

1 **TOBACCO REGULATION AMENDMENTS**

2 2023 GENERAL SESSION

3 STATE OF UTAH

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

5 Senate Sponsor: \_\_\_\_\_

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7 **LONG TITLE**

8 **General Description:**

9 This bill relates to the regulation of tobacco products, electronic cigarette products, and  
10 nicotine products.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ amends definitions;
- 14 ▶ changes certain penalties for violating a regulation regarding tobacco products,  
15 electronic cigarette products, or nicotine products;
- 16 ▶ adds a hazardous waste disposal fee for electronic cigarette products; and
- 17 ▶ enacts new requirements and restrictions on the sale of tobacco products, electronic  
18 cigarette products, and nicotine products.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **26-62-102**, as last amended by Laws of Utah 2020, Chapters 302, 347

26 **26-62-203**, as enacted by Laws of Utah 2018, Chapter 231

27 **26-62-206**, as enacted by Laws of Utah 2020, Chapter 347



- 28            **26-62-301**, as last amended by Laws of Utah 2020, Chapter 347
- 29            **26-62-304**, as last amended by Laws of Utah 2022, Chapter 274
- 30            **76-10-114**, as last amended by Laws of Utah 2021, First Special Session, Chapter 12
- 31            **77-39-101**, as last amended by Laws of Utah 2021, Chapter 291

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

34            Section 1. Section **26-62-102** is amended to read:

35            **26-62-102. Definitions.**

36            As used in this chapter:

37            (1) "Community location" means the same as that term is defined:

38            (a) as it relates to a municipality, in Section **10-8-41.6**; and

39            (b) as it relates to a county, in Section **17-50-333**.

40            (2) "Electronic cigarette product" means the same as that term is defined in Section  
41 **76-10-101**.

42            (3) "Employee" means an employee of a tobacco retailer.

43            (4) "Enforcing agency" means the state Department of Health and Human Services, or  
44 any local health department enforcing the provisions of this chapter.

45            (5) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco  
46 specialty business.

47            (6) "Local health department" means the same as that term is defined in Section  
48 **26A-1-102**.

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

50            (8) "Owner" means a person holding a 20% ownership interest in the business that is  
51 required to obtain a permit under this chapter.

52            (9) "Permit" means a tobacco retail permit issued under this chapter.

53            (10) (a) "Proof of age" means:

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

56            (ii) a valid identification that:

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

- 59 (B) is issued in accordance with the laws of a state other than Utah in which the
- 60 identification is issued;
- 61 (C) includes date of birth; and
- 62 (D) has a picture affixed;
- 63 (iii) a valid driver license certificate that is issued under Title 53, Chapter 3, Uniform
- 64 Driver License Act, or in accordance with the laws of the state in which the valid driver license
- 65 is issued;
- 66 (iv) a valid United States military identification card that:
- 67 (A) includes date of birth; and
- 68 (B) has a picture affixed; or
- 69 (v) a valid passport.
- 70 (b) "Proof of age" does not include a valid driving privilege card issued in accordance
- 71 with Section [53-3-207](#).
- 72 (11) "Retail tobacco specialty business" means the same as that term is defined:
- 73 (a) as it relates to a municipality, in Section [10-8-41.6](#); and
- 74 (b) as it relates to a county, in Section [17-50-333](#).
- 75 (12) "Tax commission license" means a license issued by the State Tax Commission
- 76 under:
- 77 (a) Section [59-14-201](#) to sell a cigarette at retail;
- 78 (b) Section [59-14-301](#) to sell a tobacco product at retail; or
- 79 (c) Section [59-14-803](#) to sell an electronic cigarette product or a nicotine product.
- 80 (13) "Tobacco product" means:
- 81 (a) a tobacco product as defined in Section [76-10-101](#); or
- 82 (b) tobacco paraphernalia as defined in Section [76-10-101](#).
- 83 (14) "Tobacco retailer" means ~~[a person that is required to obtain a tax commission~~
- 84 ~~license.];~~
- 85 (a) a retailer as defined in Section [59-14-102](#);
- 86 (b) a person who offers to sell, displays, or advertises a cigarette, an electronic
- 87 cigarette, or a nicotine product to a consumer in the state; and
- 88 (c) a person who sells, offers to sell, distributes, displays, or advertises a tobacco
- 89 product to a consumer in the state.

