

1 **TOBACCO RETAILER AMENDMENTS**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Evan J. Vickers**

5 House Sponsor: Paul Ray

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions relating to tobacco retailers.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ amends provisions relating to a retail tobacco specialty business that is within a
13 certain distance from a school;

14 ▶ modifies the requirements for a tobacco retail permit;

15 ▶ clarifies provisions relating to who may be in a retail tobacco specialty business;

16 and

17 ▶ modifies penalties for selling a tobacco product, electronic cigarette product, or a
18 nicotine product to an individual who is younger than 21 years old.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **10-8-41.6**, as last amended by Laws of Utah 2020, Sixth Special Session, Chapter 18

26 **17-50-333**, as last amended by Laws of Utah 2020, Sixth Special Session, Chapter 18

27 **26-62-205**, as last amended by Laws of Utah 2020, Chapters 302, 347

28 **26-62-304**, as last amended by Laws of Utah 2020, Chapters 302, 347

29 **26-62-305**, as last amended by Laws of Utah 2020, Chapters 302, 347 and last amended

30 by Coordination Clause, Laws of Utah 2020, Chapter 302

31 **26-62-306**, as last amended by Laws of Utah 2020, Chapter 347

32 **26-62-401**, as enacted by Laws of Utah 2020, Chapter 302

33 **76-10-105.1**, as last amended by Laws of Utah 2020, Chapters 302 and 347

34 REPEALS:

35 **26-62-402**, as enacted by Laws of Utah 2020, Chapter 302



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

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

39 **10-8-41.6. Regulation of retail tobacco specialty business.**

40 (1) As used in this section:

41 (a) "Community location" means:

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

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

44 (iii) a trade or technical school;

45 (iv) a church;

46 (v) a public library;

47 (vi) a public playground;

48 (vii) a public park;

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

50 (ix) a public recreational facility;

51 (x) a public arcade; or

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

53 (b) "Department" means the Department of Health, created in Section **26-1-4**.

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

55 **76-10-101**.

56 (d) "Flavored electronic cigarette product" means the same as that term is defined in

57 Section **76-10-101**.

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

60 (f) "Local health department" means the same as that term is defined in Section
61 26A-1-102.

62 (g) "Nicotine product" means the same as that term is defined in Section 76-10-101.

63 (h) "Retail tobacco specialty business" means a commercial establishment in which:

64 (i) sales of tobacco products, electronic cigarette products, and nicotine products
65 account for more than 35% of the total quarterly gross receipts for the establishment;

66 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
67 storage of tobacco products, electronic cigarette products, or nicotine products;

68 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
69 tobacco products, electronic cigarette products, or nicotine products;

70 (iv) the commercial establishment:

71 (A) holds itself out as a retail tobacco specialty business; and

72 (B) causes a reasonable person to believe the commercial establishment is a retail
73 tobacco specialty business;

74 (v) any flavored electronic cigarette product is sold; or

75 (vi) the retail space features a self-service display for tobacco products, electronic
76 cigarette products, or nicotine products.

77 (i) "Self-service display" means the same as that term is defined in Section
78 76-10-105.1.

79 (j) "Tobacco product" means:

80 (i) a tobacco product as defined in Section 76-10-101; or

81 (ii) tobacco paraphernalia as defined in Section 76-10-101.

82 (2) The regulation of a retail tobacco specialty business is an exercise of the police
83 powers of the state by the state or by delegation of the state's police powers to other
84 governmental entities.

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

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

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

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

- 93 (i) 1,000 feet of a community location;
- 94 (ii) 600 feet of another retail tobacco specialty business; or
- 95 (iii) 600 feet from property used or zoned for:
 - 96 (A) agriculture use; or
 - 97 (B) residential use.

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

102 (5) A municipality may not issue or renew a license for a person to conduct business as
103 a retail tobacco specialty business until the person provides the municipality with proof that the
104 retail tobacco specialty business has:

105 (a) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
106 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local health
107 department having jurisdiction over the area in which the retail tobacco specialty business is
108 located; and

109 (b) (i) for a retailer that sells a tobacco product, a valid license issued by the State Tax
110 Commission in accordance with Section 59-14-201 or 59-14-301 to sell a tobacco product; and

111 (ii) for a retailer that sells an electronic cigarette product or a nicotine product, a valid
112 license issued by the State Tax Commission in accordance with Section 59-14-803 to sell an
113 electronic cigarette product or a nicotine product.

