



- 24 ▶ authorizes regulation and testing of manufacturer sealed electronic cigarette
- 25 substances;
- 26 ▶ requires a tobacco retailer to maintain certain records;
- 27 ▶ prohibits a manufacturer, wholesaler, or retailer from providing certain discounts or
- 28 giveaways for tobacco products; and
- 29 ▶ makes technical changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill provides a coordination clause.

34 **Utah Code Sections Affected:**

35 AMENDS:

- 36 **10-8-41.6**, as last amended by Laws of Utah 2018, Chapter 231
- 37 **17-50-333**, as last amended by Laws of Utah 2018, Chapter 231
- 38 **26-57-103**, as enacted by Laws of Utah 2015, Chapter 132
- 39 **76-10-111**, as last amended by Laws of Utah 2010, Chapter 114
- 40 **76-10-112**, as enacted by Laws of Utah 1989, Chapter 193

41 ENACTS:

42 **26-62-206**, Utah Code Annotated 1953

43 **Utah Code Sections Affected by Coordination Clause:**

- 44 **10-8-41.6**, as last amended by Laws of Utah 2018, Chapter 231
- 45 **17-50-333**, as last amended by Laws of Utah 2018, Chapter 231



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

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

49 **10-8-41.6. Regulation of retail tobacco specialty business.**

50 (1) As used in this section:

51 (a) "Community location" means:

- 52 (i) a public or private kindergarten, elementary, middle, junior high, or high school;
- 53 (ii) a licensed child-care facility or preschool;
- 54 (iii) a trade or technical school;

- 55 (iv) a church;
- 56 (v) a public library;
- 57 (vi) a public playground;
- 58 (vii) a public park;
- 59 (viii) a youth center or other space used primarily for youth oriented activities;
- 60 (ix) a public recreational facility;
- 61 (x) a public arcade; or
- 62 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
- 63 (b) "Department" means the Department of Health, created in Section [26-1-4](#).
- 64 (c) "Electronic cigarette product" means the same as that term is defined in Section
- 65 [59-14-802](#).
- 66 (d) (i) "Flavored electronic cigarette product" means an electronic cigarette product
- 67 that has a taste or smell that is distinguishable by an ordinary consumer either before or during
- 68 use or consumption of the electronic cigarette product.
- 69 (ii) "Flavored electronic cigarette product" includes an electronic cigarette product that
- 70 has a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic
- 71 beverage, herb, mint, or spice.
- 72 (iii) "Flavored electronic cigarette product" does not include an electronic cigarette
- 73 product that:
- 74 (A) has a taste or smell of only tobacco or menthol; or
- 75 (B) has received a modified risk tobacco product order from the United States Food
- 76 and Drug Administration under 21 U.S.C. Sec. 387k(g).
- 77 [~~(e)~~] (e) "Local health department" means the same as that term is defined in Section
- 78 [26A-1-102](#).
- 79 [~~(f)~~] (f) "Permittee" means a person licensed under this section to conduct business as
- 80 a retail tobacco specialty business.
- 81 [~~(g)~~] (g) "Retail tobacco specialty business" means a commercial establishment in
- 82 which:
- 83 (i) the sale of tobacco products accounts for more than 35% of the total quarterly gross
- 84 receipts for the establishment;
- 85 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or

86 storage of tobacco products;

87 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of  
88 tobacco products; [~~or~~]

89 (iv) the retail space features a self-service display for tobacco products[~~;~~]; or

90 (v) any flavored electronic cigarette product is sold.

91 [~~(f)~~] (h) "Self-service display" means the same as that term is defined in Section  
92 76-10-105.1.

93 [~~(g)~~] (i) "Tobacco product" means:

94 (i) any cigar, cigarette, or electronic cigarette, as those terms are defined in Section  
95 76-10-101;

96 (ii) a tobacco product, as that term is defined in Section 59-14-102, including:

97 (A) chewing tobacco; or

98 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;

99 and

100 (iii) tobacco paraphernalia, as that term is defined in Section 76-10-104.1.

101 (2) The regulation of a retail tobacco specialty business is an exercise of the police  
102 powers of the state, and through delegation, to other governmental entities.

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

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

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

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

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

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

114 (A) agriculture use; or

115 (B) residential use.

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

117 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest  
118 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard  
119 to intervening structures or zoning districts.

