

TOBACCO RETAILER AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Evan J. Vickers

House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill amends provisions relating to tobacco retailers.

Highlighted Provisions:

This bill:

- ▶ amends provisions relating to a retail tobacco specialty business that is within a certain distance from a school;
- ▶ modifies the requirements for a tobacco retail permit;
- ▶ clarifies provisions relating to who may be in a retail tobacco specialty business;
- ▶ creates restrictions on the sale or transfer of a retail tobacco specialty business;
- ▶ modifies penalties for selling a tobacco product, electronic cigarette product, or a nicotine product to an individual who is younger than 21 years old; and
- ▶ adds nicotine products to provisions relating to the sale, use, and possession of tobacco products and electronic cigarette products.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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



28 **17-50-333**, as last amended by Laws of Utah 2020, Sixth Special Session, Chapter 18
 29 **26-62-202**, as last amended by Laws of Utah 2020, Sixth Special Session, Chapter 18
 30 **26-62-205**, as last amended by Laws of Utah 2020, Chapters 302, 347
 31 **26-62-301**, as last amended by Laws of Utah 2020, Chapter 347
 32 **26-62-303**, as enacted by Laws of Utah 2018, Chapter 231
 33 **26-62-304**, as last amended by Laws of Utah 2020, Chapters 302, 347
 34 **26-62-305**, as last amended by Laws of Utah 2020, Chapters 302, 347 and last amended
 35 by Coordination Clause, Laws of Utah 2020, Chapter 302
 36 **26-62-306**, as last amended by Laws of Utah 2020, Chapter 347
 37 **26-62-401**, as enacted by Laws of Utah 2020, Chapter 302
 38 **76-10-105.1**, as last amended by Laws of Utah 2020, Chapters 302 and 347
 39 **76-10-111**, as last amended by Laws of Utah 2020, Chapters 302 and 347
 40 **76-10-114**, as enacted by Laws of Utah 2020, Chapter 302
 41 **76-10-115**, as enacted by Laws of Utah 2020, Chapter 302

42 REPEALS:

43 **26-62-402**, as enacted by Laws of Utah 2020, Chapter 302

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

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

47 **10-8-41.6. Regulation of retail tobacco specialty business.**

48 (1) As used in this section:

49 (a) "Community location" means:

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

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

52 (iii) a trade or technical school;

53 (iv) a church;

54 (v) a public library;

55 (vi) a public playground;

56 (vii) a public park;

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

58 (ix) a public recreational facility;

- 59 (x) a public arcade; or
- 60 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
- 61 (b) "Department" means the Department of Health, created in Section 26-1-4.
- 62 (c) "Electronic cigarette product" means the same as that term is defined in Section
- 63 76-10-101.
- 64 (d) "Flavored electronic cigarette product" means the same as that term is defined in
- 65 Section 76-10-101.
- 66 (e) "Licensee" means a person licensed under this section to conduct business as a
- 67 retail tobacco specialty business.
- 68 (f) "Local health department" means the same as that term is defined in Section
- 69 26A-1-102.
- 70 (g) "Nicotine product" means the same as that term is defined in Section 76-10-101.
- 71 (h) "Retail tobacco specialty business" means a commercial establishment in which:
- 72 (i) sales of tobacco products, electronic cigarette products, and nicotine products
- 73 account for more than 35% of the total quarterly gross receipts for the establishment;
- 74 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
- 75 storage of tobacco products, electronic cigarette products, or nicotine products;
- 76 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
- 77 tobacco products, electronic cigarette products, or nicotine products;
- 78 (iv) the commercial establishment:
- 79 (A) holds itself out as a retail tobacco specialty business; and
- 80 (B) causes a reasonable person to believe the commercial establishment is a retail
- 81 tobacco specialty business;
- 82 (v) any flavored electronic cigarette product is sold; or
- 83 (vi) the retail space features a self-service display for tobacco products, electronic
- 84 cigarette products, or nicotine products.
- 85 (i) "Self-service display" means the same as that term is defined in Section
- 86 76-10-105.1.
- 87 (j) "Tobacco product" means:
- 88 (i) a tobacco product as defined in Section 76-10-101; or
- 89 (ii) tobacco paraphernalia as defined in Section 76-10-101.