- 114 (6) (a) Nothing in this section:
- 115 (i) requires a municipality to issue a retail tobacco specialty business license; or
- 116 (ii) prohibits a municipality from adopting more restrictive requirements on a person
- 117 seeking a license or renewal of a license to conduct business as a retail tobacco specialty
- 118 business.
- 119 (b) A municipality may suspend or revoke a retail tobacco specialty business license
- 120 issued under this section:
- 121 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,
- 122 Part 16, Pattern of Unlawful Activity Act;
- 123 (ii) if a licensee violates federal law or federal regulations restricting the sale and
- 124 distribution of tobacco products or electronic cigarette products to protect children and
- 125 adolescents;
- 126 (iii) upon the recommendation of the department or a local health department under
- 127 Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit; or
- 128 (iv) under any other provision of state law or local ordinance.
- 129 (7) (a) A retail tobacco specialty business is exempt from Subsection (4) if:
- 130 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
- 131 license to conduct business as a retail tobacco specialty business;
- 132 (ii) the retail tobacco specialty business is operating in a municipality in accordance
- 133 with all applicable laws except for the requirement in Subsection (4); and
- 134 (iii) beginning July 1, [~~2021~~] 2022, the retail tobacco specialty business is not located
- 135 within 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high
- 136 school.
- 137 (b) A retail tobacco specialty business may maintain an exemption under Subsection
- 138 (7)(a) if:
- 139 (i) the license described in Subsection (7)(a)(i) is renewed continuously without lapse
- 140 or permanent revocation;
- 141 (ii) the retail tobacco specialty business does not close for business or otherwise

142 suspend the sale of tobacco products, electronic cigarette products, or nicotine products for
143 more than 60 consecutive days;

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

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

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

149 (B) zoning ordinances;

150 (C) building codes; and

151 (D) the requirements of the license described in Subsection (7)(a)(i).

152 (c) A retail tobacco specialty business that does not qualify for an exemption under
153 Subsection (7)(a) is exempt from Subsection (4) if:

154 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
155 general tobacco retailer permit or a retail tobacco specialty business permit under Title 26,
156 Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local
157 health department having jurisdiction over the area in which the retail tobacco specialty
158 business is located;

159 (ii) the retail tobacco specialty business is operating in the municipality in accordance
160 with all applicable laws except for the requirement in Subsection (4); and

161 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
162 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

163 (d) ~~[A]~~ Except as provided in Subsection (7)(e), a retail tobacco specialty business may
164 maintain an exemption under Subsection (7)(c) if:

165 (i) on or before December 31, 2020, the retail tobacco specialty business receives a
166 retail tobacco specialty business permit from the local health department having jurisdiction
167 over the area in which the retail tobacco specialty business is located;

168 (ii) the permit described in Subsection (7)(d)(i) is renewed continuously without lapse
169 or permanent revocation;

170 (iii) the retail tobacco specialty business does not close for business or otherwise
171 suspend the sale of tobacco products, electronic cigarette products, or nicotine products for
172 more than 60 consecutive days; ~~and~~

173 (iv) the retail tobacco specialty business does not substantially change the business
174 premises or business operation as the business existed when the retail tobacco specialty
175 business received a permit under Subsection (7)(d)(i); and

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

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

179 (B) zoning ordinances;

180 (C) building codes; and

181 (D) the requirements of the retail tobacco permit described in Subsection (7)(d)(i).

182 (e) A retail tobacco specialty business described in Subsection (7)(a) or (b) that is
183 located within 1,000 feet of a public or private kindergarten, elementary, middle, junior high,
184 or high school before July 1, 2022, is exempt from Subsection (4)(a)(iii)(B) if the retail tobacco
185 specialty business:

186 (i) relocates, before July 1, 2022, to a property that is used or zoned for commercial use
187 and located within a group of architecturally unified commercial establishments built on a site
188 that is planned, developed, owned, and managed as an operating unit; and

189 (ii) continues to meet the requirements described in Subsection (7)(b) that are not
190 directly related to the relocation described in this Subsection (7)(e).

