

Representative Jennifer Dailey-Provost proposes the following substitute bill:

RETAIL TOBACCO BUSINESS AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer Dailey-Provost

Senate Sponsor: Evan J. Vickers

6	Cosponsors:	Karen Kwan	Paul Ray
7	Melissa G. Ballard	Derrin R. Owens	Andrew Stoddard
8	Suzanne Harrison	Lee B. Perry	Norman K. Thurston
9	Sandra Hollins	Stephanie Pitcher	Raymond P. Ward
10	Eric K. Hutchings	Val K. Potter	Mark A. Wheatley
11	Marsha Judkins	Marie H. Poulson	

LONG TITLE

General Description:

This bill amends provisions relating to the sale of certain tobacco products.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates requirements regarding the verification of age when selling an electronic cigarette product or seeking entry into certain restricted areas;
- ▶ prohibits an individual from using proof of age fraudulently or permitting the individual's proof of age to be used by another individual fraudulently to obtain an electronic cigarette product or gain entry into certain restricted areas;
- ▶ prohibits a manufacturer, wholesaler, or retailer from providing certain discounts or



25 giveaways for electronic cigarette products; and
26 ▶ makes technical changes.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 This bill provides a special effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **26-62-102**, as renumbered and amended by Laws of Utah 2018, Chapter 231

34 **76-10-111**, as last amended by Laws of Utah 2010, Chapter 114

35 ENACTS:

36 **26-62-206**, Utah Code Annotated 1953

37 **26-62-401**, Utah Code Annotated 1953

38 **26-62-402**, Utah Code Annotated 1953

39 **26-62-403**, Utah Code Annotated 1953

40 **26-62-404**, Utah Code Annotated 1953



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

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

44 **26-62-102. Definitions.**

45 As used in this chapter:

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

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

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

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

50 **59-14-802**.

51 ~~(2)~~ (3) "Employee" means an employee of a tobacco retailer.

52 ~~(3)~~ (4) "Enforcing agency" means the state Department of Health, or any local health
53 department enforcing the provisions of this chapter.

54 ~~(4)~~ (5) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco
55 specialty business.

56 ~~[(5)]~~ (6) "Local health department" means the same as that term is defined in Section
57 [26A-1-102](#).

58 ~~[(6)]~~ (7) "Permit" means a tobacco retail permit issued under this chapter.

59 (8) (a) "Proof of age" means:

60 (i) an identification card issued under Title 53, Chapter 3, Part 8, Identification Card
61 Act;

62 (ii) an identification that:

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

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

67 (C) includes date of birth; and

68 (D) has a picture affixed;

69 (iii) a valid driver license certificate that:

70 (A) includes date of birth;

71 (B) has a picture affixed; and

72 (C) is issued under Title 53, Chapter 3, Uniform Driver License Act, or in accordance
73 with the laws of the state in which it is issued;

74 (iv) a military identification card that:

75 (A) includes date of birth; and

76 (B) has a picture affixed; or

77 (v) a valid passport.

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

80 (9) "Qualified individual" means an individual who:

81 (a) for entry into a restricted area, is permitted to enter or be present at a retail tobacco
82 specialty business under Subsection [76-10-105.1\(4\)](#); or

83 (b) for obtaining an electronic cigarette product, may be provided an electronic
84 cigarette product under Section [76-10-104](#).

85 (10) "Restricted area" means:

86 (a) any part of the premises of a retail tobacco specialty business; or

87 (b) any part of the floor space of a general tobacco retailer that is:
88 (i) physically separated from unrestricted parts of the general tobacco retailer; and
89 (ii) restricted to an individual who provides proof of age before entering.
90 ~~[(7)]~~ (11) "Retail tobacco specialty business" means the same as that term is defined:
91 (a) as it relates to a municipality, in Section 10-8-41.6; and
92 (b) as it relates to a county, in Section 17-50-333.
93 ~~[(8)]~~ (12) "Tax commission license" means a license issued by the State Tax
94 Commission under:
95 (a) Section 59-14-201 to sell cigarettes at retail;
96 (b) Section 59-14-301 to sell tobacco products at retail; or
97 (c) Section 59-14-803 to sell an electronic cigarette product.
98 ~~[(9)]~~ (13) "Tobacco product" means:
99 (a) a cigar[;] or cigarette[; ~~or electronic cigarette~~] as those terms are defined in Section
100 76-10-101;
101 (b) an electronic cigarette product;
102 ~~[(b)]~~ (c) a tobacco product as that term is defined in Section 59-14-102, including:
103 (i) chewing tobacco; or
104 (ii) any substitute for a tobacco product, including flavoring or additives to tobacco; or
105 ~~[(c)]~~ (d) tobacco paraphernalia as that term is defined in Section 76-10-104.1.
106 ~~[(10)]~~ (14) "Tobacco retailer" means a person that is required to obtain a tax
107 commission license.
108 Section 2. Section **26-62-206** is enacted to read:
109 **26-62-206. Permit requirements for the sale of an electronic cigarette product.**
110 (1) If a tobacco retailer sells an electronic cigarette product, the tobacco retailer shall
111 maintain a video recording system that:
112 (a) tracks the inventory and sale of any electronic cigarette product offered for sale by
113 the tobacco retailer;
114 (b) stores a video record for at least 30 days; and
115 (c) is made available to an enforcing agency or peace officer at the request of the
116 enforcing agency or peace officer.
117 (2) A general tobacco retailer that sells an electronic cigarette product shall display and

118 store the electronic cigarette product in a manner that is not accessible to an individual who is
119 not a qualified individual, including:

120 (a) behind a retail counter that is not accessible to customers of the general tobacco
121 retailer;

122 (b) in a locked case that cannot be accessed without assistance from an employee; or

123 (c) in a part of the store that:

124 (i) is physically separated from unrestricted parts of the general tobacco retailer; and

125 (ii) is only made accessible to an individual who provides proof of age prior to

126 entering.

127 Section 3. Section **26-62-401** is enacted to read:

128 **Part 4. Proof of Age Requirements**

129 **26-62-401. Verification of proof of age.**

130 (1) A tobacco retailer shall require that an employee verify proof of age as provided in
131 this section.

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

134 (i) except as provided in Subsection (2)(b), enter a restricted area; or

135 (ii) obtain an electronic cigarette product.

136 (b) In accordance with Subsection 76-10-105.1(4), an individual who is not a qualified
137 individual may be permitted to enter a restricted area if the individual is:

138 (i) accompanied by a parent or legal guardian who provides proof of age;

139 (ii) present at the tobacco retailer for a bona fide commercial purpose other than to
140 purchase a cigarette, tobacco, or an electronic cigarette; or

141 (iii) 18 years of age or older and an active duty member of the United States Armed
142 Forces, as demonstrated by a valid, government-issued military identification card.

143 (3) To comply with Subsections (1) and (2), an employee shall:

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

145 (b) (i) verify the validity of the proof of age electronically under the verification
146 program created in Subsection (6); or

147 (ii) if the employee attempts to verify the validity of the proof of age under Subsection
148 (3)(b)(i) and the proof of age cannot be verified electronically, document the individual's proof

149 of age in accordance with Subsection (4)(b).

150 (4) If, after an employee attempts to verify an individual's proof of age under
151 Subsection (6), the employee cannot electronically verify the individual's proof of age, an
152 employee complies with Subsections (1) and (2) if:

153 (a) for a tobacco retailer that maintains a video recording system described in
154 Subsection (5), the employee manually inputs the individual's date of birth; or

155 (b) for a tobacco retailer that does not maintain a video recording system described in
156 Subsection (5), the employee obtains a statement of age from the individual that includes:

157 (i) the individual's name

158 (ii) the individual's date of birth;

159 (iii) a description of the type of document presented to the employee as proof of age;

160 (iv) the date that the statement of age is signed;

161 (v) the signature of the employee; and

162 (vi) the signature of the individual.

163 (5) A video recording system described in Subsection (4) shall:

164 (a) record a clear video of the inventory of any electronic cigarette product offered for
165 sale by the tobacco retailer;

166 (b) record a clear video of the sale of any electronic cigarette product where the
167 employee and the customer are clearly visible;

168 (c) store a video record for at least 20 days; and

169 (d) be made available to an enforcing agency or peace officer at the request of the
170 enforcing agency or peace officer.

171 (6) The department shall implement an electronic verification program that adopts the
172 specifications and security measures established under Subsection [32B-1-407\(5\)](#) by the
173 Alcoholic Beverage Control Commission created in Section [32B-2-201](#).

