has not implemented a documented training program
742 with a written curriculum for employees at that location regarding compliance with this
743 chapter, the hearing officer may suspend all or a portion of the penalty if:

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

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

748 (b) If the hearing officer determines at a subsequent hearing that the tobacco retailer
749 has not implemented the training program within the time period required under Subsection
750 (2)(a)(ii), the hearing officer shall promptly impose the suspended penalty, unless the tobacco
751 retailer demonstrates good cause for an extension of time for implementation of the training
752 program.

753 Section 24. Section **26-62-307** is enacted to read:

754 **26-62-307. Allocation of civil penalties.**

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

756 (1) if a local health department conducts an adjudicative proceeding under Section
757 26-62-302, the penalty shall be paid to the treasurer of the county in which the violation was
758 committed, and transferred to the local health department; and

759 (2) if the department conducts a civil hearing under Section 26-62-302, the penalty
760 shall be deposited in the state's General Fund, and may be appropriated by the Legislature to
761 the Department of Health for use in enforcement of this chapter.

762 Section 25. Section **26A-1-128** is enacted to read:

763 **26A-1-128. Tobacco permits -- Enforcement.**

764 A local health department:

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

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

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

771 Section 26. Section **59-14-201** is amended to read:

772 **59-14-201. License -- Application of part -- Fee -- Bond -- Exceptions.**

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

776 (2) Except for the tax rates described in Subsection [59-14-204\(2\)](#), this part does not
777 apply to a cigarette produced from a cigarette rolling machine.

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

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

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

784 (4) (a) A license may not be issued until the applicant files a bond with the
785 commission. The commission shall determine the form and the amount of the bond, the
786 minimum amount of which shall be \$500. The bond shall be executed by the applicant as
787 principal, with a corporate surety, payable to the state and conditioned upon the faithful
788 performance of all the requirements of this chapter, including the payment of all taxes,
789 penalties, and other obligations.

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

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

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

794 Section 27. Section **59-14-803** is amended to read:

795 **59-14-803. License to sell electronic cigarette products.**

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

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

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

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

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

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

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

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

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

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

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

816 (b) valid for three years;

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

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

819 ~~[(5) The commission shall, after notifying a licensee, revoke a license described in~~
820 ~~Subsection (3) if an enforcing agency determines the licensee has violated a provision of:]~~

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

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

823 ~~[(6) If the commission revokes a person's license to sell an electronic cigarette product~~
824 ~~under Subsection (5), the commission may not issue a license to sell an electronic cigarette~~
825 ~~product, a license to sell cigarettes under Section 59-14-201, or a license to sell tobacco under~~
826 ~~Section 59-14-301 to the person until one year after:]~~

827 ~~[(a) the day on which the time for filing an appeal of the revocation ends, as~~
828 ~~determined by the enforcing agency; or]~~

829 ~~[(b) if the person appeals the enforcing agency's decision to revoke the license to sell~~
830 ~~an electronic cigarette product, the day on which the enforcing agency's decision to uphold the~~
831 ~~revocation is final.]~~

832 ~~[(7) If the commission revokes a person's license under Subsection (5), the commission~~
833 ~~shall also revoke the person's license to sell cigarettes under Section 59-14-201, if any, and the~~

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

835 ~~[(8)]~~ (5) The commission may make rules in accordance with Title 63G, Chapter 3,
836 Utah Administrative Rulemaking Act, to establish the additional information described in
837 Subsection (3)~~[(a)(iii)]~~(c) that a person must provide in the application described in Subsection
838 (3)~~[(a)]~~.

839 ~~[(9)]~~ (6) It is a class B misdemeanor for a person to violate Subsection (1).

840 (7) The commission may not charge a fee for a license under this chapter.

841 Section 28. Section **76-10-105.1** is amended to read:

842 **76-10-105.1. Requirement of direct, face-to-face sale of cigarettes, tobacco, and**
843 **electronic cigarettes -- Minors not allowed in tobacco specialty shop -- Penalties.**

844 (1) As used in this section:

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

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

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

849 (A) vending machine; or

850 (B) self-service display.

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

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

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

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

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

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

863 (i) as it relates to a municipality, in Section 10-8-41.6; and

864 (ii) as it relates to a county, in Section 17-50-333.

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

867 (3) The face-to-face sale requirement in Subsection (2) does not apply to:

868 (a) a mail-order, telephone, or Internet sale made in compliance with Section

869 [59-14-509](#);

870 (b) a sale from a vending machine or self-service display that is located in an area of a
871 retailer's facility:

872 (i) that is distinct and separate from the rest of the facility; and

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

875 (c) a sale at a tobacco specialty shop.

876 (4) An individual who is less than 19 years old may not enter or be present at a tobacco
877 specialty shop unless the individual is:

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

879 (b) present at the tobacco shop for a bona fide commercial purpose other than to
880 purchase a cigarette, tobacco, or an electronic cigarette; or

881 (c) 18 years old or older and an active duty member of the United States Armed Forces,
882 as demonstrated by a valid, government-issued military identification card.

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

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

887 (a) class C misdemeanor on the first offense;

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

889 (c) class A misdemeanor on the third and all subsequent offenses.

890 (7) An individual who violates Subsection (5) is guilty of providing tobacco to a minor
891 under Section [76-10-104](#).

892 (8) (a) Any ordinance, regulation, or rule adopted by the governing body of a political
893 subdivision of the state or by a state agency that affects the sale, placement, or display of
894 cigarettes, tobacco, or electronic cigarettes that is not essentially identical to the provisions of
895 this section and Section [76-10-102](#) is superseded.

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

898 Section 29. Section **77-39-101** is amended to read:

899 **77-39-101. Investigation of sales of alcohol, tobacco, and electronic cigarettes to**
900 **underage persons.**

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

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

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

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

908 (A) a cigar;

909 (B) a cigarette;

910 (C) tobacco in any form; or

911 (D) an electronic cigarette.

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

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

917 (i) alcohol; or

918 (ii) (A) a cigar;

919 (B) a cigarette;

920 (C) tobacco in any form; or

921 (D) an electronic cigarette.

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

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

927 (b) An individual requested by the peace officer to attempt a purchase may:
928 (i) be a trained volunteer; or
929 (ii) receive payment, but may not be paid based on the number of successful purchases
930 of alcohol, tobacco, or an electronic cigarette.

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

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

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

941 (i) on a random basis; and
942 (ii) within a 12-month period at any one retail establishment location not more often
943 than:

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

945 (I) a cigar;
946 (II) a cigarette;
947 (III) tobacco in any form; or
948 (IV) an electronic cigarette; and

949 (B) four times for the attempted purchase of alcohol.

950 (b) Nothing in this section shall prohibit an investigation or an attempt to purchase
951 tobacco under this section if:

952 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a
953 cigar, a cigarette, tobacco in any form, or an electronic cigarette to an individual under the age
954 established by Section [32B-4-403](#) or [76-10-104](#); and

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

957 (7) (a) The peace officer exercising direction, supervision, and monitoring of the

958 attempted purchase shall make a report of the attempted purchase, whether or not a purchase
959 was made.

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

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

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

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

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

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

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

969 **Section 30. Repealer.**

970 This bill repeals:

971 Section **59-14-203.5, Commission action to suspend or revoke license.**

972 Section **59-14-301.5, Commission action to suspend or revoke license.**

Legislative Review Note
Office of Legislative Research and General Counsel