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

192 **17-50-333. Regulation of retail tobacco specialty business.**

193 (1) As used in this section:

194 (a) "Community location" means:

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

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

197 (iii) a trade or technical school;

- 198 (iv) a church;
- 199 (v) a public library;
- 200 (vi) a public playground;
- 201 (vii) a public park;
- 202 (viii) a youth center or other space used primarily for youth oriented activities;
- 203 (ix) a public recreational facility;
- 204 (x) a public arcade; or
- 205 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
- 206 (b) "Department" means the Department of Health, created in Section 26-1-4.
- 207 (c) "Electronic cigarette product" means the same as that term is defined in Section
- 208 76-10-101.
- 209 (d) "Flavored electronic cigarette product" means the same as that term is defined in
- 210 Section 76-10-101.
- 211 (e) "Licensee" means a person licensed under this section to conduct business as a
- 212 retail tobacco specialty business.
- 213 (f) "Local health department" means the same as that term is defined in Section
- 214 26A-1-102.
- 215 (g) "Nicotine product" means the same as that term is defined in Section 76-10-101.
- 216 (h) "Retail tobacco specialty business" means a commercial establishment in which:
- 217 (i) sales of tobacco products, electronic cigarette products, and nicotine products
- 218 account for more than 35% of the total quarterly gross receipts for the establishment;
- 219 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
- 220 storage of tobacco products, electronic cigarette products, or nicotine products;
- 221 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
- 222 tobacco products, electronic cigarette products, or nicotine products;
- 223 (iv) the commercial establishment:
- 224 (A) holds itself out as a retail tobacco specialty business; and
- 225 (B) causes a reasonable person to believe the commercial establishment is a retail

226 tobacco specialty business;

227 (v) any flavored electronic cigarette product is sold; or

228 (vi) the retail space features a self-service display for tobacco products, electronic
229 cigarette products, or nicotine products.

230 (i) "Self-service display" means the same as that term is defined in Section
231 76-10-105.1.

232 (j) "Tobacco product" means:

233 (i) the same as that term is defined in Section 76-10-101; or

234 (ii) tobacco paraphernalia as defined in Section 76-10-101.

235 (2) The regulation of a retail tobacco specialty business is an exercise of the police
236 powers of the state by the state or by the delegation of the state's police power to other
237 governmental entities.

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

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

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

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

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

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

249 (A) agriculture use; or

250 (B) residential use.

251 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in
252 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
253 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard

254 to intervening structures or zoning districts.

255 (5) A county may not issue or renew a license for a person to conduct business as a
256 retail tobacco specialty business until the person provides the county with proof that the retail
257 tobacco specialty business has:

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

262 (b) (i) for a retailer that sells a tobacco product, a valid license issued by the State Tax
263 Commission in accordance with Section 59-14-201 or 59-14-301 to sell a tobacco product; or

264 (ii) for a retailer that sells an electronic cigarette product or a nicotine product, a valid
265 license issued by the State Tax Commission in accordance with Section 59-14-803 to sell an
266 electronic cigarette product or a nicotine product.

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

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

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

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

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

275 (ii) if a licensee violates federal law or federal regulations restricting the sale and
276 distribution of tobacco products or electronic cigarette products to protect children and
277 adolescents;

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

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

281 (7) (a) ~~[A]~~ Except as provided in Subsection (7)(e), a retail tobacco specialty business

282 is exempt from Subsection (4) if:

283 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
284 license to conduct business as a retail tobacco specialty business;

285 (ii) the retail tobacco specialty business is operating in a county in accordance with all
286 applicable laws except for the requirement in Subsection (4); and

287 (iii) beginning July 1, [~~2021~~] 2022, the retail tobacco specialty business is not located
288 within 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high
289 school.

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

292 (i) the license described in Subsection (7)(a)(i) is renewed continuously without lapse
293 or permanent revocation;

294 (ii) the retail tobacco specialty business does not close for business or otherwise
295 suspend the sale of tobacco products, electronic cigarette products, or nicotine products for
296 more than 60 consecutive days;

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

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

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

302 (B) zoning ordinances;

303 (C) building codes; and

304 (D) the requirements of the license described in Subsection (7)(a)(i).

305 (c) A retail tobacco specialty business that does not qualify for an exemption under
306 Subsection (7)(a) is exempt from Subsection (4) if:

307 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
308 general tobacco retailer permit or a retail tobacco specialty business permit under Title 26,
309 Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local

310 health department having jurisdiction over the area in which the retail tobacco specialty
311 business is located;

312 (ii) the retail tobacco specialty business is operating in the county in accordance with
313 all applicable laws except for the requirement in Subsection (4); and

314 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
315 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

316 (d) A retail tobacco specialty business may maintain an exemption under Subsection
317 (7)(c) if:

318 (i) on or before December 31, 2020, the retail tobacco specialty business receives a
319 retail tobacco specialty business permit from the local health department having jurisdiction
320 over the area in which the retail tobacco specialty business is located;