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

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

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

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

- 101 (i) 1,000 feet of a community location;
- 102 (ii) 600 feet of another retail tobacco specialty business; or
- 103 (iii) 600 feet from property used or zoned for:
 - 104 (A) agriculture use; or
 - 105 (B) residential use.

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

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

113 (a) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
114 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local health
115 department having jurisdiction over the area in which the retail tobacco specialty business is
116 located; and

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

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

121 electronic cigarette product or a nicotine product.

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

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

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

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

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

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

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

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

137 (7) (a) A retail tobacco specialty business is exempt from Subsection (4) if:

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

140 (ii) the retail tobacco specialty business is operating in a municipality in accordance
141 with all applicable laws except for the requirement in Subsection (4)~~]; and~~].

142 ~~[(iii) beginning July 1, 2021, the retail tobacco specialty business is not located within~~
143 ~~1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.]~~

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

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

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

151 (iii) the retail tobacco specialty business does not substantially change the business

152 premises or business operation; and
153 (iv) the retail tobacco specialty business maintains the right to operate under the terms
154 of other applicable laws, including:
155 (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;
156 (B) zoning ordinances;
157 (C) building codes; and
158 (D) the requirements of the license described in Subsection (7)(a)(i).
159 (c) A retail tobacco specialty business that does not qualify for an exemption under
160 Subsection (7)(a) is exempt from Subsection (4) if:
161 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
162 general tobacco retailer permit or a retail tobacco specialty business permit under Title 26,
163 Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local
164 health department having jurisdiction over the area in which the retail tobacco specialty
165 business is located; and
166 (ii) the retail tobacco specialty business is operating in the municipality in accordance
167 with all applicable laws except for the requirement in Subsection (4)~~[-and]~~.
168 ~~[(iii) beginning July 1, 2022, the retail tobacco specialty business is not located within~~
169 ~~1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.]~~
170 (d) A retail tobacco specialty business may maintain an exemption under Subsection
171 (7)(c) if:
172 (i) on or before December 31, 2020, the retail tobacco specialty business receives a
173 retail tobacco specialty business permit from the local health department having jurisdiction
174 over the area in which the retail tobacco specialty business is located;
175 (ii) the permit described in Subsection (7)(d)(i) is renewed continuously without lapse
176 or permanent revocation;
177 (iii) the retail tobacco specialty business does not close for business or otherwise
178 suspend the sale of tobacco products, electronic cigarette products, or nicotine products for
179 more than 60 consecutive days; ~~[and]~~
180 (iv) the retail tobacco specialty business does not substantially change the business
181 premises or business operation as the business existed when the retail tobacco specialty
182 business received a permit under Subsection (7)(d)(i); and

183 [~~(iv)~~] (v) the retail tobacco specialty business maintains the right to operate under the
184 terms of other applicable laws, including:

- 185 (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;
- 186 (B) zoning ordinances;
- 187 (C) building codes; and
- 188 (D) the requirements of the retail tobacco permit described in Subsection (7)(d)(i).

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

190 **17-50-333. Regulation of retail tobacco specialty business.**

191 (1) As used in this section:

192 (a) "Community location" means:

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

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

205 (c) "Electronic cigarette product" means the same as that term is defined in Section
206 [76-10-101](#).

207 (d) "Flavored electronic cigarette product" means the same as that term is defined in
208 Section [76-10-101](#).

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

211 (f) "Local health department" means the same as that term is defined in Section
212 [26A-1-102](#).

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

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

215 (i) sales of tobacco products, electronic cigarette products, and nicotine products

216 account for more than 35% of the total quarterly gross receipts for the establishment;

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

218 storage of tobacco products, electronic cigarette products, or nicotine products;

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

220 tobacco products, electronic cigarette products, or nicotine products;

221 (iv) the commercial establishment:

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

223 (B) causes a reasonable person to believe the commercial establishment is a retail

224 tobacco specialty business;

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

226 (vi) the retail space features a self-service display for tobacco products, electronic

227 cigarette products, or nicotine products.

