

Representative Jennifer Dailey-Provost proposes the following substitute bill:

RETAIL TOBACCO BUSINESS AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer Dailey-Provost

Senate Sponsor: Evan J. Vickers

6	Cosponsors:	Karen Kwan	Paul Ray
7	Melissa G. Ballard	Derrin R. Owens	Andrew Stoddard
8	Suzanne Harrison	Lee B. Perry	Norman K. Thurston
9	Sandra Hollins	Stephanie Pitcher	Raymond P. Ward
10	Eric K. Hutchings	Val K. Potter	Mark A. Wheatley
11	Marsha Judkins	Marie H. Poulson	

LONG TITLE

General Description:

This bill amends provisions relating to the sale of certain tobacco products.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates requirements regarding the verification of age when selling an electronic cigarette product or seeking entry into certain restricted areas;
- ▶ prohibits an individual from using proof of age fraudulently or permitting the individual's proof of age to be used by another individual fraudulently to obtain an electronic cigarette product or gain entry into certain restricted areas;
- ▶ prohibits a manufacturer, wholesaler, or retailer from providing certain discounts or



25 giveaways for tobacco products; and
26 ▶ makes technical changes.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 This bill provides a special effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **26-62-102**, as renumbered and amended by Laws of Utah 2018, Chapter 231

34 **76-10-111**, as last amended by Laws of Utah 2010, Chapter 114

35 **76-10-112**, as enacted by Laws of Utah 1989, Chapter 193

36 **77-39-101**, as last amended by Laws of Utah 2018, Chapter 231

37 ENACTS:

38 **26-62-206**, Utah Code Annotated 1953

39 **26-62-401**, Utah Code Annotated 1953

40 **26-62-402**, Utah Code Annotated 1953

41 **26-62-403**, Utah Code Annotated 1953

42 **26-62-404**, Utah Code Annotated 1953



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

45 Section 1. Section **26-62-102** is amended to read:

46 **26-62-102. Definitions.**

47 As used in this chapter:

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

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

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

51 (2) "Employee" means an employee of a tobacco retailer.

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

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

- 56 (5) "Local health department" means the same as that term is defined in Section
57 [26A-1-102](#).
- 58 (6) "Permit" means a tobacco retail permit issued under this chapter.
- 59 (7) (a) "Proof of age" means:
- 60 (i) an identification card issued under Title 53, Chapter 3, Part 8, Identification Card
61 Act;
- 62 (ii) an identification that:
- 63 (A) is substantially similar to an identification card issued under Title 53, Chapter 3,
64 Part 8, Identification Card Act;
- 65 (B) is issued in accordance with the laws of a state other than Utah in which the
66 identification is issued;
- 67 (C) includes date of birth; and
- 68 (D) has a picture affixed;
- 69 (iii) a valid driver license certificate that:
- 70 (A) includes date of birth;
- 71 (B) has a picture affixed; and
- 72 (C) is issued under Title 53, Chapter 3, Uniform Driver License Act, or in accordance
73 with the laws of the state in which it is issued;
- 74 (iv) a military identification card that:
- 75 (A) includes date of birth; and
- 76 (B) has a picture affixed; or
- 77 (v) a valid passport.
- 78 (b) "Proof of age" does not include a driving privilege card issued in accordance with
79 Section [53-3-207](#).
- 80 (8) "Restricted area" means:
- 81 (a) any part of the premises of a retail tobacco specialty business; or
- 82 (b) any part of the floor space of a general tobacco retailer that is:
- 83 (i) physically separated from unrestricted parts of the general tobacco retailer; and
- 84 (ii) restricted to an individual who provides proof of age before entering.
- 85 [~~7~~] (9) "Retail tobacco specialty business" means the same as that term is defined:
86 (a) as it relates to a municipality, in Section [10-8-41.6](#); and

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

88 [~~8~~] (10) "Tax commission license" means a license issued by the State Tax

89 Commission under:

90 (a) Section 59-14-201 to sell cigarettes at retail;

91 (b) Section 59-14-301 to sell tobacco products at retail; or

92 (c) Section 59-14-803 to sell an electronic cigarette product.

93 [~~9~~] (11) "Tobacco product" means:

94 (a) a cigar, cigarette, or electronic cigarette as those terms are defined in Section

95 76-10-101;

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

97 (i) chewing tobacco; or

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

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

100 [~~10~~] (12) "Tobacco retailer" means a person that is required to obtain a tax

101 commission license.

