

**Senator Evan J. Vickers** proposes the following substitute bill:

**TOBACCO RETAILER AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Evan J. Vickers**

House Sponsor: Paul Ray

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

**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



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

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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; and

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, the retail tobacco specialty business is not located within~~  
135 ~~1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.]~~

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

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

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

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

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

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

148 (B) zoning ordinances;

149 (C) building codes; and

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

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

182 **17-50-333. Regulation of retail tobacco specialty business.**

183 (1) As used in this section:

184 (a) "Community location" means:

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

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

187 (iii) a trade or technical school;

188 (iv) a church;

189 (v) a public library;

190 (vi) a public playground;

191 (vii) a public park;

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

193 (ix) a public recreational facility;

194 (x) a public arcade; or

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

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

197 (c) "Electronic cigarette product" means the same as that term is defined in Section  
198 76-10-101.

199 (d) "Flavored electronic cigarette product" means the same as that term is defined in  
200 Section 76-10-101.

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

203 (f) "Local health department" means the same as that term is defined in Section  
204 26A-1-102.

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

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

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

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

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

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

213 (iv) the commercial establishment:

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

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

216 tobacco specialty business;

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

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

219 cigarette products, or nicotine products.

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

221 [76-10-105.1](#).

222 (j) "Tobacco product" means:

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

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

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

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

227 governmental entities.

228 (3) (a) A person may not operate a retail tobacco specialty business in a county unless

229 the person obtains a license from the county in which the retail tobacco specialty business is

230 located.

231 (b) A county may only issue a retail tobacco specialty business license to a person if

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

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

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

235 business is located within:

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

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

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

239 (A) agriculture use; or

240 (B) residential use.

241 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in

242 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest



243 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard  
244 to intervening structures or zoning districts.

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

248 (a) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter  
249 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local health  
250 department having jurisdiction over the area in which the retail tobacco specialty business is  
251 located; and

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

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

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

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

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

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

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

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

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

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

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

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

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

276 ~~[(iii) beginning July 1, 2021, the retail tobacco specialty business is not located within  
277 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.]~~

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

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

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

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

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

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

290 (B) zoning ordinances;

291 (C) building codes; and

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

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

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

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

302 ~~[(iii) beginning July 1, 2022, the retail tobacco specialty business is not located within  
303 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.]~~

304 (d) A retail tobacco specialty business may maintain an exemption under Subsection

305 (7)(c) if:

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

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

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

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

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

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

320 (B) zoning ordinances;

321 (C) building codes; and

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

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

324 **26-62-205. Permit requirements for a retail tobacco specialty business.**

325 (1) A retail tobacco specialty business shall:

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

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

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

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

334 [~~(b)~~] (ii) the prohibition on the sale of tobacco products and electronic cigarette  
335 products to an individual under 21 years old as described in Sections **76-10-104**, **76-10-104.1**,

336 76-10-105.1, and 76-10-114.

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

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

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

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

343 **26-62-304. Hearing -- Evidence of criminal conviction.**

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

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

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

354 (b) [~~may~~] shall revoke or suspend a permit in accordance with Section 26-62-305 [~~or~~  
355 ~~26-62-402~~].

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

357 **26-62-305. Penalties.**

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

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

365 (2) [~~Except as provided in Subsection (3) and Section 26-62-402, if~~] If a violation is  
366 found in an inspection by an enforcing agency or from an investigation by a law enforcement

367 agency under Section 77-39-101, the enforcing agency shall:

368 (a) on the first violation:

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

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

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

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

374 (ii) revoke the permit for the tobacco retailer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

406           ~~[(5)] (4) (a) [Except when a transfer described in Subsection (6) occurs, a] A local~~  
407 ~~health department may not issue a permit to:~~

408           (i) a tobacco retailer for whom a permit is suspended or revoked under Subsection (2)

409 ~~or (3) [or Section 26-62-402]; or~~

410           (ii) a tobacco retailer that has the same proprietor, director, corporate officer, partner,

411 ~~or other holder of significant interest as another tobacco retailer for whom a permit is~~

412 ~~suspended or revoked under Subsection (2) or (3) [or Section 26-62-402].~~

413           (b) A person whose permit:

414           (i) is suspended under this section may not apply for a new permit for any other

415 ~~tobacco retailer for a period of 12 months after the day on which an enforcing agency suspends~~

416 ~~the permit; and~~

417           (ii) is revoked under this section ~~[or Section 26-62-402]~~ may not apply for a new

418 ~~permit for any tobacco retailer for a period of 24 months after the day on which an enforcing~~

419 ~~agency revokes the permit.~~

420           ~~[(6)] (5) Violations of this chapter, Section 10-8-41.6, Section 17-50-333, or Section~~  
421 ~~26-62-402 that occur at a tobacco retailer location shall stay on the record for that tobacco~~  
422 ~~retailer location unless:~~

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

424           (b) the new proprietor provides documentation to the local health department that the

425 ~~new proprietor is acquiring the tobacco retailer in an arm's length transaction from the previous~~

426 ~~proprietor.~~

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

428           **26-62-306. Recognition of tobacco retailer training program.**

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

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

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

- 440 (i) the tobacco retailer agrees to initiate a training program for employees at that  
441 location; and
- 442 (ii) the training program begins within 30 days after the hearing officer makes a  
443 determination under this Subsection (2)(a).

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

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

450 **26-62-401. Verification of proof of age.**

451 (1) As used in this section:

- 452 (a) "Employee" means an employee of a retail tobacco specialty business.
- 453 (b) "Electronic verification program" means a technology used by a retail tobacco  
454 specialty business to confirm proof of age for an individual.

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

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

- 458 (a) request the individual present proof of age; and
- 459 (b) verify the validity of the proof of age electronically in accordance with Subsection

460 (4).

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

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

465 (b) Information obtained under this section:

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

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

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

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

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

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

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

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

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

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

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

488 (a) an employee;

489 (b) a peace officer; or

490 (c) a representative of an enforcing agency.



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

492 **76-10-105.1. Requirement of direct, face-to-face sale of a tobacco product, an**  
493 **electronic cigarette product, or a nicotine product -- Minors not allowed in tobacco**  
494 **specialty shop -- Penalties.**

495 (1) As used in this section:

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

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

499 (A) vending machine; or

500 (B) self-service display.

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

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

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

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

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

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

512 (a) a mail-order, telephone, or Internet sale made in compliance with Section  
513 [59-14-509](#);

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

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

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

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

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

- 522 (a) accompanied by a parent or legal guardian; or  
523 (b) (i) present at the retail tobacco specialty business [~~for a bona fide commercial~~  
524 ~~purpose other than to purchase a tobacco product, an electronic cigarette product, or a nicotine~~  
525 ~~product.] solely for the purpose of providing a service to the retail tobacco specialty business,  
526 including making a delivery;  
527 (ii) monitored by the proprietor of the retail tobacco specialty business or an employee  
528 of the retail tobacco specialty business; and  
529 (iii) not permitted to make any purchase or conduct any commercial transaction other  
530 than the service described in Subsection (4)(b)(i).~~

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

- 535 (6) A violation of Subsection (2) or (4) is a:  
536 (a) class C misdemeanor on the first offense;  
537 (b) class B misdemeanor on the second offense; and  
538 (c) class A misdemeanor on any subsequent offenses.

539 (7) An individual who violates Subsection (5) is guilty of an offense under Section  
540 76-10-104.

541 Section 9. **Repealer.**

542 This bill repeals:

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