

Representative Bradley G. Last proposes the following substitute bill:

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:



26 None

27 **Other Special Clauses:**

28 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 gross
91 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) the name of the business evidences the business as a retail tobacco specialty
97 business;

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

100 (iv) 20% or more of the total shelf space is allocated to the offer, display, or storage of
101 tobacco products; or

102 (v) the retail space features a self-service display for tobacco products.

103 (f) "Self-service display" means the same as that term is defined in Section
104 76-10-105.1.

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

106 (i) any cigar, cigarette, or electronic cigarette, as those terms are defined in Section
107 76-10-101;

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

109 (A) chewing tobacco; or

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

111 and

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

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

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

118 (3) (a) A person may not operate a retail tobacco specialty business in a municipality

119 unless the person obtains a license from the municipality in which the retail tobacco specialty
120 business is located.

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

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

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

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

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

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

144 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
145 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in
146 which the retail tobacco specialty business is located; and

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

148 (b) A person that was licensed to conduct business as a retail tobacco specialty
149 business in a municipality before July 1, 2018, shall obtain a permit from a local health

150 department under Title 26, Chapter 62, Tobacco Retail Permit, on or before January 1, 2019.

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

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

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

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

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

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

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

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

167 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business [~~that~~
168 ~~has a business license and is operating lawfully in a municipality on or before May 8, 2012, is~~
169 ~~exempt from Subsections (4) and (5):~~] is exempt from Subsection (4) if the person obtained the
170 license to operate the retail tobacco specialty business before July 1, 2018.

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

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

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

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

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

- 181 (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;
182 (B) zoning ordinances[;];
183 (C) building codes[;]; and [the]
184 (D) the requirements of a retail tobacco specialty business license issued [prior to]
185 before May 8, 2012.

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

187 **17-50-333. Regulation of retail tobacco specialty business.**

188 (1) As used in this section:

189 (a) "Community location" means:

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

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

192 (iii) a trade or technical school;

193 (iv) a church;

194 (v) a public library;

195 (vi) a public playground;

196 (vii) a public park;

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

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

199 (x) a public arcade[;]; or

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

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

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

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

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

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

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

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

214 (ii) the name of the business evidences the business as a retail tobacco specialty
215 business;

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

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

220 (v) the retail space features a self-service display for tobacco products.

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

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

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

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

227 (A) chewing tobacco; or

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

229 and

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

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

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

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

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

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

243 ~~that conducts a retail tobacco specialty business in a county shall be licensed by the county as a~~
244 ~~retail tobacco specialty business.]~~

245 ~~[(5)] (4) (a) [A] Except as provided in Subsection (7), a county may not issue a license~~
246 ~~[to] for a person to conduct business as a retail tobacco specialty business if [it] the retail~~
247 ~~tobacco specialty business is located within:~~

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

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

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

262 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
263 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in
264 which the retail tobacco specialty business is located; and

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

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

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

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

272 (ii) prohibits a county from adopting more restrictive requirements on a person seeking
273 a license or renewal of a license to conduct business as a retail tobacco specialty business [than

274 ~~provided for in this section].~~

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

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

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

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

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

285 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business ~~[that~~
286 ~~has a business license and is operating lawfully in a county on or before May 8, 2012, is~~
287 ~~exempt from Subsections (4) and (5)].~~ is exempt from Subsection (4) if the person obtained the
288 license to operate the retail tobacco specialty business before July 1, 2018.

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

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

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

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

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

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

300 (B) zoning ordinances[;];

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

302 (D) the requirements of a retail tobacco specialty business license issued [prior to]
303 before May 8, 2012.

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

305 **26-38-2. Definitions.**

306 As used in this chapter:

307 (1) "E-cigarette":

308 (a) means any electronic oral device:

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

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

311 (b) includes an oral device that is:

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

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

314 (A) an e-cigarette;

315 (B) e-cigar;

316 (C) e-pipe; or

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

318 definition of Subsection (1)(a).

