

**Senator Curtis S. Bramble** 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 [26-62-402](#), as enacted by Laws of Utah 2020, Chapter 302  
34 [76-10-105.1](#), as last amended by Laws of Utah 2020, Chapters 302 and 347

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

37 Section 1. Section [10-8-41.6](#) is amended to read:

38 **[10-8-41.6. Regulation of retail tobacco specialty business.](#)**

39 (1) As used in this section:

40 (a) "Community location" means:

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

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

43 (iii) a trade or technical school;

44 (iv) a church;

45 (v) a public library;

46 (vi) a public playground;

47 (vii) a public park;

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

49 (ix) a public recreational facility;

50 (x) a public arcade; or

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

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

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

54 [76-10-101](#).

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

56 Section [76-10-101](#).

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

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

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

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

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

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

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

69 (iv) the commercial establishment:

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

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

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

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

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

78 (j) "Tobacco product" means:

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

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

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

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

87 (b) A municipality may only issue a retail tobacco specialty business license to a

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

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

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

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

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

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

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

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

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

- 114 (i) requires a municipality to issue a retail tobacco specialty business license; or
- 115 (ii) prohibits a municipality from adopting more restrictive requirements on a person  
116 seeking a license or renewal of a license to conduct business as a retail tobacco specialty  
117 business.

118 (b) A municipality may suspend or revoke a retail tobacco specialty business license

119 issued under this section:

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

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

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

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

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

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

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

133 (iii) beginning July 1, [~~2021~~] 2022, the retail tobacco specialty business is not located  
134 within 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high  
135 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;
- 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 (e) A retail tobacco specialty business described in Subsection (7)(a) or (b) that is  
182 located within 1,000 feet of a public or private kindergarten, elementary, or secondary school  
183 before July 1, 2022, is exempt from Subsection (4)(a)(iii)(B) if the retail tobacco specialty  
184 business:

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

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

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

191 **17-50-333. Regulation of retail tobacco specialty business.**

192 (1) As used in this section:

193 (a) "Community location" means:

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

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

196 (iii) a trade or technical school;

197 (iv) a church;

198 (v) a public library;

199 (vi) a public playground;

200 (vii) a public park;

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

202 (ix) a public recreational facility;

203 (x) a public arcade; or

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

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

206 (c) "Electronic cigarette product" means the same as that term is defined in Section  
207 [76-10-101](#).

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

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

212 (f) "Local health department" means the same as that term is defined in Section  
213 26A-1-102.

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

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

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

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

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

222 (iv) the commercial establishment:

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

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

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

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

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

231 (j) "Tobacco product" means:

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

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

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

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

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

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



243 person to conduct business as a retail tobacco specialty business if the retail tobacco specialty  
244 business is located within:

- 245 (i) 1,000 feet of a community location;
- 246 (ii) 600 feet of another retail tobacco specialty business; or
- 247 (iii) 600 feet from property used or zoned for:
  - 248 (A) agriculture use; or
  - 249 (B) residential use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

300 (B) zoning ordinances;

301 (C) building codes; and

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

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

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

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

312 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within  
313 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

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

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

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

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

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

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

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

330 (B) zoning ordinances;

331 (C) building codes; and

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

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

336 business:

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

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

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

343 **26-62-205. Permit requirements for a retail tobacco specialty business.**

344 (1) A retail tobacco specialty business shall:

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

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

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

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

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

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

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

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

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

362 **26-62-304. Hearing -- Evidence of criminal conviction.**

363 (1) At a civil hearing conducted under Section 26-62-302, evidence of the final  
364 criminal conviction of a tobacco retailer ~~[or employee]~~ for violation of Section 76-10-114 at  
365 the same location and within the same time period as the location and time period alleged in  
366 the civil hearing for violation of this chapter for sale of a tobacco product, an electronic

367 cigarette product, or a nicotine product to an individual under 21 years old is prima facie  
368 evidence of a violation of this chapter.

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

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

373 (b) [~~may~~] shall revoke or suspend a permit in accordance with Section 26-62-305 or  
374 26-62-402.

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

376 **26-62-305. Penalties.**

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

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

383 (2) Except as provided in Subsection (3) and Section 26-62-402, if a violation is found  
384 in an inspection by an enforcing agency or an investigation by a law enforcement agency under  
385 Section 77-39-101, the enforcing agency shall:

386 (a) on a first violation at a retail location, impose a penalty of [~~no more than \$500~~]  
387 \$1,000;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

421 (b) A person whose permit:

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

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

428 (6) Violations of this chapter, Section 10-8-41.6, Section 17-50-333, or Section

429 26-62-402 that occur at a tobacco retailer location shall stay on the record for that tobacco  
430 retailer location unless:

- 431 (a) the tobacco retailer is transferred to a new proprietor; and
- 432 (b) the new proprietor provides documentation to the local health department that the  
433 new proprietor is acquiring the tobacco retailer in an arm's length transaction from the previous  
434 proprietor.

