

## SB0189S04 compared with SB0189S03

~~{deleted text}~~ shows text that was in SB0189S03 but was deleted in SB0189S04.

inserted text shows text that was not in SB0189S03 but was inserted into SB0189S04.

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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:

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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

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

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

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

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

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

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

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

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

#### REPEALS:

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

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

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

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

(1) As used in this section:

(a) "Community location" means:

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

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

(iii) a trade or technical school;

(iv) a church;

(v) a public library;

(vi) a public playground;

(vii) a public park;

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

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- (ix) a public recreational facility;
- (x) a public arcade; or
- (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
- (b) "Department" means the Department of Health, created in Section 26-1-4.
- (c) "Electronic cigarette product" means the same as that term is defined in Section 76-10-101.
- (d) "Flavored electronic cigarette product" means the same as that term is defined in Section 76-10-101.
- (e) "Licensee" means a person licensed under this section to conduct business as a retail tobacco specialty business.
- (f) "Local health department" means the same as that term is defined in Section 26A-1-102.
- (g) "Nicotine product" means the same as that term is defined in Section 76-10-101.
- (h) "Retail tobacco specialty business" means a commercial establishment in which:
  - (i) sales of tobacco products, electronic cigarette products, and nicotine products account for more than 35% of the total quarterly gross receipts for the establishment;
  - (ii) 20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, or nicotine products;
  - (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, or nicotine products;
  - (iv) the commercial establishment:
    - (A) holds itself out as a retail tobacco specialty business; and
    - (B) causes a reasonable person to believe the commercial establishment is a retail tobacco specialty business;
  - (v) any flavored electronic cigarette product is sold; or
  - (vi) the retail space features a self-service display for tobacco products, electronic cigarette products, or nicotine products.
- (i) "Self-service display" means the same as that term is defined in Section 76-10-105.1.
- (j) "Tobacco product" means:
  - (i) a tobacco product as defined in Section 76-10-101; or

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

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

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

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

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

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

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

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

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

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

(ii) for a retailer that sells an electronic cigarette product or a nicotine product, a valid

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license issued by the State Tax Commission in accordance with Section 59-14-803 to sell an electronic cigarette product or a nicotine product.

(6) (a) Nothing in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) the retail tobacco specialty business does not close for business or otherwise suspend the sale of tobacco products, electronic cigarette products, or nicotine products for

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more than 60 consecutive days;

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

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

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

(B) zoning ordinances;

(C) building codes; and

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

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

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

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

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

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

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

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

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

(iv) the retail tobacco specialty business does not substantially change the business

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premises or business operation as the business existed when the retail tobacco specialty business received a permit under Subsection (7)(d)(i); and

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

- (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;
- (B) zoning ordinances;
- (C) building codes; and
- (D) the requirements of the retail tobacco permit described in Subsection (7)(d)(i).
- (e) A retail tobacco specialty business described in Subsection (7)(a) or (b) that is

located within 1,000 feet of a public or private kindergarten, elementary, ~~for~~ secondary; middle, junior high, or high school before July 1, 2022, is exempt from Subsection (4)(a)(iii)(B) if the retail tobacco specialty business:

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

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

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

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

(1) As used in this section:

(a) "Community location" means:

- (i) a public or private kindergarten, elementary, middle, junior high, or high school;
- (ii) a licensed child-care facility or preschool;
- (iii) a trade or technical school;
- (iv) a church;
- (v) a public library;
- (vi) a public playground;
- (vii) a public park;
- (viii) a youth center or other space used primarily for youth oriented activities;
- (ix) a public recreational facility;
- (x) a public arcade; or

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- (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
- (b) "Department" means the Department of Health, created in Section 26-1-4.
- (c) "Electronic cigarette product" means the same as that term is defined in Section 76-10-101.
- (d) "Flavored electronic cigarette product" means the same as that term is defined in Section 76-10-101.
- (e) "Licensee" means a person licensed under this section to conduct business as a retail tobacco specialty business.
- (f) "Local health department" means the same as that term is defined in Section 26A-1-102.
- (g) "Nicotine product" means the same as that term is defined in Section 76-10-101.
- (h) "Retail tobacco specialty business" means a commercial establishment in which:
  - (i) sales of tobacco products, electronic cigarette products, and nicotine products account for more than 35% of the total quarterly gross receipts for the establishment;
  - (ii) 20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, or nicotine products;
  - (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, or nicotine products;
  - (iv) the commercial establishment:
    - (A) holds itself out as a retail tobacco specialty business; and
    - (B) causes a reasonable person to believe the commercial establishment is a retail tobacco specialty business;
  - (v) any flavored electronic cigarette product is sold; or
  - (vi) the retail space features a self-service display for tobacco products, electronic cigarette products, or nicotine products.
- (i) "Self-service display" means the same as that term is defined in Section 76-10-105.1.
- (j) "Tobacco product" means:
  - (i) the same as that term is defined in Section 76-10-101; or
  - (ii) tobacco paraphernalia as defined in Section 76-10-101.
- (2) The regulation of a retail tobacco specialty business is an exercise of the police



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powers of the state by the state or by the delegation of the state's police power to other governmental entities.