102 Section 2. Section 26-62-206 is enacted to read:

103 **26-62-206. Permit requirements for the sale of an electronic cigarette product.**

104 (1) If a tobacco retailer sells an electronic cigarette product, the tobacco retailer shall
105 maintain a video recording system that:

106 (a) tracks the inventory and sale of any electronic cigarette product offered for sale by
107 the tobacco retailer;

108 (b) stores a video record for at least 30 days; and

109 (c) is made available to an enforcing agency or peace officer at the request of the
110 enforcing agency or peace officer.

111 (2) A general tobacco retailer that sells an electronic cigarette product shall display and
112 store an electronic cigarette product in a manner that is not accessible to an individual
113 described in Subsection 26-62-401(2)(b), including:

114 (a) behind a retail counter that is not accessible to customers of the general tobacco
115 retailer;

116 (b) in a locked case that cannot be accessed without assistance from an employee; or

117 (c) in a part of the store that:

- 118 (i) is physically separated from unrestricted parts of the general tobacco retailer; and
- 119 (ii) is only made accessible to an individual who provides proof of age prior to
- 120 entering.

121 Section 3. Section **26-62-401** is enacted to read:

122 **Part 4. Proof of age requirements**

123 **26-62-401. Verification of proof of age.**

124 (1) A tobacco retailer shall require that an employee verify proof of age as provided in

125 this section.

126 (2) (a) If an employee does not verify proof of age under this section, the employee

127 may not permit an individual to:

- 128 (i) except as provided in Subsection (2)(b), enter a restricted area; or
- 129 (ii) obtain an electronic cigarette product.

130 (b) In accordance with Subsection [76-10-105.1\(4\)](#), an individual who is younger than

131 19 years of age may be permitted to enter a restricted area if the individual is:

- 132 (i) accompanied by a parent or legal guardian who provides proof of age;
- 133 (ii) present at the tobacco shop for a bona fide commercial purpose other than to
- 134 purchase a cigarette, tobacco, or an electronic cigarette; or
- 135 (iii) 18 years of age or older and an active duty member of the United States Armed

136 Forces, as demonstrated by a valid, government-issued military identification card.

137 (3) To comply with Subsections (1) and (2), an employee shall:

- 138 (a) request the individual present proof of age; and
- 139 (b) verify the validity of the proof of age electronically under the verification program
- 140 created in Subsection (4).

141 (4) The department shall implement an electronic verification program that adopts the

142 specifications and security measures established under Subsection [32B-1-407\(5\)](#) by the

143 Alcoholic Beverage Control Commission created in Section [32B-2-201](#).

144 (5) (a) A tobacco retailer may not disclose information obtained under this section

145 except as provided under this chapter.

146 (b) Information obtained under this section shall be:

- 147 (i) kept for at least 30 days; and
- 148 (ii) is subject to inspection upon request by a peace officer or the representative of an

149 enforcement agency.

150 Section 4. Section **26-62-402** is enacted to read:

151 **26-62-402. Presentation of proof of age upon request.**

152 (1) If an individual does not present proof of age at the request of a person listed in
153 Subsection (3), a tobacco retailer may not permit the individual to:

154 (a) obtain an electronic cigarette product; or

155 (b) except as provided in Subsection (2), enter a restricted area.

156 (2) An individual may enter a restricted area without presenting proof of age if the
157 individual is:

158 (a) accompanied by a parent or legal guardian who presents proof of age; or

159 (b) present at the tobacco shop for a bona fide commercial purpose other than to
160 purchase a cigarette, tobacco, or an electronic cigarette.

161 (3) To determine whether the individual described in Subsection (1) is 19 years of age,
162 the following may request an individual described in Subsection (1) to present proof of age:

163 (a) an employee;

164 (b) a peace officer; or

165 (c) the representative of an enforcement agency.

166 Section 5. Section **26-62-403** is enacted to read:

167 **26-62-403. Unlawful transfer or use of proof of age -- False information.**

168 (1) (a) It is unlawful for an individual to transfer that individual's proof of age to
169 another individual to aid that individual:

170 (i) in procuring a tobacco product; or

171 (ii) in gaining admittance to a restricted area.

172 (b) An individual who violates Subsection (1)(a) is guilty of a class B misdemeanor.

173 (2) (a) It is unlawful for an individual to use a proof of age containing false information
174 with the intent to:

175 (i) procure a tobacco product; or

176 (ii) gain admittance to a restricted area.

177 (b) An individual who violates this Subsection (2) is guilty of a class A misdemeanor.

178 Section 6. Section **26-62-404** is enacted to read:

179 **26-62-404. Penalty.**

180 (1) Unless otherwise provided in this chapter, a person who violates this part is guilty
181 of a class B misdemeanor.

182 (2) A person is not subject to a penalty for a violation of this part if it is proved to the
183 enforcing agency or the court hearing the matter that the person charged with the violation
184 acted in good faith.