90 Section 2. Section **26-62-203** is amended to read:

91 **26-62-203. Permit term and fees.**

92 (1) (a) The term of a permit issued under this chapter to a retail tobacco specialty  
93 business is one year.

94 (b) The term of a permit issued under this chapter to a general tobacco retailer is two  
95 years.

96 (2) (a) A local health department may not issue a permit under this chapter until the  
97 applicant has paid [~~a permit fee~~] to the local health department:

98 (i) a permit fee of:

99 ~~[(i)]~~ (A) \$30 for a new permit;

100 ~~[(ii)]~~ (B) \$20 for a permit renewal; or

101 ~~[(iii)]~~ (C) \$30 for reinstatement of a permit that has been revoked, suspended, or  
102 allowed to expire[-]; and

103 (ii) an electronic cigarette product hazardous waste disposal fee of \$25.

104 (b) A local health department that collects fees under Subsection (2)(a)(i) shall use the  
105 fees to administer the permit requirements under this chapter.

106 (c) In addition to the fee described in Subsection (2)(a), a local health department may  
107 establish and collect a fee to perform a plan review for a retail tobacco specialty business  
108 permit.

109 (d) A local health department shall transfer fees paid under Subsection (2)(a)(ii) to the  
110 Department of Environmental Quality for use by that department's Division of Environmental  
111 Response and Remediation to administer hazardous waste disposal requirements for electronic  
112 cigarette products and nicotine products.

113 (3) A permit holder may apply for a renewal of a permit no earlier than 30 days before  
114 the day on which the permit expires.

115 (4) A tobacco retailer that fails to renew a permit before the permit expires may apply  
116 to reinstate the permit by submitting to the local health department:

117 (a) the information required in Subsection **26-62-202(3)** and, if applicable, Subsection  
118 **26-62-202(4)**;

119 (b) the fee for the reinstatement of a permit; and

120 (c) a signed affidavit affirming that the tobacco retailer has not violated the

121 prohibitions in Subsection 26-62-201(1)(b) after the permit expired.

122 Section 3. Section 26-62-206 is amended to read:

123 **26-62-206. Requirements for the sale of tobacco product, electronic cigarette**  
124 **product, or nicotine product.**

125 (1) A tobacco retailer shall:

126 (a) provide the customer with an itemized receipt for each sale of a tobacco product, an  
127 electronic cigarette product, or a nicotine product that separately identifies:

128 (i) the name of the tobacco product, the electronic cigarette product, or the nicotine  
129 product;

130 (ii) the amount charged for each tobacco product, electronic cigarette product, or  
131 nicotine product; and

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

133 (b) maintain an itemized transaction log for each sale of a tobacco product, an  
134 electronic cigarette product, or a nicotine product that separately identifies:

135 (i) the name of the tobacco product, the electronic cigarette product, or the nicotine  
136 product;

137 (ii) the amount charged for each tobacco product, electronic cigarette product, or  
138 nicotine product; and

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

140 (2) A tobacco retailer may not sell, give, provide, or furnish a tobacco product, an  
141 electronic cigarette product, or a nicotine product to an individual who is younger than 21 years  
142 old.

143 (3) The itemized transaction log described in Subsection (1)(b) shall be:

144 (a) maintained for at least one year after the date of each transaction in the itemized  
145 transaction log;

146 (b) made available to an enforcing agency or a peace officer at the request of the  
147 enforcing agency or the peace officer; and

148 (c) in addition to any documentation required under Section 59-1-1406 and Subsection  
149 59-14-805(2).