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

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

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

322 [~~2~~] (3) "Place of public access" means any enclosed indoor place of business,

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

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

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

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

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

328 (c) restaurants, cafes, or cafeterias;

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

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

331 (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical
332 sites, auditoriums, or arenas;

333 (g) barber shops, hair salons, or laundromats;

334 (h) sports or fitness facilities;

335 (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and

336 breakfast" lodging facilities, and other similar lodging facilities, including the lobbies,
337 hallways, elevators, restaurants, cafeterias, other designated dining areas, and restrooms of any
338 of these;

339 (j) (i) any child care facility or program subject to licensure or certification under this
340 title, including those operated in private homes, when any child cared for under that license is
341 present; and

342 (ii) any child care, other than child care as defined in Section 26-39-102, that is not
343 subject to licensure or certification under this title, when any child cared for by the provider,
344 other than the child of the provider, is present;

345 (k) public or private elementary or secondary school buildings and educational
346 facilities or the property on which those facilities are located;

347 (l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or
348 religious organization when used solely by the organization members or their guests or
349 families;

350 (m) any facility rented or leased for private functions from which the general public is
351 excluded and arrangements for the function are under the control of the function sponsor;

352 (n) any workplace that is not a place of public access or a publicly owned building or
353 office but has one or more employees who are not owner-operators of the business;

354 (o) any area where the proprietor or manager of the area has posted a conspicuous sign
355 stating "no smoking", "thank you for not smoking", or similar statement; and

356 (p) a holder of a bar establishment license, as defined in Section 32B-1-102.

357 ~~[(3)]~~ (4) "Publicly owned building or office" means any enclosed indoor place or
358 portion of a place owned, leased, or rented by any state, county, or municipal government, or
359 by any agency supported by appropriation of, or by contracts or grants from, funds derived
360 from the collection of federal, state, county, or municipal taxes.

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

362 (a) contains tobacco or nicotine; and

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

364 ~~[(4)]~~ (6) "Smoking" means:

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

366 (b) inhaling, exhaling, burning, or ~~[heating a substance containing tobacco or nicotine~~

367 ~~intended for inhalation through a]~~ carrying any lighted or heated cigar, cigarette, pipe, or
368 hookah[;] that contains:

- 369 (i) tobacco or any plant product intended for inhalation;
- 370 (ii) shisha or non-tobacco shisha;
- 371 (iii) nicotine;
- 372 (iv) a natural or synthetic tobacco substitute; or
- 373 (v) a natural or synthetic flavored tobacco product;
- 374 (c) ~~[except as provided in Section 26-38-2.6;]~~ using an e-cigarette; or
- 375 (d) using an oral smoking device intended to circumvent the prohibition of smoking in
376 this chapter.

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

378 **CHAPTER 62. TOBACCO RETAIL PERMIT**

379 **Part 1. General Provisions**

380 **26-62-101. Title.**

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

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

384 ~~**26-42-102].**~~ **26-62-102. Definitions.**

385 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

397 (4) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco

398 specialty business.

399 (5) "Local health department" means the same as that term is defined in Section
400 26A-1-102.

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

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

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

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

405 ~~[(5)]~~ (8) ["License to sell tobacco" or "license"] "Tax commission license" means a
406 license issued by the State Tax Commission under:

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

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

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

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

411 ~~[(a) a cigarette or a tobacco product, as defined in Section 59-14-102; or]~~

412 ~~[(b) an electronic cigarette product, as defined in Section 59-14-802.]~~

413 (9) "Tobacco product" means:

414 (a) a cigar, cigarette, or electronic cigarette as those terms are defined in Section
415 76-10-101;

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

417 (i) chewing tobacco; or

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

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

420 (10) "Tobacco retailer" means a person that is required to obtain a tax commission
421 license.

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

423 **26-62-103. Regulation of tobacco retailers.**

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

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

427 **Part 2. Permit Requirements**

428 **26-62-201. Permitting requirement.**

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

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

433 (i) place tobacco products in public view;

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

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

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

440 (a) a general tobacco retailer; or

441 (b) a retail tobacco specialty business.

