

Representative Jennifer Dailey-Provost proposes the following substitute bill:

1 **RETAIL TOBACCO AMENDMENTS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Jennifer Dailey-Provost**

5 Senate Sponsor: Evan J. Vickers

6	Cosponsors:	Brian S. King	Lawanna Shurtliff
7	Patrice M. Arent	Karen Kwan	Andrew Stoddard
8	Melissa G. Ballard	Carol Spackman Moss	Norman K. Thurston
9	Joel K. Briscoe	Derrin R. Owens	Steve Waldrip
10	Susan Duckworth	Lee B. Perry	Elizabeth Weight
11	Steve Eliason	Stephanie Pitcher	Mark A. Wheatley
12	Suzanne Harrison	Marie H. Poulson	Logan Wilde
13	Sandra Hollins	Paul Ray	Mike Winder
14	Eric K. Hutchings	Angela Romero	
	Marsha Judkins		

15

16 **LONG TITLE**

17 **General Description:**

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

19 **Highlighted Provisions:**

20 This bill:

- 21 ▶ defines terms;
- 22 ▶ amends the definition of a retail tobacco specialty business to include any retailer
- 23 that sells a flavored electronic cigarette product;



- 24 ▶ authorizes regulation and testing of manufacturer sealed electronic cigarette
- 25 substances;
- 26 ▶ requires a tobacco retailer to maintain certain records;
- 27 ▶ prohibits a manufacturer, wholesaler, or retailer from providing certain discounts or
- 28 giveaways for tobacco products; and
- 29 ▶ makes technical changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill provides a coordination clause.

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **10-8-41.6**, as last amended by Laws of Utah 2018, Chapter 231

37 **17-50-333**, as last amended by Laws of Utah 2018, Chapter 231

38 **26-57-103**, as enacted by Laws of Utah 2015, Chapter 132

39 **76-10-111**, as last amended by Laws of Utah 2010, Chapter 114

40 **76-10-112**, as enacted by Laws of Utah 1989, Chapter 193

41 ENACTS:

42 **26-62-206**, Utah Code Annotated 1953

43 **Utah Code Sections Affected by Coordination Clause:**

44 **10-8-41.6**, as last amended by Laws of Utah 2018, Chapter 231

45 **17-50-333**, as last amended by Laws of Utah 2018, Chapter 231



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

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

49 **10-8-41.6. Regulation of retail tobacco specialty business.**

50 (1) As used in this section:

51 (a) "Community location" means:

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

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

54 (iii) a trade or technical school;

- 55 (iv) a church;
- 56 (v) a public library;
- 57 (vi) a public playground;
- 58 (vii) a public park;
- 59 (viii) a youth center or other space used primarily for youth oriented activities;
- 60 (ix) a public recreational facility;
- 61 (x) a public arcade; or
- 62 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
- 63 (b) "Department" means the Department of Health, created in Section [26-1-4](#).
- 64 (c) "Electronic cigarette product" means the same as that term is defined in Section
- 65 [59-14-802](#).
- 66 (d) (i) "Flavored electronic cigarette product" means an electronic cigarette product
- 67 that has a taste or smell that is distinguishable by an ordinary consumer either before or during
- 68 use or consumption of the electronic cigarette product.
- 69 (ii) "Flavored electronic cigarette product" includes an electronic cigarette product that
- 70 has a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic
- 71 beverage, herb, mint, menthol, or spice.
- 72 (iii) "Flavored electronic cigarette product" does not include an electronic cigarette
- 73 product that has a taste or smell of only tobacco.
- 74 [~~e~~] (e) "Local health department" means the same as that term is defined in Section
- 75 [26A-1-102](#).
- 76 [~~f~~] (f) "Permittee" means a person licensed under this section to conduct business as
- 77 a retail tobacco specialty business.
- 78 [~~e~~] (g) "Retail tobacco specialty business" means a commercial establishment in
- 79 which:
- 80 (i) the sale of tobacco products accounts for more than 35% of the total quarterly gross
- 81 receipts for the establishment;
- 82 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
- 83 storage of tobacco products;
- 84 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
- 85 tobacco products; [~~or~~]

86 (iv) the retail space features a self-service display for tobacco products~~[-];~~ or
87 (v) any flavored electronic cigarette product is sold.