228 (i) "Self-service display" means the same as that term is defined in Section

229 [76-10-105.1](#).

230 (j) "Tobacco product" means:

231 (i) the same as that term is defined in Section [76-10-101](#); or

232 (ii) tobacco paraphernalia as defined in Section [76-10-101](#).

233 (2) The regulation of a retail tobacco specialty business is an exercise of the police

234 powers of the state by the state or by the delegation of the state's police power to other

235 governmental entities.

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 a person if

240 the person complies with the provisions of Subsections (4) and (5).

241 (4) (a) Except as provided in Subsection (7), a county may not issue a license for a

242 person to conduct business as a retail tobacco specialty business if the retail tobacco specialty

243 business is located within:

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

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

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

247 (A) agriculture use; or

248 (B) residential use.

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

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

256 (a) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
257 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local health
258 department having jurisdiction over the area in which the retail tobacco specialty business is
259 located; and

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

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

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

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

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

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

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

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

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

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

279 (7) (a) A retail tobacco specialty business is exempt from Subsection (4) if:

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

282 (ii) the retail tobacco specialty business is operating in a county in accordance with all
283 applicable laws except for the requirement in Subsection (4)~~[-and]~~.

284 ~~[(iii) beginning July 1, 2021, the retail tobacco specialty business is not located within~~
285 ~~1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.]~~

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

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

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

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

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

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

298 (B) zoning ordinances;

299 (C) building codes; and

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

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

303 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
304 general tobacco retailer permit or a retail tobacco specialty business permit under Title 26,
305 Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local
306 health department having jurisdiction over the area in which the retail tobacco specialty

307 business is located; and

308 (ii) the retail tobacco specialty business is operating in the county in accordance with
309 all applicable laws except for the requirement in Subsection (4)~~[-and]~~.

310 ~~[(iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
311 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.]~~

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

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

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

319 (iii) the retail tobacco specialty business does not close for business or otherwise
320 suspend the sale of tobacco products, electronic cigarette products, or nicotine products for
321 more than 60 consecutive days; ~~[and]~~

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

325 ~~[(iv)]~~ (v) the retail tobacco specialty business maintains the right to operate under the
326 terms of other applicable laws, including:

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

328 (B) zoning ordinances;

329 (C) building codes; and

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

331 Section 3. Section **26-62-202** is amended to read:

332 **26-62-202. Permit application.**

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

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

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

338 (2) An applicant for a permit shall:
339 (a) submit an application described in Subsection (3) to the local health department
340 with jurisdiction over the area where the tobacco retailer is located; and
341 (b) pay all applicable fees described in Section 26-62-203.
342 (3) The application for a permit shall include:
343 (a) the name, address, and telephone number of each proprietor;
344 (b) the name and mailing address of each proprietor authorized to receive
345 permit-related communication and notices;
346 (c) the business name, address, and telephone number of the single, fixed location for
347 which a permit is sought;
348 (d) evidence that the location for which a permit is sought has a valid tax commission
349 license;
350 (e) information regarding whether, in the past 24 months, any proprietor of the tobacco
351 retailer has been determined to have violated, or has been a proprietor at a location that has
352 been determined to have violated:
353 (i) a provision of this chapter;
354 (ii) Chapter 38, Utah Indoor Clean Air Act;
355 (iii) Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic Chemical
356 Solvents;
357 (iv) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
358 (v) a provision of the Federal Food, Drug, and Cosmetic Act, Subchapter IX, 21 U.S.C.
359 Sec. 387 et seq.;
360 [~~(v)~~] (vi) regulations restricting the sale and distribution of cigarettes and smokeless
361 tobacco issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140; or
362 [~~(vi)~~] (vii) any other provision of state law or local ordinance regarding the sale,
363 marketing, or distribution of a tobacco product, an electronic cigarette product, or a nicotine
364 product; and
365 (f) the dates of all violations disclosed under this Subsection (3).
366 (4) (a) In addition to the information described in Subsection (3), an applicant for a
367 retail tobacco specialty business permit shall include evidence showing whether the business is
368 located within:

- 369 (i) 1,000 feet of a community location;
370 (ii) 600 feet of another retail tobacco specialty business; or
371 (iii) 600 feet of property used or zoned for agricultural or residential use.