442 (3) A permit under this chapter is:

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

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

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

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

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

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

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

453 **26-62-202. Permit application.**

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

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

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

459 (2) An applicant for a permit shall:

- 460 (a) submit an application described in Subsection (3) to the local health department
461 with jurisdiction over the area where the tobacco retailer is located; and
- 462 (b) pay all applicable fees described in Section [26-62-203](#).
- 463 (3) The application for a permit shall include:
- 464 (a) the name, address, and telephone number of each proprietor;
465 (b) the name and mailing address of each proprietor authorized to receive
466 permit-related communication and notices;
- 467 (c) the business name, address, and telephone number of the single, fixed location for
468 which a permit is sought;
- 469 (d) evidence that the location for which a permit is sought has a valid tax commission
470 license;
- 471 (e) information regarding whether, in the past 24 months, any proprietor of the tobacco
472 retailer has been determined to have violated, or has been a proprietor at a location that has
473 been determined to have violated:
- 474 (i) a provision of this chapter;
475 (ii) Chapter 38, Utah Indoor Clean Air Act;
476 (iii) Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic Chemical
477 Solvents;
- 478 (iv) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
479 (v) regulations restricting the sale and distribution of cigarettes and smokeless tobacco
480 issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140; or
481 (vi) any other provision of state law or local ordinance regarding the sale, marketing, or
482 distribution of tobacco products; and
- 483 (f) the dates of all violations disclosed under this Subsection (3).
- 484 (4) (a) In addition to the information described in Subsection (3), an applicant for a
485 retail tobacco specialty business permit shall include evidence showing whether the business is
486 located within:
- 487 (i) 1,000 feet of a community location;
488 (ii) 600 feet of another retail tobacco specialty business; or
489 (iii) 600 feet of property used or zoned for agricultural or residential use.
- 490 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in

491 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
492 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard
493 to intervening structures or zoning districts.

494 (5) The department or a local health department may not deny a permit to a retail
495 tobacco specialty business under Subsection (4) if the person obtained a license to operate the
496 retail tobacco specialty business before July 1, 2018, from:

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

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

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

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

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

505 **26-62-203. Permit term and fees.**

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

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

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

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

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

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

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

518 (c) In addition to the fee described in Subsection (2)(a), a local health department may
519 establish and collect a fee to perform a plan review for a retail tobacco specialty business
520 permit.

521 (3) A permit holder may apply for a renewal of a permit no earlier than 30 days before

522 the day on which the permit expires.

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

525 (a) the information required in Subsection 26-62-202(3) and, if applicable, Subsection
526 26-62-202(4);

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

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

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

531 **26-62-204. Permit nontransferable.**

532 (1) A permit is nontransferable.

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

534 (a) may not renew the permit; and

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

536 Subsection 26-62-202(3) changes.

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

538 **26-62-205. Permit requirements for a retail tobacco specialty business.**

539 A retail tobacco specialty business shall:

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

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

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

545 **Part 3. Enforcement**

546 **26-62-301. Permit violation.**

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

548 (1) a provision of this chapter;

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

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

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

553 (5) a regulation restricting the sale and distribution of cigarettes and smokeless tobacco
 554 issued by the United States Food and Drug Administration under 21 C.F.R. Part 1140; or
 555 (6) any other provision of state law or local ordinance regarding the sale, marketing, or
 556 distribution of tobacco products.

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

559 ~~[26-42-104].~~ **26-62-302. Enforcement by state and local health**
 560 **departments.**

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

- 564 (1) notifying [~~licensees~~] a tobacco retailer of alleged violations of [~~Section 26-42-103~~]
 565 this chapter;
 566 (2) conducting hearings;
 567 (3) determining violations of this chapter; and
 568 (4) imposing civil [~~monetary~~] administrative penalties.

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

570 **26-62-303. Inspection of retail tobacco businesses.**

571 The department or a local health department may inspect a tobacco retailer to determine
 572 whether the tobacco retailer:

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

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

584 ~~[26-42-105].~~ **26-62-304. Hearing -- Evidence of criminal conviction.**

585 (1) At a civil hearing conducted under Section ~~[26-42-104]~~ 26-62-302, evidence of the
586 final criminal conviction of a [~~licensee~~] tobacco retailer or employee for violation of Section
587 76-10-104 at the same location and within the same time period as the location and time period
588 alleged in the civil hearing for violation of [~~Section 26-42-103]~~ this chapter for sale of tobacco
589 products to a person under the age of 19 is prima facie evidence of a violation of [~~Section~~
590 ~~26-42-103]~~ this chapter.