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

436 **26-62-306. Recognition of tobacco retailer training program.**

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

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

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

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

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

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

458 **26-62-401. Verification of proof of age.**

459 (1) As used in this section:

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

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

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

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

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

467 (b) verify the validity of the proof of age electronically in accordance with Subsection

468 (4).

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

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

473 (b) Information obtained under this section:

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

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

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

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

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

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

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

485 (ii) (A) ~~[the individual is]~~ present at the retail tobacco specialty ~~[shop for a bona fide~~  
486 ~~commercial purpose other than to purchase a tobacco product or an electronic cigarette~~

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

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



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

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

- 496 (a) an employee;
- 497 (b) a peace officer; or
- 498 (c) a representative of an enforcing agency.

499 Section 8. Section **26-62-402** is amended to read:

500 **26-62-402. Penalties.**

501 (1) Except as provided in [~~Subsection (2)~~] Subsections (2) and (3), if a violation of this  
502 part is found in an investigation of a retail tobacco specialty business by a law enforcement  
503 agency under Section 77-39-101, the enforcing agency shall:

504 (a) on a first violation, impose a penalty of [~~no more than \$500~~] \$1,000 on the retail  
505 tobacco specialty business;

506 (b) on a second violation for the same retail tobacco specialty business that occurs  
507 within one year of a previous violation, impose a penalty of [~~no more than \$750~~] \$1,500;

508 (c) on a third violation for the same retail tobacco specialty business that occurs within  
509 two years of the two previous violations, impose:

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

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

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

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

516 (ii) revoke the permit of the retail tobacco specialty business; and

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

519 (2) If a violation of this part is committed by the owner and is found in an investigation  
520 of a retail tobacco specialty business by a law enforcement agency under Section 77-39-101,  
521 the enforcing agency shall:

522 (a) on a first violation, impose a fine [~~not exceeding~~] of \$2,000; and  
523 (b) on a second violation at the same retail tobacco specialty business within one year  
524 of the first violation:

- 525 (i) impose a fine [~~not exceeding~~] of \$5,000;
- 526 (ii) revoke the retail tobacco specialty business's permit; and
- 527 (iii) recommend to a municipality or county that the retail tobacco specialty license  
528 issued under Section 10-8-41.6 or 17-50-333 to the retail tobacco specialty business be  
529 suspended or revoked.

530 (3) (a) As used in this Subsection (3), "high risk tobacco retailer" means a retail  
531 tobacco specialty business that is:

- 532 (i) within 1,000 feet of a community location as defined in Section 10-8-41.6 or  
533 Section 17-50-333; and
- 534 (ii) operating under an exemption in accordance with Subsection 10-8-41.6(7) or  
535 Subsection 17-50-333(7).

536 (b) If a violation is found at a high risk tobacco retailer in an inspection by an enforcing  
537 agency or from an investigation by a law enforcement agency under Section 77-39-101, the  
538 enforcing agency shall:

- 539 (i) on the first violation:
  - 540 (A) impose a fine of \$5,000; and
  - 541 (B) immediately suspend the permit for 30 consecutive days; and
- 542 (ii) on the second violation at the same retail location within two years of the first  
543 violation:

- 544 (A) impose a fine of \$10,000; and
- 545 (B) revoke the permit for the tobacco retailer.

546 [~~(3)~~] (4) If multiple violations are found in a single investigation by a law enforcement  
547 agency under Section 77-39-101, the enforcing agency shall treat the multiple violations as a  
548 single violation.

549 Section 9. Section 76-10-105.1 is amended to read:

550 **76-10-105.1. Requirement of direct, face-to-face sale of a tobacco product, an**  
551 **electronic cigarette product, or a nicotine product -- Minors not allowed in tobacco**  
552 **specialty shop -- Penalties.**

553 (1) As used in this section:

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

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

557 (A) vending machine; or

558 (B) self-service display.

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

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

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

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

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

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

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

571 [59-14-509](#);

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

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

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

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

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

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

581 (b) (i) present at the retail tobacco specialty business [~~for a bona fide commercial~~  
582 ~~purpose other than to purchase a tobacco product, an electronic cigarette product, or a nicotine~~  
583 ~~product.~~] solely for the purpose of providing a service to the retail tobacco specialty business,

584 including making a delivery;

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

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

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

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

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

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

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

597 (7) An individual who violates Subsection (5) is guilty of an offense under Section  
598 [76-10-104](#).