88 [~~(f)~~] (h) "Self-service display" means the same as that term is defined in Section
89 76-10-105.1.

90 [~~(g)~~] (i) "Tobacco product" means:

91 (i) any cigar, cigarette, or electronic cigarette, as those terms are defined in Section
92 76-10-101;

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

94 (A) chewing tobacco; or

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

96 and

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

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

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

103 (b) A municipality may only issue a retail tobacco specialty business license to a
104 person if the person complies with the provisions of Subsections (4) and (5).

105 (4) (a) Except as provided in Subsection (7), a municipality may not issue a license for
106 a person to conduct business as a retail tobacco specialty business if the retail tobacco specialty
107 business is located within:

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

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

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

111 (A) agriculture use; or

112 (B) residential use.

113 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in
114 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
115 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard
116 to intervening structures or zoning districts.

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

121 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
122 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in
123 which the retail tobacco specialty business is located; and

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

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

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

129 (i) requires a municipality to issue a retail tobacco specialty business license; or

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

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

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

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

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

142 (iv) under any other provision of state law or local ordinance.

143 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has
144 a business license and is operating in a municipality in accordance with all applicable laws
145 except for the requirement in Subsection (4), on or before December 31, 2015, is exempt from
146 Subsection (4).

147 (b) A retail tobacco specialty business may maintain an exemption under Subsection

148 (7)(a) if:

149 (i) the retail tobacco specialty business license is renewed continuously without lapse
150 or permanent revocation;

151 (ii) the retail tobacco specialty business does not close for business or otherwise
152 suspend the sale of tobacco products for more than 60 consecutive days;

153 (iii) the retail tobacco specialty business does not substantially change the business
154 premises or business operation; and

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

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

158 (B) zoning ordinances;

159 (C) building codes; and

160 (D) the requirements of a retail tobacco specialty business license issued before
161 December 31, 2015.

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

163 **17-50-333. Regulation of retail tobacco specialty business.**

164 (1) As used in this section:

165 (a) "Community location" means:

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

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

168 (iii) a trade or technical school;

169 (iv) a church;

170 (v) a public library;

171 (vi) a public playground;

172 (vii) a public park;

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

174 (ix) a public recreational facility;

175 (x) a public arcade; or

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

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

178 (c) "Electronic cigarette product" means the same as that term is defined in Section

179 [59-14-802.](#)

180 (d) (i) "Flavored electronic cigarette product" means an electronic cigarette product
181 that has a taste or smell that is distinguishable by an ordinary consumer either before or during
182 use or consumption of the electronic cigarette product.

183 (ii) "Flavored electronic cigarette product" includes an electronic cigarette product that
184 has a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic
185 beverage, herb, mint, menthol, or spice.

186 (iii) "Flavored electronic cigarette product" does not include an electronic cigarette
187 product that has a taste or smell of only tobacco.

188 ~~(e)~~ (e) "Licensee" means a person licensed under this section to conduct business as a
189 retail tobacco specialty business.

190 ~~(f)~~ (f) "Local health department" means the same as that term is defined in Section
191 26A-1-102.

192 ~~(g)~~ (g) "Retail tobacco specialty business" means a commercial establishment in
193 which:

194 (i) the sale of tobacco products accounts for more than 35% of the total quarterly gross
195 receipts for the establishment;

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

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

200 (iv) the retail space features a self-service display for tobacco products~~[-];~~ or

201 (v) any flavored electronic cigarette product is sold.

202 ~~(h)~~ (h) "Self-service display" means the same as that term is defined in Section
203 76-10-105.1.

204 ~~(i)~~ (i) "Tobacco product" means:

205 (i) any cigar, cigarette, or electronic cigarette as those terms are defined in Section
206 76-10-101;

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

208 (A) chewing tobacco; or

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

210 and

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

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

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

217 (b) A county may only issue a retail tobacco specialty business license to a person if
218 the person complies with the provisions of Subsections (4) and (5).

219 (4) (a) Except as provided in Subsection (7), a county may not issue a license for a
220 person to conduct business as a retail tobacco specialty business if the retail tobacco specialty
221 business is located within:

- 222 (i) 1,000 feet of a community location;
- 223 (ii) 600 feet of another retail tobacco specialty business; or
- 224 (iii) 600 feet from property used or zoned for:
 - 225 (A) agriculture use; or
 - 226 (B) residential use.