321 (ii) the permit described in Subsection (7)(d)(i) is renewed continuously without lapse
322 or permanent revocation;

323 (iii) the retail tobacco specialty business does not close for business or otherwise
324 suspend the sale of tobacco products, electronic cigarette products, or nicotine products for
325 more than 60 consecutive days; ~~and~~

326 (iv) the retail tobacco specialty business does not substantially change the business
327 premises or business operation as the business existed when the retail tobacco specialty
328 business received a permit under Subsection (7)(d)(i); and

329 ~~(iv)~~ (v) the retail tobacco specialty business maintains the right to operate under the
330 terms of other applicable laws, including:

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

332 (B) zoning ordinances;

333 (C) building codes; and

334 (D) the requirements of the retail tobacco permit described in Subsection (7)(d)(i).

335 (e) A retail tobacco specialty business described in Subsection (7)(a) or (b) that is
336 located within 1,000 feet of a public or private kindergarten, elementary, middle, junior high,
337 or high school before July 1, 2022, is exempt from Subsection (4)(a)(iii)(B) if the retail tobacco

338 specialty business:

339 (i) relocates, before July 1, 2022, to a property that is used or zoned for commercial use
340 and located within a group of architecturally unified commercial establishments built on a site
341 that is planned, developed, owned, and managed as an operating unit; and

342 (ii) continues to meet the requirements described in Subsection (7)(b) that are not
343 directly related to the relocation described in this Subsection (7)(e).

344 Section 3. Section **26-62-205** is amended to read:

345 **26-62-205. Permit requirements for a retail tobacco specialty business.**

346 (1) A retail tobacco specialty business shall:

347 ~~[(1)]~~ (a) electronically verify proof of age for any individual that enters the premises of
348 the business in accordance with Part 4, Proof of Age Requirements;

349 ~~[(2)]~~ (b) except as provided in Subsection 76-10-105.1(4), prohibit any individual from
350 entering the business if the individual is under 21 years old; and

351 ~~[(3)]~~ (c) prominently display at the retail tobacco specialty business a sign on the
352 public entrance of the business that communicates:

353 ~~[(a)]~~ (i) the prohibition on the presence of an individual under 21 years old in a retail
354 tobacco specialty business in Subsection 76-10-105.1(4); and

355 ~~[(b)]~~ (ii) the prohibition on the sale of tobacco products and electronic cigarette
356 products to an individual under 21 years old as described in Sections 76-10-104, 76-10-104.1,
357 76-10-105.1, and 76-10-114.

358 (2) A retail tobacco specialty business may not:

359 (a) employ an individual under 21 years old to sell a tobacco product, an electronic
360 cigarette product, or a nicotine product; or

361 (b) permit an employee under 21 years old to sell a tobacco product, an electronic
362 cigarette product, or a nicotine product.

363 Section 4. Section **26-62-304** is amended to read:

364 **26-62-304. Hearing -- Evidence of criminal conviction.**

365 (1) At a civil hearing conducted under Section 26-62-302, evidence of the final

366 criminal conviction of a tobacco retailer [~~or employee~~] for violation of Section 76-10-114 at
367 the same location and within the same time period as the location and time period alleged in
368 the civil hearing for violation of this chapter for sale of a tobacco product, an electronic
369 cigarette product, or a nicotine product to an individual under 21 years old is prima facie
370 evidence of a violation of this chapter.

371 (2) If the tobacco retailer is convicted of violating Section 76-10-114, the enforcing
372 agency:

373 (a) [~~may not~~] shall assess an additional monetary penalty under this chapter for the
374 same offense for which the conviction was obtained; and

375 (b) [~~may~~] shall revoke or suspend a permit in accordance with Section 26-62-305 or
376 26-62-402.

377 Section 5. Section 26-62-305 is amended to read:

378 **26-62-305. Penalties.**

379 (1) (a) If an enforcing agency determines that a person has violated the terms of a
380 permit issued under this chapter, the enforcing agency may impose the penalties described in
381 this section.

382 (b) If multiple violations are found in a single inspection by an enforcing agency or a
383 single investigation by a law enforcement agency under Section 77-39-101, the enforcing
384 agency shall treat the multiple violations as one single violation under Subsections (2), (3), and
385 (4).