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

376 (5) The department or a local health department may not deny a permit to a retail
377 tobacco specialty business under Subsection (4) if the retail tobacco specialty business meets
378 the requirements described in Subsection 10-8-41.6(7) or 17-50-333(7).

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

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

384 Section 4. Section 26-62-205 is amended to read:

385 **26-62-205. Permit requirements for a retail tobacco specialty business.**

386 (1) A retail tobacco specialty business shall:

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

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

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

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

395 [~~(b)~~] (ii) the prohibition on the sale of tobacco products and electronic cigarette
396 products to an individual under 21 years old as described in Sections 76-10-104, 76-10-104.1,
397 76-10-105.1, and 76-10-114.

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

399 (a) employ an individual under 21 years old to sell a tobacco product, an electronic

400 cigarette product, or a nicotine product; or

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

403 Section 5. Section **26-62-301** is amended to read:

404 **26-62-301. Permit violation.**

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

406 (1) a provision of this chapter;

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

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

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

411 (5) a provision of the Federal Food, Drug, and Cosmetic Act, Subchapter IX, 21 U.S.C.

412 Sec. 387 et seq.;

413 [~~5~~] (6) a regulation restricting the sale and distribution of cigarettes and smokeless
414 tobacco issued by the United States Food and Drug Administration under 21 C.F.R. Part 1140;
415 or

416 [~~6~~] (7) any other provision of state law or local ordinance regarding the sale,
417 marketing, or distribution of a tobacco product, an electronic cigarette product, or a nicotine
418 product.

419 Section 6. Section **26-62-303** is amended to read:

420 **26-62-303. Inspection of retail tobacco businesses.**

421 The department or a local health department may inspect a tobacco retailer to determine
422 whether the tobacco retailer:

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

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

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

428 (4) violated a provision of the Federal Food, Drug, and Cosmetic Act, Subchapter IX,
429 21 U.S.C. Sec. 387 et seq.;

430 [~~4~~] (5) violated any of the regulations restricting the sale and distribution of cigarettes

431 and smokeless tobacco issued by the United States Food and Drug Administration under 21
432 C.F.R. Part 1140; or

433 [~~(5)~~] (6) has violated any other provision of state law or local ordinance.

434 Section 7. Section **26-62-304** is amended to read:

435 **26-62-304. Hearing -- Evidence of criminal conviction.**

436 (1) At a civil hearing conducted under Section ~~26-62-302~~, evidence of the final
437 criminal conviction of a tobacco retailer [~~or employee~~] for violation of Section ~~76-10-114~~ at
438 the same location and within the same time period as the location and time period alleged in
439 the civil hearing for violation of this chapter for sale of a tobacco product, an electronic
440 cigarette product, or a nicotine product to an individual under 21 years old is prima facie
441 evidence of a violation of this chapter.

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

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

446 (b) [~~may~~] shall revoke or suspend a permit in accordance with Section ~~26-62-305~~ [~~or~~
447 ~~26-62-402~~].

448 Section 8. Section **26-62-305** is amended to read:

449 **26-62-305. Penalties.**

450 (1) (a) If an enforcing agency determines that a person has violated the terms of a
451 permit issued under this chapter, the enforcing agency [~~may~~] shall impose the penalties
452 described in this section.

453 (b) If multiple violations are found in a single inspection by an enforcing agency or
454 investigation by a law enforcement agency under Section ~~77-39-101~~, the enforcing agency shall
455 treat the multiple violations as one single violation under Subsections (2), (3), and (4), and the
456 enforcing agency shall impose the penalty described in Subsection (2).