150 Section 4. Section 26-62-301 is amended to read:

151 **26-62-301. Permit violation.**

152 A [person] tobacco retailer is in violation of the permit issued under this chapter if the  
153 [person] tobacco retailer violates:

- 154 (1) a provision of this chapter;
- 155 (2) a provision of licensing laws under Section 10-8-41.6 or Section 17-50-333;
- 156 (3) a provision of Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic  
157 Chemical Solvents;
- 158 (4) a provision of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
- 159 (5) a regulation restricting the sale and distribution of cigarettes ~~[and]~~, smokeless  
160 tobacco, and covered tobacco products issued by the United States Food and Drug  
161 Administration under 21 C.F.R. Part 1140; or
- 162 (6) any other provision of state law or local ordinance regarding the sale, marketing, or  
163 distribution of a tobacco product, an electronic cigarette product, or a nicotine product.

164 Section 5. Section 26-62-304 is amended to read:

165 **26-62-304. Hearing -- Evidence of criminal conviction.**

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

172 (2) If the tobacco retailer or employee is convicted of violating Section 76-10-114, the  
173 enforcing agency:

174 (a) shall assess an additional monetary penalty under this chapter for the same offense  
175 for which the conviction was obtained; and

176 (b) shall revoke or suspend a permit in accordance with Section 26-62-305.

177 Section 6. Section 76-10-114 is amended to read:

178 **76-10-114. Unlawful sale of a tobacco product, electronic cigarette product, or**  
179 **nicotine product.**

180 (1) As used in this section~~[(a) "Compensatory service" means service or unpaid work~~  
181 ~~performed by an employee, in lieu of the payment of a fine or imprisonment. (b) "Employee"]~~,  
182 "employee" means an employee or an owner of a tobacco retailer.

183 (2) It is unlawful for an employee to [~~knowingly or intentionally sell or~~] sell, give,  
184 provide, or furnish a tobacco product, an electronic cigarette product, or a nicotine product in  
185 the course of business to an individual who is under 21 years old.

186 (3) An employee who violates this section is[] guilty of an infraction and subject to a  
187 fine of \$50.

188 [~~(a) on a first violation:~~]

189 [~~(i) guilty of an infraction; and~~]

190 [~~(ii) subject to:~~]

191 [~~(A) a fine not exceeding \$1,000; or~~]

192 [~~(B) compensatory service;~~]

193 [~~(b) on any subsequent violation:~~]

194 [~~(i) guilty of a class C misdemeanor; and~~]

195 [~~(ii) subject to:~~]

196 [~~(A) a fine not exceeding \$2,000; or~~]

197 [~~(B) compensatory service.~~]

198 (4) The enforcing agency shall issue the additional civil penalties described in Section  
199 26-62-305 against the tobacco retailer.

200 Section 7. Section ~~77-39-101~~ is amended to read:

201 **77-39-101. Investigation of sales of alcohol, tobacco products, electronic cigarette**  
202 **products, and nicotine products to underage individuals.**

203 (1) As used in this section:

204 (a) "Electronic cigarette product" means the same as that term is defined in Section  
205 76-10-101.

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

207 (c) "Peace officer" means the same as the term is described in Section 53-13-109.

208 (d) "Tobacco product" means the same as that term is defined in Section 76-10-101.