386 (2) Except as provided in [~~Subsection~~] Subsections (3) [~~and Section 26-62-402~~] and
387 (4), if a violation is found in [~~an inspection by an enforcing agency or~~] an investigation by a
388 law enforcement agency under Section 77-39-101 or an inspection by an enforcing agency, the
389 enforcing agency shall:

390 (a) on a first violation at a retail location, impose a penalty of [~~no more than \$500~~]
391 \$1,000;

392 (b) on a second violation at the same retail location that occurs within one year of a
393 previous violation, impose a penalty of [~~no more than \$750~~] \$1,500;

394 (c) on a third violation at the same retail location that occurs within two years after two
 395 previous violations, impose:

396 (i) a suspension of the permit for 30 consecutive business days within 60 days after the
 397 day on which the third violation occurs; or

398 (ii) a penalty of [~~no more than \$1,000~~] \$2,000; and

399 (d) on a fourth or subsequent violation within two years of three previous violations:

400 (i) impose a penalty of [~~no more than \$1,000~~] \$2,000;

401 (ii) revoke a permit of the retailer; and

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

404 (3) If a violation is found in an investigation of a general tobacco retailer by a law
 405 enforcement agency under Section 77-39-101 for the sale of a tobacco product, an electronic
 406 cigarette product, or a nicotine product to an individual under 21 years old and the violation is
 407 committed by the owner of the general tobacco retailer, the enforcing agency shall:

408 (a) on a first violation, impose a fine of [~~no more than~~] \$2,000 on the general tobacco
 409 retailer; and

410 (b) on the second violation for the same general tobacco retailer within one year of the
 411 first violation:

412 (i) impose a fine [~~not exceeding~~] of \$5,000; and

413 (ii) revoke the permit for the general tobacco retailer.

414 (4) If a violation is found in an investigation of a retail tobacco specialty business by a
 415 law enforcement agency under Section 77-39-101 for the sale of a tobacco product, an
 416 electronic cigarette product, or a nicotine product to an individual under 21 years old, the
 417 enforcing agency shall [~~apply the provisions of Section 26-62-402~~].:

418 (a) on the first violation:

419 (i) impose a fine of \$5,000; and

420 (ii) immediately suspend the permit for 30 consecutive days; and

421 (b) on the second violation at the same retail location within two years of the first

422 violation:

423 (i) impose a fine of \$10,000; and

424 (ii) revoke the permit for the retail tobacco specialty business.

425 (5) (a) Except when a transfer described in Subsection (6) occurs, a local health
426 department may not issue a permit to:

427 (i) a tobacco retailer for whom a permit is suspended or revoked under Subsection (2)
428 or (3) or Section 26-62-402; or

429 (ii) a tobacco retailer that has the same proprietor, director, corporate officer, partner,
430 or other holder of significant interest as another tobacco retailer for whom a permit is
431 suspended or revoked under Subsection (2) [~~or~~]₂ (3)₂ or [~~Section 26-62-402~~] (4).

432 (b) A person whose permit:

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

436 (ii) is revoked under this section [~~or Section 26-62-402~~] may not apply for a new
437 permit for any tobacco retailer for a period of 24 months after the day on which an enforcing
438 agency revokes the permit.

439 (6) Violations of this chapter, Section 10-8-41.6, or Section 17-50-333[~~, or Section~~
440 ~~26-62-402~~] that occur at a tobacco retailer location shall stay on the record for that tobacco
441 retailer location unless:

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

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

446 Section 6. Section 26-62-306 is amended to read:

447 **26-62-306. Recognition of tobacco retailer training program.**

448 (1) In determining the amount of the monetary penalty to be imposed for [~~an~~
449 ~~employee's~~] a violation of this chapter, a hearing officer shall reduce the civil penalty by at

450 least 50% if the hearing officer determines that:

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

452 (b) the employees have completed that training program within 30 days after the day on
453 which each employee commences the duties of selling a tobacco product, an electronic
454 cigarette product, or a nicotine product.

455 (2) (a) For the first offense at a location, if the hearing officer determines under
456 Subsection (1) that the tobacco retailer [~~licensee~~] has not implemented a documented training
457 program with a written curriculum for employees at that location regarding compliance with
458 this chapter, the hearing officer may suspend all or a portion of the penalty if:

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

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

463 (b) If the hearing officer determines at a subsequent hearing that the tobacco retailer
464 has not implemented the training program within the time period required under Subsection
465 (2)(a)(ii), the hearing officer shall promptly impose the suspended monetary penalty, unless the
466 tobacco retailer demonstrates good cause for an extension of time for implementation of the
467 training program.

468 Section 7. Section **26-62-401** is amended to read:

469 **26-62-401. Verification of proof of age.**

470 (1) As used in this section:

471 (a) "Employee" means an employee of a retail tobacco specialty business.