120 (5) (a) Except as provided in Subsection (5)(b), beginning July 1, 2018, a municipality  
121 may not issue or renew a license for a person to conduct business as a retail tobacco specialty  
122 business until the person provides the municipality with proof that the retail tobacco specialty  
123 business has:

124 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter  
125 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in  
126 which the retail tobacco specialty business is located; and

127 (ii) a valid license to sell tobacco products from the State Tax Commission.

128 (b) A person that was licensed to conduct business as a retail tobacco specialty  
129 business in a municipality before July 1, 2018, shall obtain a permit from a local health  
130 department under Title 26, Chapter 62, Tobacco Retail Permit, on or before January 1, 2019.

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

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

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

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

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

140 (ii) if a licensee violates the regulations restricting the sale and distribution of  
141 cigarettes and smokeless tobacco to protect children and adolescents issued by the United  
142 States Food and Drug Administration, 21 C.F.R. Part 1140;

143 (iii) upon the recommendation of the department or a local health department under  
144 Title 26, Chapter 62, Tobacco Retail Permit; or

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

146 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has  
147 a business license and is operating in a municipality in accordance with all applicable laws

148 except for the requirement in Subsection (4), on or before December 31, 2015, is exempt from  
149 Subsection (4).

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

152 (i) the retail tobacco specialty business license is renewed continuously without lapse  
153 or permanent revocation;

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

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

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

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

161 (B) zoning ordinances;

162 (C) building codes; and

163 (D) the requirements of a retail tobacco specialty business license issued before  
164 December 31, 2015.

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

166 **17-50-333. Regulation of retail tobacco specialty business.**

167 (1) As used in this section:

168 (a) "Community location" means:

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

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

171 (iii) a trade or technical school;

172 (iv) a church;

173 (v) a public library;

174 (vi) a public playground;

175 (vii) a public park;

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

177 (ix) a public recreational facility;

178 (x) a public arcade; or

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

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

181 (c) "Electronic cigarette product" means the same as that term is defined in Section  
182 [59-14-802](#).

183 (d) (i) "Flavored electronic cigarette product" means an electronic cigarette product  
184 that has a taste or smell that is distinguishable by an ordinary consumer either before or during  
185 use or consumption of the electronic cigarette product.

186 (ii) "Flavored electronic cigarette product" includes an electronic cigarette product that  
187 has a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic  
188 beverage, herb, mint, or spice.

189 (iii) "Flavored electronic cigarette product" does not include an electronic cigarette  
190 product that:

191 (A) has a taste or smell of only tobacco or menthol; or

192 (B) has received a modified risk tobacco product order from the United States Food  
193 and Drug Administration under 21 U.S.C. Sec. 387k(g).

194 ~~[(e)]~~ (e) "Licensee" means a person licensed under this section to conduct business as a  
195 retail tobacco specialty business.

196 ~~[(d)]~~ (f) "Local health department" means the same as that term is defined in Section  
197 [26A-1-102](#).

198 ~~[(e)]~~ (g) "Retail tobacco specialty business" means a commercial establishment in  
199 which:

200 (i) the sale of tobacco products accounts for more than 35% of the total quarterly gross  
201 receipts for the establishment;

202 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or  
203 storage of tobacco products;

204 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of  
205 tobacco products; ~~[or]~~

206 (iv) the retail space features a self-service display for tobacco products~~[-];~~ or

207 (v) any flavored electronic cigarette product is sold.

208 ~~[(f)]~~ (h) "Self-service display" means the same as that term is defined in Section  
209 [76-10-105.1](#).

210 [~~(g)~~] (i) "Tobacco product" means:

211 (i) any cigar, cigarette, or electronic cigarette as those terms are defined in Section  
212 76-10-101;

213 (ii) a tobacco product as that term is defined in Section 59-14-102, including:

214 (A) chewing tobacco; or

215 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;

216 and

217 (iii) tobacco paraphernalia as that term is defined in Section 76-10-104.1.

218 (2) The regulation of a retail tobacco specialty business is an exercise of the police  
219 powers of the state, and through delegation, to other governmental entities.

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

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

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

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

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

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

231 (A) agriculture use; or

232 (B) residential use.