227 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in
228 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
229 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard
230 to intervening structures or zoning districts.

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

235 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
236 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in
237 which the retail tobacco specialty business is located; and

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

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

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

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

243 (i) requires a county to issue a retail tobacco specialty business license; or

244 (ii) prohibits a county from adopting more restrictive requirements on a person seeking
245 a license or renewal of a license to conduct business as a retail tobacco specialty business.

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

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

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

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

255 (iv) under any other provision of state law or local ordinance.

256 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has
257 a business license and is operating in a county in accordance with all applicable laws except for
258 the requirement in Subsection (4), on or before December 31, 2015, is exempt from Subsection
259 (4).

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

262 (i) the retail tobacco specialty business license is renewed continuously without lapse
263 or permanent revocation;

264 (ii) the retail tobacco specialty business does not close for business or otherwise
265 suspend the sale of tobacco products for more than 60 consecutive days;

266 (iii) the retail tobacco specialty business does not substantially change the business
267 premises or business operation; and

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

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

271 (B) zoning ordinances;

272 (C) building codes; and
273 (D) the requirements of a retail tobacco specialty business license issued before
274 December 31, 2015.

275 Section 3. Section **26-57-103** is amended to read:

276 **26-57-103. Electronic cigarette products -- Labeling -- Manufacturing and**
277 **quality control standards -- Advertising.**

278 (1) The department shall, in consultation with a local health department, as defined in
279 Section [26A-1-102](#), and with input from members of the public, establish, no later than January
280 1, 2016, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
281 Rulemaking Act, standards for electronic cigarette substance:

- 282 (a) labeling;
- 283 (b) nicotine content;
- 284 (c) packaging; and
- 285 (d) product quality.

286 ~~[(2) The standards established by the department under Subsection (1) do not apply to a~~
287 ~~manufacturer sealed electronic cigarette substance.]~~

288 (2) On or before January 1, 2021, the department shall, in consultation with a local
289 health department, as defined in Section [26A-1-102](#), and with input from members of the
290 public, establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
291 Rulemaking Act, standards for manufacturer sealed electronic cigarette substance:

- 292 (a) labeling;
- 293 (b) nicotine content;
- 294 (c) packaging; and
- 295 (d) product quality.

296 (3) (a) Beginning on July 1, 2016, a person may not sell an electronic cigarette
297 substance unless the electronic cigarette substance complies with the standards established by
298 the department under Subsection (1).

299 (b) Beginning July 1, 2021, a person may not sell a manufacturer sealed electronic
300 cigarette substance unless the manufacturer sealed electronic cigarette substance complies with
301 the standards established by the department under Subsection (2).

302 (4) (a) Beginning on July 1, 2016, a local health department may not enact a rule or

303 regulation regarding electronic cigarette substance labeling, nicotine content, packaging, or
304 product quality that is not identical to the standards established by the department under
305 ~~[Subsection (1)]~~ Subsections (1) and (2).

306 (b) ~~[Except as provided in Subsection (4)(c), a]~~ A local health department may enact a
307 rule or regulation regarding electronic cigarette substance manufacturing.

308 ~~[(c) A local health department may not enact a rule or regulation regarding a
309 manufacturer sealed electronic cigarette substance.]~~

310 (5) Beginning on July 1, 2016, a person may not advertise an electronic cigarette
311 product:

312 (a) as a tobacco cessation device;

313 (b) if the person is not licensed to sell an electronic cigarette product under Section
314 [59-14-803](#); or

315 (c) during a period of time when the person's license to sell an electronic cigarette
316 product under Section [59-14-803](#) has been suspended or revoked.

317 Section 4. Section ~~26-62-206~~ is enacted to read:

318 **26-62-206. Permit requirements for the sale of tobacco products.**

319 (1) A tobacco retailer shall:

320 (a) for each sale of a tobacco product, provide the customer with an itemized receipt
321 for each sale of a tobacco product that separately identifies:

322 (i) the name of the tobacco product;

323 (ii) the amount charged for each tobacco product; and

324 (iii) the time and date of the sale; and

325 (b) maintain an itemized transaction log for each sale of a tobacco product that
326 separately identifies:

327 (i) the name of the tobacco product;

328 (ii) the amount charged for each tobacco product; and

329 (iii) the date and time of the sale.