591 (2) If the [~~licensee has been~~] tobacco retailer is convicted of violating Section
592 76-10-104 [~~prior to a finding of a violation of Section 26-42-103, the licensee,~~] the enforcing
593 agency:

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

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

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

599 ~~[26-42-103].~~ **26-62-305. Penalties.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

645 (b) in addition to a monetary penalty imposed under Subsection (2), suspend the permit

646 if the violation is due to a sale of tobacco products to a person under 19 years of age; and

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

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

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

652 or

653 (ii) a tobacco retailer that has the same proprietor, director, corporate officer, partner,
654 or other holder of significant interest as another tobacco retailer for whom a permit is
655 suspended or revoked under Subsection (3).

656 (b) A person whose permit:

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

660 (ii) is revoked may not apply for a new permit for any tobacco retailer for a period of
661 24 months after the day on which an enforcing agency revokes the permit.

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

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

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

668 Section 17. Section ~~26-62-306~~, which is renumbered from Section 26-42-106 is
669 renumbered and amended to read:

670 ~~[26-42-106].~~ **26-62-306. Recognition of tobacco retailer training program.**

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

674 (a) the [licensee] tobacco retailer has implemented a documented employee training
675 program; and

676 (b) the [employee has] employees have completed that training program within 30 days

677 ~~[of commencing]~~ after the day on which each employee commences the duties of selling
 678 tobacco products.

679 (2) (a) ~~[If]~~ For the first offense at a location, if the hearing officer determines under
 680 Subsection (1)~~[, regarding a first offense at a location, that the]~~ that the tobacco retailer licensee
 681 has not implemented a documented training program with a written curriculum for employees
 682 at that location regarding compliance with this chapter, the hearing officer may suspend all or a
 683 portion of the ~~[monetary penalty, contingent upon the licensee's initiating a training program~~
 684 ~~for employees at that location within 30 days after the hearing date.]~~ penalty if:

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

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

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

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

696 ~~[26-42-107].~~ **26-62-307. Allocation of civil penalties.**

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

698 (1) if a local health department conducts an adjudicative proceeding under Section
 699 ~~[26-42-104]~~ 26-62-302, the penalty shall be paid to the treasurer of the county in which the
 700 violation was committed, and transferred to~~:(a)]~~ the local health department ~~[if it conducts a~~
 701 ~~civil hearing under Section 26-42-104 alone; or]; and~~

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

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

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

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

712 **26A-1-128. Tobacco permits -- Enforcement.**

713 A local health department:

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

715 (2) may enforce licensing requirements for entities that hold a business license to sell

716 tobacco products under Section 10-8-41.6 or Section 17-50-333; and

717 (3) may recommend to a municipality or county that the business license of a retail

718 tobacco specialty business be suspended or revoked for a violation of Section 10-8-41.6,

719 Section 17-50-333, or Title 26, Chapter 62, Tobacco Retail Permit.

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

721 **59-14-201. License -- Application of part -- Fee -- Bond -- Exceptions.**

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

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

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

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

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

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

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

740 (i) purchases during the license year only products that have the proper state stamp

741 affixed as required by this chapter; and

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

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

744 **59-14-803. License to sell electronic cigarette products.**

745 (1) Except as provided in Subsection (2), a person may not sell, offer to sell, or

746 distribute an electronic cigarette product in Utah without first obtaining a license to sell an

747 electronic cigarette product from the commission under this section.

748 (2) A person that holds a valid license to sell cigarettes under Section [59-14-201](#), or a

749 person that holds a valid license to sell tobacco products under Section [59-14-301](#), may,

750 without obtaining a separate license to sell an electronic cigarette product under this part, sell,

751 offer to sell, or distribute an electronic cigarette product in Utah in accordance with this part.