174 (7) At the request of a tobacco retailer, the department shall provide to the tobacco
175 retailer a form for a statement of age described in Subsection (4)(b).

176 (8) (a) A tobacco retailer may not disclose information obtained under this section
177 except as provided under this chapter.

178 (b) Information obtained under this section shall be:

179 (i) kept for at least one year; and

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

182 Section 4. Section **26-62-402** is enacted to read:

183 **26-62-402. Presentation of proof of age upon request.**

184 (1) If an individual does not present proof of age at the request of an individual listed
185 in Subsection (3), a tobacco retailer may not permit the individual to:

186 (a) obtain an electronic cigarette product; or

187 (b) except as provided in Subsection (2), enter a restricted area.

188 (2) An individual may enter a restricted area without presenting proof of age if the
189 individual is:

190 (a) accompanied by a parent or legal guardian who presents proof of age or a statement
191 of age; or

192 (b) present at the tobacco retailer for a bona fide commercial purpose other than to
193 purchase a cigarette, tobacco, or an electronic cigarette.

194 (3) To determine whether an individual is a qualified individual, the following may
195 request the individual to present proof of age:

196 (a) an employee;

197 (b) a peace officer; or

198 (c) the representative of an enforcement agency.

199 Section 5. Section **26-62-403** is enacted to read:

200 **26-62-403. Unlawful transfer or use of proof of age -- False information.**

201 (1) (a) It is unlawful for an individual to transfer that individual's proof of age to
202 another individual to aid that individual:

203 (i) in procuring a tobacco product; or

204 (ii) in gaining admittance to a restricted area.

205 (b) An individual who violates Subsection (1)(a) is guilty of a class B misdemeanor.

206 (2) (a) It is unlawful for an individual to use a proof of age containing false information
207 with the intent to:

208 (i) procure a tobacco product; or

209 (ii) gain admittance to a restricted area.

210 (b) An individual who violates this Subsection (2) is guilty of a class A misdemeanor.

211 Section 6. Section **26-62-404** is enacted to read:

212 **26-62-404. Penalty.**

213 (1) Unless otherwise provided in this chapter, a person who violates this part is guilty
214 of:

215 (a) for the first offense within a one-year period, an infraction punishable by a fine of
216 \$100;

217 (b) for the second offense that occurs within one year of a previous violation, an
218 infraction punishable by a fine of \$200;

219 (c) for the third offense that occurs within one year after two or more previous
220 violations, an infraction punishable by a fine of \$300; and

221 (d) for the fourth or subsequent offense that occurs within one year after three or more
222 previous offenses, a class B misdemeanor.

223 (2) A person is not subject to a penalty for a violation of this part if it is proved to the
224 enforcing agency or the court hearing the matter that the person charged with the violation
225 acted in good faith.

226 Section 7. Section **76-10-111** is amended to read:

227 **76-10-111. Restrictions on sale of smokeless tobacco or electronic cigarettes --**
228 **Exceptions.**

229 (1) The Legislature finds that:

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

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

233 (c) the use of electronic cigarettes may lead to unhealthy behavior such as the use of
234 tobacco products; and

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

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

239 (i) give or distribute without charge any smokeless tobacco, chewing tobacco, or
240 electronic cigarette in this state[-];

241 (ii) except as provided in Subsection (2)(b), sell, offer for sale, or furnish any

242 electronic cigarette at less than 90% of the cost of the product to the manufacturer, wholesaler,
243 or retailer; or

244 (iii) give, distribute, sell, offer for sale, or furnish any electronic cigarette for free or at
245 a lower price because the purchaser makes another purchase.

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

248 (i) a manufacturer coupon:

249 (A) that is surrendered to the tobacco retailer at the time of sale; and

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

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

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

256 (c) Any person who violates this section is guilty of a class C misdemeanor for the first
257 offense, and is guilty of a class B misdemeanor for any subsequent offense.

258 (3) [(a)] Smokeless tobacco, chewing tobacco, or an electronic cigarette may be
259 distributed to adults without charge at professional conventions where the general public is
260 excluded.

261 [(b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who gives
262 smokeless tobacco, chewing tobacco, or an electronic cigarette to a person of legal age upon
263 the person's purchase of another tobacco product or electronic cigarette.]

264 **Section 8. Effective date.**

265 This bill takes effect on January 1, 2020.