472 (b) "Electronic verification program" means a technology used by a retail tobacco
473 specialty business to confirm proof of age for an individual.

474 (2) A retail tobacco specialty business shall require that an employee verify proof of
475 age as provided in this section.

476 (3) To comply with Subsection (2), an employee shall:

477 (a) request the individual present proof of age; and

478 (b) verify the validity of the proof of age electronically in accordance with Subsection
479 (4).

480 (4) A retail tobacco specialty business shall use an electronic verification program to
481 assist the business in complying with the requirements of this section.

482 (5) (a) A retail tobacco specialty business may not disclose information obtained under
483 this section except as provided under this part.

484 (b) Information obtained under this section:

485 (i) shall be kept for at least 180 days; and

486 (ii) is subject to inspection upon request by a peace officer or the representative of an
487 enforcing agency.

488 (6) (a) If an employee does not verify proof of age under this section, the employee
489 may not permit an individual to:

490 (i) except as provided in Subsection (6)(b), enter a retail tobacco specialty business; or

491 (ii) purchase a tobacco product or an electronic cigarette product.

492 (b) In accordance with Subsection 76-10-105.1(4), an individual who is under 21 years
493 old may be permitted to enter a retail tobacco specialty business if the individual is:

494 (i) ~~[the individual is]~~ accompanied by a parent or legal guardian who provides proof of
495 age; or

496 (ii) (A) [the individual is] present at the retail tobacco specialty [shop for a bona fide
497 commercial purpose other than to purchase a tobacco product or an electronic cigarette
498 product.] business solely for the purpose of providing a commercial service to the retail
499 tobacco specialty business, including making a commercial delivery;

500 (B) monitored by the proprietor of the retail tobacco specialty business or an employee
501 of the retail tobacco specialty business; and

502 (C) not permitted to make any purchase or conduct any commercial transaction other
503 than the service described in Subsection (6)(b)(ii)(A).

504 (7) To determine whether the individual described in Subsection (2) is 21 years old or
505 older, the following may request an individual described in Subsection (2) to present proof of

506 age:

- 507 (a) an employee;
- 508 (b) a peace officer; or
- 509 (c) a representative of an enforcing agency.

510 Section 8. Section **76-10-105.1** is amended to read:

511 **76-10-105.1. Requirement of direct, face-to-face sale of a tobacco product, an**
512 **electronic cigarette product, or a nicotine product -- Minors not allowed in tobacco**
513 **specialty shop -- Penalties.**

514 (1) As used in this section:

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

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

518 (A) vending machine; or

519 (B) self-service display.

520 (b) "Retailer" means a person who:

521 (i) sells a tobacco product, an electronic cigarette product, or a nicotine product to an
522 individual for personal consumption; or

523 (ii) operates a facility with a vending machine that sells a tobacco product, an
524 electronic cigarette product, or a nicotine product.

525 (c) "Self-service display" means a display of a tobacco product, an electronic cigarette
526 product, or a nicotine product to which the public has access without the intervention of a
527 retailer or retailer's employee.

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

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

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

532 [59-14-509](#);

533 (b) a sale from a vending machine or self-service display that is located in an area of a

534 retailer's facility:

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

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

538 (c) a sale at a retail tobacco specialty business.

539 (4) An individual who is under 21 years old may not enter or be present at a retail
540 tobacco specialty business unless the individual is:

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

542 (b) (i) present at the retail tobacco specialty business [for a bona fide commercial
543 purpose other than to purchase a tobacco product, an electronic cigarette product, or a nicotine
544 product.] solely for the purpose of providing a service to the retail tobacco specialty business,
545 including making a delivery;

546 (ii) monitored by the proprietor of the retail tobacco specialty business or an employee
547 of the retail tobacco specialty business; and

548 (iii) not permitted to make any purchase or conduct any commercial transaction other
549 than the service described in Subsection (4)(b)(i).

550 (5) A parent or legal guardian who accompanies, under Subsection (4)(a), an individual
551 into an area described in Subsection (3)(b) or into a retail tobacco specialty business may not
552 allow the individual to purchase a tobacco product, an electronic cigarette product, or a
553 nicotine product.

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

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

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

557 (c) class A misdemeanor on any subsequent offenses.

558 (7) An individual who violates Subsection (5) is guilty of an offense under Section
559 76-10-104.

560 Section 9. **Repealer.**

561 This bill repeals:

562

Section **26-62-402**, Penalties.