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

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

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

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

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

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

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

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

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

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(6) (a) Nothing in this section:

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

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

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

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

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

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

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

(7) (a) [A] Except as provided in Subsection (7)(e), a retail tobacco specialty business is exempt from Subsection (4) if:

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

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

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

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

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

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

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

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premises or business operation; and

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

- (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;
- (B) zoning ordinances;
- (C) building codes; and
- (D) the requirements of the license described in Subsection (7)(a)(i).

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

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

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

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

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

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

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

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

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

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

- (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;
  - (B) zoning ordinances;
  - (C) building codes; and
  - (D) the requirements of the retail tobacco permit described in Subsection (7)(d)(i).
- (e) A retail tobacco specialty business described in Subsection (7)(a) or (b) that is

located within 1,000 feet of a public or private kindergarten, elementary, ~~for~~ secondary, middle, junior high, or high school before July 1, 2022, is exempt from Subsection (4)(a)(iii)(B) if the retail tobacco specialty business:

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

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

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

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

(1) A retail tobacco specialty business shall:

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

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

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

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

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

(2) A retail tobacco specialty business may not:

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

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cigarette product, or a nicotine product; or

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

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

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

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

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

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

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

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

### **26-62-305. Penalties.**

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

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

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

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

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\$1,000;

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

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

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

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

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

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

(ii) revoke a permit of the retailer; and

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

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

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

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

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

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

(4) If a violation is found in an investigation of a retail tobacco specialty business by a law enforcement agency under Section 77-39-101 for the sale of a tobacco product, an electronic cigarette product, or a nicotine product to an individual under 21 years old, the enforcing agency shall [~~apply the provisions of Section 26-62-402.1~~]:

(a) on the first violation:

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

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

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

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### violation:

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

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

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

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

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

(b) A person whose permit:

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

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

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

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

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

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

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

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

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

(b) the employees have completed that training program within 30 days after the day on

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which each employee commences the duties of selling a tobacco product, an electronic cigarette product, or a nicotine product.

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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



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(b) Information obtained under this section:

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

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

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

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

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

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

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

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

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

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

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

(a) an employee;

(b) a peace officer; or

(c) a representative of an enforcing agency.

Section 8. Section ~~{26-62-402}~~ 76-10-105.1 is amended to read:

~~{~~ 26-62-402. Penalties.

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

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- ~~—— (a) on a first violation, impose a penalty of [no more than \$500] \$1,000 on the retail tobacco specialty business;~~
- ~~—— (b) on a second violation for the same retail tobacco specialty business that occurs within one year of a previous violation, impose a penalty of [no more than \$750] \$1,500;~~
- ~~—— (c) on a third violation for the same retail tobacco specialty business that occurs within two years of the two previous violations, impose:~~
- ~~—— (i) a suspension of the permit for 30 consecutive business days within 60 days after the day on which the third violation occurs; or~~
- ~~—— (ii) a penalty of [no more than \$1,000] \$2,000; and~~
- ~~—— (d) on a fourth or subsequent violation within two years of the three previous violations:~~
- ~~—— (i) impose a penalty of [no more than \$1,000] \$2,000;~~
- ~~—— (ii) revoke the permit of the retail tobacco specialty business; and~~
- ~~—— (iii) recommend to a municipality or county that a retail tobacco specialty business license issued under Section 10-8-41.6 or 17-50-333 be suspended or revoked.~~
- ~~—— (2) If a violation of this part is committed by the owner and is found in an investigation of a retail tobacco specialty business by a law enforcement agency under Section 77-39-101, the enforcing agency shall:~~
- ~~—— (a) on a first violation, impose a fine [not exceeding] of \$2,000; and~~
- ~~—— (b) on a second violation at the same retail tobacco specialty business within one year of the first violation:~~
- ~~—— (i) impose a fine [not exceeding] of \$5,000;~~
- ~~—— (ii) revoke the retail tobacco specialty business's permit; and~~
- ~~—— (iii) recommend to a municipality or county that the retail tobacco specialty license issued under Section 10-8-41.6 or 17-50-333 to the retail tobacco specialty business be suspended or revoked.~~
- ~~—— (3) (a) As used in this Subsection (3), "high risk tobacco retailer" means a retail tobacco specialty business that is:~~
- ~~—— (i) within 1,000 feet of a community location as defined in Section 10-8-41.6 or Section 17-50-333; and~~
- ~~—— (ii) operating under an exemption in accordance with Subsection 10-8-41.6(7) or~~

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Subsection 17-50-333(7):

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

~~(i) on the first violation:~~

~~(A) impose a fine of \$5,000; and~~

~~(B) immediately suspend the permit for 30 consecutive days; and~~

~~(ii) on the second violation at the same retail location within two years of the first violation:~~

~~(A) impose a fine of \$10,000; and~~

~~(B) revoke the permit for the tobacco retailer.~~

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

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

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

(1) As used in this section:

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

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

(A) vending machine; or

(B) self-service display.

(b) "Retailer" means a person who:

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

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

(c) "Self-service display" means a display of a tobacco product, an electronic cigarette product, or a nicotine product to which the public has access without the intervention of a

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retailer or retailer's employee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) class C misdemeanor on the first offense;

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

(c) class A misdemeanor on any subsequent offenses.

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

**Section 9. Repealer.**

**This bill repeals:**

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