185 Section 7. Section **76-10-111** is amended to read:

186 **76-10-111. Restrictions on sale of smokeless tobacco or electronic cigarettes --**
187 **Exceptions.**

188 (1) The Legislature finds that:

189 (a) smokeless tobacco, or chewing tobacco, is harmful to the health of individuals who
190 use those products because research indicates that they may cause mouth or oral cancers;

191 (b) the use of smokeless tobacco among juveniles in this state is increasing rapidly;

192 (c) the use of electronic cigarettes may lead to unhealthy behavior such as the use of
193 tobacco products; and

194 (d) it is necessary to restrict the gift of the products described in this Subsection (1) in
195 the interest of the health of the citizens of this state.

196 (2) (a) Except as provided in Subsection (3), it is unlawful for a manufacturer,
197 wholesaler, and retailer to:

198 (i) give or distribute without charge any smokeless tobacco, chewing tobacco, or
199 electronic cigarette in this state[-];

200 (ii) sell, offer for sale, or furnish any smokeless tobacco, chewing tobacco, or
201 electronic cigarette at less than 90% of the cost of the product to the manufacturer, wholesaler,
202 or retailer; or

203 (iii) give, distribute, sell, offer for sale, or furnish any smokeless tobacco, chewing
204 tobacco, or electronic cigarette for free or at a lower price because the purchaser makes another
205 purchase.

206 (b) Any person who violates this section is guilty of a class C misdemeanor for the first
207 offense, and is guilty of a class B misdemeanor for any subsequent offense.

208 (3) [~~a~~] Smokeless tobacco, chewing tobacco, or an electronic cigarette may be
209 distributed to adults without charge at professional conventions where the general public is
210 excluded.

211 ~~[(b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who gives~~
212 ~~smokeless tobacco, chewing tobacco, or an electronic cigarette to a person of legal age upon~~
213 ~~the person's purchase of another tobacco product or electronic cigarette.]~~

214 Section 8. Section 76-10-112 is amended to read:

215 **76-10-112. Prohibition of distribution of cigarettes or other tobacco products --**
216 **Exceptions.**

217 (1) As used in this section, "tobacco product" means the same as that term is defined in
218 Section 26-62-102.

219 ~~[(+)]~~ (2) (a) Except as provided in Subsection (2), it is unlawful for a manufacturer,
220 wholesaler, or retailer to:

221 (i) give or distribute cigarettes or other tobacco products in this state without charge[-];

222 (ii) sell, offer for sale, or furnish cigarettes or other tobacco products at less than 90%
223 of the cost of the product to the manufacturer, wholesaler, or retailer; or

224 (iii) give, distribute, sell, offer for sale, or furnish cigarettes or other tobacco products
225 for free or at a lower price because the purchaser makes another purchase.

226 (b) Any person who violates this subsection is guilty of a class C misdemeanor for the
227 first offense and a class B misdemeanor for any subsequent offense.

228 ~~[(2)]~~ (3) Cigarettes and other tobacco products may be distributed to adults without
229 charge at professional conventions where the general public is excluded.

230 ~~[(3) The prohibition described in Subsection (1) does not apply to retailers,~~
231 ~~manufacturers, or distributors who give cigarettes or other tobacco products to persons of legal~~
232 ~~age upon their purchase of cigarettes or other tobacco products.]~~

233 Section 9. Section 77-39-101 is amended to read:

234 **77-39-101. Investigation of sales of alcohol, tobacco, and electronic cigarettes to**
235 **underage persons.**

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

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

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

241 (ii) Section 76-10-104 by requesting an individual under the age of 19 years to enter

242 into and attempt to purchase or make a purchase from a retail establishment of:

243 (A) a cigar;

244 (B) a cigarette;

245 (C) tobacco in any form; or

246 (D) an electronic cigarette.

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

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

252 (i) alcohol; or

253 (ii) (A) a cigar;

254 (B) a cigarette;

255 (C) tobacco in any form; or

256 (D) an electronic cigarette.

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

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

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

263 (i) be a trained volunteer; or

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

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

270 (5) An individual requested to attempt to purchase or make a purchase pursuant to this
271 section is immune from prosecution, suit, or civil liability for the purchase of, attempted
272 purchase of, or possession of alcohol, a cigar, a cigarette, tobacco in any form, or an electronic

273 cigarette if a peace officer directs, supervises, and monitors the individual.

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

276 (i) on a random basis; and

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

279 (A) [~~two~~] ten times for the attempted purchase of:

280 (I) a cigar;

281 (II) a cigarette;

282 (III) tobacco in any form; or

283 (IV) an electronic cigarette; and

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

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

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

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

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

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

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

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

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

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

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

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

304 Section 10. **Effective date.**
305 This bill takes effect on July 1, 2020.