457 (2) [~~Except as provided in Subsection (3) and Section 26-62-402, if~~] If a violation is
458 found in an inspection by an enforcing agency or from an investigation by a law enforcement
459 agency under Section ~~77-39-101~~, the enforcing agency shall:

460 (a) on the first violation:

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

462 (ii) immediately suspend the permit for 30 consecutive days; and
 463 (b) on the second violation at the same retail location within two years of the first
 464 violation:

465 (i) impose a fine of \$10,000; and
 466 (ii) revoke the permit for the tobacco retailer.

467 (3) If a violation of the permit under Section 26-62-301 is found in an inspection by an
 468 enforcing agency under the provisions of this chapter, and the violation does not involve the
 469 sale of a tobacco product, an electronic cigarette product, or a nicotine product to an individual
 470 under 21 years old, the enforcing agency shall:

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

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

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

476 (i) a suspension of the permit for 30 consecutive business days within ~~[60]~~ 120 days
 477 after the day on which the third violation occurs; ~~[or]~~ and

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

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

480 (i) impose a penalty of ~~[no more than \$1,000]~~ \$1,500;

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

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

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

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

490 ~~[(b) on the second violation for the same general tobacco retailer within one year of the~~
 491 ~~first violation:]~~

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

493 ~~[(ii) revoke the permit for the general tobacco retailer.]~~

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

498 ~~[(5)]~~ (4) (a) ~~[Except when a transfer described in Subsection (6) occurs, a]~~ A local
 499 health department may not issue a permit to:

500 (i) a tobacco retailer for whom a permit is suspended or revoked under Subsection (2)
 501 or (3) ~~[or Section 26-62-402];~~ or

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

505 (b) A person whose permit:

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

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

512 ~~[(6)]~~ (5) Violations of this chapter, Section 10-8-41.6, Section 17-50-333, or Section
 513 26-62-402 that occur at a tobacco retailer location shall stay on the record for that tobacco
 514 retailer location unless:

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

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

519 Section 9. Section 26-62-306 is amended to read:

520 **26-62-306. Recognition of tobacco retailer training program.**

521 (1) In determining the amount of the monetary penalty to be imposed for ~~[an~~
 522 ~~employee's]~~ a violation of this chapter, a hearing officer shall reduce the civil penalty by at
 523 least 50% if the hearing officer determines that:

524 (a) the tobacco retailer has implemented a documented employee training program; and
525 (b) the employees have completed that training program within 30 days after the day on
526 which each employee commences the duties of selling a tobacco product, an electronic
527 cigarette product, or a nicotine product.

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

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

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

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

541 Section 10. Section **26-62-401** is amended to read:

542 **26-62-401. Verification of proof of age.**

543 (1) As used in this section:

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

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

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

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

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

551 (b) verify the validity of the proof of age electronically in accordance with Subsection
552 (4).

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

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

557 (b) Information obtained under this section:

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

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

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

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

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

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

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

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

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

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

577 (7) To determine whether the individual described in Subsection (2) is 21 years old or
578 older, the following may request an individual described in Subsection (2) to present proof of
579 age:

580 (a) an employee;

581 (b) a peace officer; or

582 (c) a representative of an enforcing agency.

583 Section 11. Section 76-10-105.1 is amended to read:

584 **76-10-105.1. Requirement of direct, face-to-face sale of a tobacco product, an**
585 **electronic cigarette product, or a nicotine product -- Minors not allowed in tobacco**

586 **specialty shop -- Penalties.**

587 (1) As used in this section:

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

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

591 (A) vending machine; or

592 (B) self-service display.

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

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

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

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

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

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

604 (a) a mail-order, telephone, or Internet sale made in compliance with Section
605 [59-14-509](#);

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

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

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

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

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

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

615 (b) (i) present at the retail tobacco specialty business [~~for a bona fide commercial~~
616 ~~purpose other than to purchase a tobacco product, an electronic cigarette product, or a nicotine~~

617 ~~product.] solely for the purpose of providing a service to the retail tobacco specialty business,~~
 618 ~~including making a delivery;~~

619 ~~(ii) monitored by the proprietor of the retail tobacco specialty business or an employee~~
 620 ~~of the retail tobacco specialty business; and~~

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

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

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

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

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

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

631 (7) An individual who violates Subsection (5) is guilty of an offense under Section
 632 76-10-104.