330 (2) The itemized transaction log described in Subsection (1)(b) shall be:

331 (a) maintained for at least one year from the date of each transaction in the itemized
332 transaction log; and

333 (b) made available to an enforcing agency or peace officer at the request of the

334 enforcing agency or peace officer that is no less restrictive than the provisions in this part.

335 Section 5. Section 76-10-111 is amended to read:

336 **76-10-111. Prohibition of gift or free distribution of smokeless tobacco or**
337 **electronic cigarettes -- Exceptions.**

338 (1) The Legislature finds that:

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

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

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

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

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

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

350 (ii) except as provided in Subsection (2)(b), sell, offer for sale, or furnish any
351 smokeless tobacco, chewing tobacco, or electronic cigarette at less than 90% of the cost of the
352 product to the manufacturer, wholesaler, or retailer; or

353 (iii) give, distribute, sell, offer for sale, or furnish any smokeless tobacco, chewing
354 tobacco, or electronic cigarette for free or at a lower price because the recipient of the
355 electronic cigarette product makes another purchase.

356 (b) The price that a manufacturer, wholesaler, or retailer may charge under Subsection
357 (2)(a)(ii) does not include a discount for:

358 (i) a physical manufacturer coupon:

359 (A) that is surrendered to the wholesaler or retailer at the time of sale; and

360 (B) for which the manufacturer will reimburse the wholesaler or the retailer for the full
361 amount of the discount described in the manufacturer coupon and provided to the purchaser;

362 (ii) a rebate that will be paid to the manufacturer, the wholesaler, or the retailer for the
363 full amount of the rebate provided to the purchaser; or

364 (iii) a promotional fund that will be paid to the manufacturer, the wholesaler, or the

365 retailer for the full amount of the promotional fund provided to the purchaser.

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

368 (3) ~~(a)~~ Smokeless tobacco, chewing tobacco, or an electronic cigarette may be
369 distributed to adults without charge at professional conventions where the general public is
370 excluded.

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

374 Section 6. Section 76-10-112 is amended to read:

375 **76-10-112. Prohibition of distribution of cigarettes or other tobacco products --**
376 **Exceptions.**

377 (1) (a) Except as provided in Subsection ~~[(2)]~~ (3), it is unlawful for a manufacturer,
378 wholesaler, or retailer to:

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

380 (ii) except as provided in Subsection (2)(b), sell, offer for sale, or furnish any cigarettes
381 or other tobacco products at less than the cost of the product to the manufacturer, wholesaler,
382 or retailer; or

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

385 (b) The price that a manufacturer, wholesaler, or retailer may charge under Subsection
386 (2)(a)(ii) does not include a discount for:

387 (i) a manufacturer coupon:

388 (A) that is surrendered to the tobacco retailer at the time of sale; and

389 (B) for which the manufacturer will reimburse the wholesaler or retailer for the full
390 amount of the discount described in the manufacturer coupon and provided to the purchaser;

391 (ii) a rebate that will be paid to the manufacturer, wholesaler, or retailer for the full
392 amount of the rebate provided to the purchaser; or

393 (iii) a promotional fund that will be paid to the manufacturer, wholesaler, or retailer for
394 the full amount of the promotional fund provided to the purchaser.

395 (2) Any person who violates this ~~[subsection]~~ section is guilty of a class C

396 misdemeanor for the first offense and a class B misdemeanor for any subsequent offense.

397 ~~[(2)]~~ (3) Cigarettes and other tobacco products may be distributed to adults without
398 charge at professional conventions where the general public is excluded.

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

402 Section 7. **Coordinating H.B. 118 with S.B. 37 -- Technical amendments.**

403 If this H.B. 118 and S.B. 37, Electronic Cigarette and Other Nicotine Product
404 Amendments, both pass and become law, it is the intent of the Legislature that the Office of
405 Legislative Research and General Counsel shall prepare the Utah Code database for publication
406 by amending:

407 (1) Subsection 10-8-41.6(1)(c) to read:

408 "(c) "Electronic cigarette product" means the same as that term is defined in Section
409 76-10-101."; and

410 (2) Subsection 17-50-333(1)(c) to read:

411 "(c) "Electronic cigarette product" means the same as that term is defined in Section
412 76-10-101."