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

237 (5) (a) Except as provided in Subsection (5)(b), beginning July 1, 2018, a county may  
238 not issue or renew a license for a person to conduct business as a retail tobacco specialty  
239 business until the person provides the county with proof that the retail tobacco specialty  
240 business has:



241 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter  
242 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in  
243 which the retail tobacco specialty business is located; and

244 (ii) a valid license to sell tobacco products from the State Tax Commission.

245 (b) A person that was licensed to conduct business as a retail tobacco specialty  
246 business in a county before July 1, 2018, shall obtain a permit from a local health department  
247 under Title 26, Chapter 62, Tobacco Retail Permit, on or before January 1, 2019.

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

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

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

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

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

256 (ii) if a licensee violates the regulations restricting the sale and distribution of  
257 cigarettes and smokeless tobacco to protect children and adolescents issued by the United  
258 States Food and Drug Administration, 21 C.F.R. Part 1140;

259 (iii) upon the recommendation of the department or a local health department under  
260 Title 26, Chapter 62, Tobacco Retail Permit; or

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

262 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has  
263 a business license and is operating in a county in accordance with all applicable laws except for  
264 the requirement in Subsection (4), on or before December 31, 2015, is exempt from Subsection  
265 (4).

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

268 (i) the retail tobacco specialty business license is renewed continuously without lapse  
269 or permanent revocation;

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

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

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

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

277 (B) zoning ordinances;

278 (C) building codes; and

279 (D) the requirements of a retail tobacco specialty business license issued before  
280 December 31, 2015.

281 Section 3. Section **26-57-103** is amended to read:

282 **26-57-103. Electronic cigarette products -- Labeling -- Manufacturing and**  
283 **quality control standards -- Advertising.**

284 (1) The department shall, in consultation with a local health department, as defined in  
285 Section [26A-1-102](#), and with input from members of the public, establish, no later than January  
286 1, 2016, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
287 Rulemaking Act, standards for electronic cigarette substance:

288 (a) labeling;

289 (b) nicotine content;

290 (c) packaging; and

291 (d) product quality.

292 [~~(2) The standards established by the department under Subsection (1) do not apply to a~~  
293 ~~manufacturer sealed electronic cigarette substance.]~~

294 (2) On or before January 1, 2021, the department shall, in consultation with a local  
295 health department, as defined in Section [26A-1-102](#), and with input from members of the  
296 public, establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
297 Rulemaking Act, standards for manufacturer sealed electronic cigarette substance:

298 (a) labeling;

299 (b) nicotine content;

300 (c) packaging; and

301 (d) product quality.

302 (3) (a) Beginning on July 1, 2016, a person may not sell an electronic cigarette

303 substance unless the electronic cigarette substance complies with the standards established by  
304 the department under Subsection (1).

305 (b) Beginning July 1, 2021, a person may not sell a manufacturer sealed electronic  
306 cigarette substance unless the manufacturer sealed electronic cigarette substance complies with  
307 the standards established by the department under Subsection (2).

308 (4) (a) Beginning on July 1, 2016, a local health department may not enact a rule or  
309 regulation regarding electronic cigarette substance labeling, nicotine content, packaging, or  
310 product quality that is not identical to the standards established by the department under  
311 [~~Subsection (1)~~] Subsections (1) and (2).

312 (b) Except as provided in Subsection (4)(c), a local health department may enact a rule  
313 or regulation regarding electronic cigarette substance manufacturing.

314 (c) A local health department may not enact a rule or regulation regarding a  
315 manufacturer sealed electronic cigarette substance.

316 (5) Beginning on July 1, 2016, a person may not advertise an electronic cigarette  
317 product:

318 (a) as a tobacco cessation device;

319 (b) if the person is not licensed to sell an electronic cigarette product under Section  
320 59-14-803; or

321 (c) during a period of time when the person's license to sell an electronic cigarette  
322 product under Section 59-14-803 has been suspended or revoked.

323 Section 4. Section 26-62-206 is enacted to read:

324 **26-62-206. Permit requirements for the sale of tobacco products.**

325 (1) A tobacco retailer shall:

326 (a) for each sale of a tobacco product, provide the customer with an itemized receipt  
327 for each sale of a tobacco product that separately identifies:

328 (i) the name of the tobacco product;

329 (ii) the amount charged for each tobacco product; and

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

331 (b) maintain an itemized transaction log for each sale of a tobacco product that  
332 separately identifies:

333 (i) the name of the tobacco product;

334 (ii) the amount charged for each tobacco product; and

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

336 (2) The itemized transaction log described in Subsection (1)(b) shall be:

337 (a) maintained for at least one year from the date of each transaction in the itemized

338 transaction log; and

339 (b) made available to an enforcing agency or peace officer at the request of the  
340 enforcing agency or peace officer that is no less restrictive than the provisions in this part.