752 (3) ~~[Except as provided in Subsection (6), the]~~ The commission shall issue a license to

753 sell an electronic cigarette product to a person that ~~[-(a)]~~ submits an application, on a form

754 created by the commission, that includes:

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

756 ~~[(ii)]~~ (b) the address of the facility where the person will sell an electronic cigarette

757 product; and

758 ~~[(iii)]~~ (c) any other information the commission requires to implement this chapter~~;~~

759 ~~and].~~

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

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

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

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

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

765 (b) valid for three years;

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

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

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

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

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

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

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

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

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

781 ~~[(7) If the commission revokes a person's license under Subsection (5), the commission~~
782 ~~shall also revoke the person's license to sell cigarettes under Section 59-14-201, if any, and the~~
783 ~~person's license to sell tobacco under Section 59-14-301, if any.]~~

784 ~~[(8)] (5)~~ The commission may make rules in accordance with Title 63G, Chapter 3,
785 Utah Administrative Rulemaking Act, to establish the additional information described in
786 Subsection (3)~~[(a)(iii)](c)~~ that a person must provide in the application described in Subsection
787 (3)~~[(a)]~~.

788 ~~[(9)] (6)~~ It is a class B misdemeanor for a person to violate Subsection (1).

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

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

791 **76-10-105.1. Requirement of direct, face-to-face sale of cigarettes, tobacco, and**
792 **electronic cigarettes -- Minors not allowed in tobacco specialty shop -- Penalties.**

793 (1) As used in this section:

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

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

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

798 (A) vending machine; or

799 (B) self-service display.

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

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

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

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

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

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

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

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

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

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

817 (a) a mail-order, telephone, or Internet sale made in compliance with Section
818 59-14-509;

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

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

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

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

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

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

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

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

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

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

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

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

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

839 (7) An individual who violates Subsection (5) is guilty of providing tobacco to a minor
840 under Section 76-10-104.

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

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

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

848 **77-39-101. Investigation of sales of alcohol, tobacco, and electronic cigarettes to**
849 **underage persons.**

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

851 (2) (a) A peace officer, as defined by Title 53, Chapter 13, Peace Officer

852 Classifications, may investigate the possible violation of:

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

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

857 (A) a cigar;

858 (B) a cigarette;

859 (C) tobacco in any form; or

860 (D) an electronic cigarette.

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

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

- 866 (i) alcohol; or
- 867 (ii) (A) a cigar;
- 868 (B) a cigarette;
- 869 (C) tobacco in any form; or
- 870 (D) an electronic cigarette.

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

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

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

- 877 (i) be a trained volunteer; or
- 878 (ii) receive payment, but may not be paid based on the number of successful purchases
879 of alcohol, tobacco, or an electronic cigarette.

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

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

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

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

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

894 (I) a cigar;
895 (II) a cigarette;
896 (III) tobacco in any form; or
897 (IV) an electronic cigarette; and
898 (B) four times for the attempted purchase of alcohol.
899 (b) Nothing in this section shall prohibit an investigation or an attempt to purchase
900 tobacco under this section if:
901 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a
902 cigar, a cigarette, tobacco in any form, or an electronic cigarette to an individual under the age
903 established by Section 32B-4-403 or 76-10-104; and
904 (ii) the supervising peace officer makes a written record of the grounds for the
905 reasonable suspicion.
906 (7) (a) The peace officer exercising direction, supervision, and monitoring of the
907 attempted purchase shall make a report of the attempted purchase, whether or not a purchase
908 was made.
909 (b) The report required by this Subsection (7) shall include:
910 (i) the name of the supervising peace officer;
911 (ii) the name of the individual attempting the purchase;
912 (iii) a photograph of the individual attempting the purchase showing how that
913 individual appeared at the time of the attempted purchase;
914 (iv) the name and description of the cashier or proprietor from whom the individual
915 attempted the purchase;
916 (v) the name and address of the retail establishment; and
917 (vi) the date and time of the attempted purchase.
918 Section 24. **Repealer.**
919 This bill repeals:
920 Section 26-42-101, Title.
921 Section 59-14-203.5, Commission action to suspend or revoke license.
922 Section 59-14-301.5, Commission action to suspend or revoke license.
923 Section 25. **Effective date.**
924 This bill takes effect on July 1, 2018.