209 (2) (a) A peace officer may investigate the possible violation of:

210 (i) Section 32B-4-403 by requesting an individual under 21 years old to enter into and  
211 attempt to purchase or make a purchase of alcohol from a retail establishment; or

212 (ii) Section 76-10-114 by requesting an individual under 21 years old to enter into and  
213 attempt to purchase or make a purchase from a retail establishment of:

- 214 (A) a tobacco product;
- 215 (B) an electronic cigarette product; or
- 216 (C) a nicotine product.
- 217 (b) A peace officer who is present at the site of a proposed purchase shall direct,
- 218 supervise, and monitor the individual requested to make the purchase.
- 219 (c) Immediately following a purchase or attempted purchase or as soon as practical the
- 220 supervising peace officer shall inform the cashier and the proprietor or manager of the retail
- 221 establishment that the attempted purchaser was under the legal age to purchase:
- 222 (i) alcohol; or
- 223 (ii) (A) a tobacco product;
- 224 (B) an electronic cigarette product; or
- 225 (C) a nicotine product.
- 226 (d) If a citation or information is issued, the citation or information shall be issued
- 227 within seven days after the day on which the purchase occurs.
- 228 (3) (a) If an individual under 18 years old is requested to attempt a purchase, a written
- 229 consent of that individual's parent or guardian shall be obtained before the individual
- 230 participates in any attempted purchase.
- 231 (b) An individual requested by the peace officer to attempt a purchase may:
- 232 (i) be a trained volunteer; or
- 233 (ii) receive payment, but may not be paid based on the number of successful purchases
- 234 of alcohol, tobacco products, electronic cigarette products, or nicotine products.
- 235 (4) The individual requested by the peace officer to attempt a purchase and anyone
- 236 accompanying the individual attempting a purchase may use false identification in attempting
- 237 the purchase if:
- 238 (a) the Department of Public Safety created in Section [53-1-103](#) provides the false
- 239 identification;
- 240 (b) the false identification:
- 241 (i) accurately represents the individual's age; and
- 242 (ii) displays a current photo of the individual; and
- 243 (c) the peace officer maintains possession of the false identification at all times outside
- 244 the attempt to purchase.



245 (5) An individual requested to attempt to purchase or make a purchase pursuant to this  
246 section is immune from prosecution, suit, or civil liability for the purchase of, attempted  
247 purchase of, or possession of alcohol, a tobacco product, an electronic cigarette product, or a  
248 nicotine product if a peace officer directs, supervises, and monitors the individual.

249 (6) (a) Except as provided in Subsection (6)(b), a purchase attempted under this section  
250 shall be conducted within a 12-month period:

251 (i) on a random basis at any one retail establishment location, not more often than four  
252 times for the attempted purchase of alcohol; and

253 (ii) a minimum of two times at a retail establishment that sells tobacco products,  
254 electronic cigarette products, or nicotine products for the attempted purchase of a tobacco  
255 product, an electronic cigarette product, or a nicotine product.

256 (b) This section does not prohibit an investigation or an attempt to purchase alcohol, a  
257 tobacco product, an electronic cigarette product, or a nicotine product under this section if:

258 (i) (A) there is reasonable suspicion to believe the retail establishment has sold alcohol,  
259 a tobacco product, an electronic cigarette product, or a nicotine product to an individual under  
260 ~~[the age established by Section 32B-4-403 or 76-10-114]~~ 21 years old; and

261 ~~[(ii)]~~ (B) the supervising peace officer makes a written record of the grounds for the  
262 reasonable suspicion~~[-];~~ or

263 (ii) within the past six months the retail establishment has been issued a citation under  
264 this section for selling alcohol, a tobacco product, an electronic cigarette product, or a nicotine  
265 product to an individual under 21 years old.

266 (7) (a) The peace officer exercising direction, supervision, and monitoring of the  
267 attempted purchase shall make a report of the attempted purchase, whether or not a purchase  
268 was made.

269 (b) The report required by this Subsection (7) shall include:

270 (i) the name of the supervising peace officer;

271 (ii) the name of the individual attempting the purchase;

272 (iii) a photograph of the individual attempting the purchase showing how that  
273 individual appeared at the time of the attempted purchase;

274 (iv) the name and description of the cashier or proprietor from whom the individual  
275 attempted the purchase;

276 (v) the name and address of the retail establishment; and

277 (vi) the date and time of the attempted purchase.