341 Section 5. Section 76-10-111 is amended to read:

342 **76-10-111. Prohibition of gift or free distribution of smokeless tobacco or**  
343 **electronic cigarettes -- Exceptions.**

344 (1) The Legislature finds that:

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

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

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

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

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

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

356 (ii) except as provided in Subsection (2)(b), sell, offer for sale, or furnish any  
357 smokeless tobacco, chewing tobacco, or electronic cigarette at less than 90% of the cost of the  
358 product to the manufacturer, wholesaler, or retailer; or

359 (iii) give, distribute, sell, offer for sale, or furnish any smokeless tobacco, chewing  
360 tobacco, or electronic cigarette for free or at a lower price because the recipient of the  
361 electronic cigarette product makes another purchase.

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

364 (i) a physical manufacturer coupon:

365 (A) that is surrendered to the wholesaler or retailer at the time of sale; and  
 366 (B) for which the manufacturer will reimburse the wholesaler or the retailer for the full  
 367 amount of the discount described in the manufacturer coupon and provided to the purchaser;  
 368 (ii) a rebate that will be paid to the manufacturer, the wholesaler, or the retailer for the  
 369 full amount of the rebate provided to the purchaser; or  
 370 (iii) a promotional fund that will be paid to the manufacturer, the wholesaler, or the  
 371 retailer for the full amount of the promotional fund provided to the purchaser.

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

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

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

380 Section 6. Section **76-10-112** is amended to read:

381 **76-10-112. Prohibition of distribution of cigarettes or other tobacco products --**  
 382 **Exceptions.**

383 (1) (a) Except as provided in Subsection ~~[(2)]~~ (3), it is unlawful for a manufacturer,  
 384 wholesaler, or retailer to:

385 (i) give or distribute cigarettes or other tobacco products in this state without charge[-];

386 (ii) except as provided in Subsection (2)(b), sell, offer for sale, or furnish any cigarettes  
 387 or other tobacco products at less than the cost of the product to the manufacturer, wholesaler,  
 388 or retailer; or

389 (iii) give, distribute, sell, offer for sale, or furnish any cigarettes or other tobacco  
 390 products for free or at a lower price because the purchaser makes another purchase.

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

393 (i) a manufacturer coupon:

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

395 (B) for which the manufacturer will reimburse the wholesaler or retailer for the full

396 amount of the discount described in the manufacturer coupon and provided to the purchaser;

397 (ii) a rebate that will be paid to the manufacturer, wholesaler, or retailer for the full

398 amount of the rebate provided to the purchaser; or

399 (iii) a promotional fund that will be paid to the manufacturer, wholesaler, or retailer for

400 the full amount of the promotional fund provided to the purchaser.

401 (2) Any person who violates this [subsection] section is guilty of a class C

402 misdemeanor for the first offense and a class B misdemeanor for any subsequent offense.

403 ~~[(2)] (3) Cigarettes and other tobacco products may be distributed to adults without~~

404 ~~charge at professional conventions where the general public is excluded.~~

405 ~~[(3) The prohibition described in Subsection (1) does not apply to retailers,~~

406 ~~manufacturers, or distributors who give cigarettes or other tobacco products to persons of legal~~

407 ~~age upon their purchase of cigarettes or other tobacco products.]~~

408 **Section 7. Coordinating H.B. 118 with S.B. 37 -- Technical amendments.**

409 If this H.B. 118 and S.B. 37, Electronic Cigarette and Other Nicotine Product

410 Amendments, both pass and become law, it is the intent of the Legislature that the Office of

411 Legislative Research and General Counsel shall prepare the Utah Code database for publication

412 by amending:

413 (1) Subsection [10-8-41.6\(1\)\(c\)](#) to read:

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

415 [76-10-101.](#)"; and

416 (2) Subsection [17-50-333\(1\)\(c\)](#) to read:

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

418 [76-10-101.](#)"