633 Section 12. Section 76-10-111 is amended to read:

634 **76-10-111. Restrictions on sale of smokeless tobacco, electronic cigarette**
 635 **products, or nicotine products -- Exceptions.**

636 (1) The Legislature finds that:

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

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

640 (c) the use of electronic cigarette products may lead to unhealthy behavior such as the
 641 use of tobacco products; and

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

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

646 (i) give or distribute without charge any smokeless tobacco, chewing tobacco, [or]
 647 electronic cigarette product, or nicotine product in this state;

648 (ii) sell, offer for sale, or furnish any electronic cigarette product or nicotine product at
649 less than the cost, including the amount of any applicable tax, of the product to the
650 manufacturer, wholesaler, or retailer; or

651 (iii) give, distribute, sell, offer for sale, or furnish any electronic cigarette product or
652 nicotine product for free or at a lower price because the recipient of the electronic cigarette
653 product or nicotine product makes another purchase.

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

656 (i) a physical manufacturer coupon:

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

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

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

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

664 (c) Any individual who violates this section is guilty of:

665 (i) a class C misdemeanor for the first offense; and

666 (ii) a class B misdemeanor for any subsequent offense.

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

670 Section 13. Section **76-10-114** is amended to read:

671 **76-10-114. Unlawful sale of a tobacco product, electronic cigarette product, or**
672 **nicotine product.**

673 (1) As used in this section:

674 (a) "Compensatory service" means service or unpaid work performed by an employee,
675 in lieu of the payment of a fine or imprisonment.

676 (b) "Employee" means an employee or an owner of a tobacco retailer.

677 (2) It is unlawful for an employee to knowingly or intentionally sell or give a tobacco
678 product [~~or~~], an electronic cigarette product, or a nicotine product in the course of business to

679 an individual who is under 21 years old.

680 (3) An employee who violates this section is:

681 (a) on a first violation:

682 (i) guilty of an infraction; and

683 (ii) subject to:

684 (A) a fine not exceeding \$1,000; or

685 (B) compensatory service; and

686 (b) on any subsequent violation:

687 (i) guilty of a class C misdemeanor; and

688 (ii) subject to:

689 (A) a fine not exceeding \$2,000; or

690 (B) compensatory service.

691 Section 14. Section **76-10-115** is amended to read:

692 **76-10-115. Unlawful transfer or use of proof of age.**

693 (1) As used in this section:

694 (a) "Proof of age" means:

695 (i) a valid identification card issued under Title 53, Chapter 3, Part 8, Identification
696 Card Act;

697 (ii) a valid identification that:

698 (A) is substantially similar to an identification card issued under Title 53, Chapter 3,
699 Part 8, Identification Card Act;

700 (B) is issued in accordance with the laws of a state other than Utah in which the
701 identification is issued;

702 (C) includes date of birth; and

703 (D) has a picture affixed;

704 (iii) a valid driver license certificate that is issued under Title 53, Chapter 3, Uniform

705 Driver License Act, or in accordance with the laws of the state in which the valid driver license
706 is issued;

707 (iv) a valid United States military identification card that:

708 (A) includes date of birth; and

709 (B) has a picture affixed; or

710 (v) a valid passport.

711 (b) "Proof of age" does not include a driving privilege card issued in accordance with
712 Section [53-3-207](#).

713 (2) An individual who knowingly and intentionally transfers that individual's proof of
714 age to another individual to aid that individual in purchasing a tobacco product [~~or~~], an
715 electronic cigarette product, or a nicotine product, or in gaining admittance to any part of the
716 premises of a retail tobacco specialty business, is guilty of a class B misdemeanor.

717 (3) An individual who knowingly and intentionally uses proof of age containing false
718 information with the intent to purchase a tobacco product [~~or~~], an electronic cigarette product,
719 or a nicotine product, or to gain admittance to any part of the premises of a retail tobacco
720 specialty business, is guilty of a class A misdemeanor.

721 Section 15. **Repealer.**

722 This bill repeals:

723 Section [26-62-402](#), **Penalties.**