

RETAIL TOBACCO SPECIALTY BUSINESS AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer Dailey-Provost

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends the definition of a retail tobacco specialty business to include any retailer that sells a flavored tobacco product;
- ▶ requires a tobacco retailer to maintain certain records;
- ▶ prohibits a manufacturer, wholesaler, or retailer from providing certain discounts or giveaways for tobacco products; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-8-41.6, as last amended by Laws of Utah 2018, Chapter 231

17-50-333, as last amended by Laws of Utah 2018, Chapter 231

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



28 [76-10-112](#), as enacted by Laws of Utah 1989, Chapter 193

29 ENACTS:

30 [26-62-206](#), Utah Code Annotated 1953

31

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

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

34 **10-8-41.6. Regulation of retail tobacco specialty business.**

35 (1) As used in this section:

36 (a) "Community location" means:

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

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

39 (iii) a trade or technical school;

40 (iv) a church;

41 (v) a public library;

42 (vi) a public playground;

43 (vii) a public park;

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

45 (ix) a public recreational facility;

46 (x) a public arcade; or

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

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

49 (c) (i) "Flavored tobacco product" means a tobacco product that has a taste or smell
50 that is distinguishable by an ordinary consumer either before or during use or consumption of
51 the tobacco product.

52 (ii) "Flavored tobacco product" includes a tobacco product that has a taste or smell of
53 any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, menthol, or
54 spice.

55 (iii) "Flavored tobacco product" does not include a tobacco product that:

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

57 (B) has a taste or smell of only menthol and is not an electronic cigarette product as
58 that term is defined in Section [59-14-802](#).

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

61 ~~[(d)]~~ (e) "Permittee" means a person licensed under this section to conduct business as
62 a retail tobacco specialty business.

63 ~~[(e)]~~ (f) "Retail tobacco specialty business" means a commercial establishment in
64 which:

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

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

69 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
70 tobacco products; or

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

72 (v) any flavored tobacco product is sold.

73 ~~[(f)]~~ (g) "Self-service display" means the same as that term is defined in Section
74 76-10-105.1.

75 ~~[(g)]~~ (h) "Tobacco product" means:

76 (i) any cigar, cigarette, or electronic cigarette, as those terms are defined in Section
77 76-10-101;

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

79 (A) chewing tobacco; or

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

81 and

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

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

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

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

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

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

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

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

- 106 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
107 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in
108 which the retail tobacco specialty business is located; and
- 109 (ii) a valid license to sell tobacco products from the State Tax Commission.

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

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

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

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

- 120 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,

121 Part 16, Pattern of Unlawful Activity Act;

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

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

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

128 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has
129 a business license and is operating in a municipality in accordance with all applicable laws
130 except for the requirement in Subsection (4), on or before December 31, 2015, is exempt from
131 Subsection (4).

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

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

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

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

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

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

143 (B) zoning ordinances;

144 (C) building codes; and

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

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

148 **17-50-333. Regulation of retail tobacco specialty business.**

149 (1) As used in this section:

150 (a) "Community location" means:

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

- 152 (ii) a licensed child-care facility or preschool;
- 153 (iii) a trade or technical school;
- 154 (iv) a church;
- 155 (v) a public library;
- 156 (vi) a public playground;
- 157 (vii) a public park;
- 158 (viii) a youth center or other space used primarily for youth oriented activities;
- 159 (ix) a public recreational facility;
- 160 (x) a public arcade; or
- 161 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
- 162 (b) "Department" means the Department of Health, created in Section [26-1-4](#).
- 163 (c) (i) "Flavored tobacco product" means a tobacco product that has a taste or smell
- 164 that is distinguishable by an ordinary consumer either before or during use or consumption of
- 165 the tobacco product.
- 166 (ii) "Flavored tobacco product" includes a tobacco product that has a taste or smell of
- 167 any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, menthol, or
- 168 spice.
- 169 (iii) "Flavored tobacco product" does not include a tobacco product that:
- 170 (A) has a taste or smell of only tobacco; or
- 171 (B) has a taste or smell of only menthol and is not an electronic cigarette product as
- 172 that term is defined in Section [59-14-802](#).
- 173 [~~(c)~~] (d) "Licensee" means a person licensed under this section to conduct business as a
- 174 retail tobacco specialty business.
- 175 [~~(d)~~] (e) "Local health department" means the same as that term is defined in Section
- 176 [26A-1-102](#).
- 177 [~~(e)~~] (f) "Retail tobacco specialty business" means a commercial establishment in
- 178 which:
- 179 (i) the sale of tobacco products accounts for more than 35% of the total quarterly gross
- 180 receipts for the establishment;
- 181 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
- 182 storage of tobacco products;

183 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
184 tobacco products; ~~or~~

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

186 (v) any flavored tobacco product is sold.

187 ~~(f)~~ (g) "Self-service display" means the same as that term is defined in Section
188 76-10-105.1.

189 ~~(g)~~ (h) "Tobacco product" means:

190 (i) any cigar, cigarette, or electronic cigarette as those terms are defined in Section
191 76-10-101;

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

193 (A) chewing tobacco; or

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

195 and

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

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

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

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

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

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

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

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

210 (A) agriculture use; or

211 (B) residential use.

212 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in
213 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest

214 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard
215 to intervening structures or zoning districts.

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

220 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
221 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in
222 which the retail tobacco specialty business is located; and

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

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

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

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

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

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

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

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

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

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

241 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has
242 a business license and is operating in a county in accordance with all applicable laws except for
243 the requirement in Subsection (4), on or before December 31, 2015, is exempt from Subsection
244 (4).

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

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

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

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

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

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

256 (B) zoning ordinances;

257 (C) building codes; and

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

260 Section 3. Section **26-62-206** is enacted to read:

261 **26-62-206. Permit requirements for the sale of tobacco products.**

262 (1) A tobacco retailer shall:

263 (a) for each sale of a tobacco product, provide the customer with an itemized receipt
264 that shows:

265 (i) the name of the tobacco product;

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

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

268 (b) maintain an itemized transaction log for each sale of a tobacco product that shows:

269 (i) the name of the tobacco product;

270 (ii) the amount charged for the tobacco product; and

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

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

273 (a) maintained for at least two years from the date of the sale of the tobacco product;

274 and

275 (b) made available to an enforcing agency or peace officer at the request of the

276 enforcing agency or peace officer.

277 Section 4. Section **76-10-111** is amended to read:

278 **76-10-111. Prohibition of gift or free distribution of smokeless tobacco or**
279 **electronic cigarettes -- Exceptions.**

280 (1) The Legislature finds that:

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

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

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

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

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

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

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

295 (iii) give, distribute, sell, offer for sale, or furnish any smokeless tobacco, chewing
296 tobacco, or electronic cigarette for free or at a lower price because the purchaser makes another
297 purchase.

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

300 (i) a manufacturer coupon:

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

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

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

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

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

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

310 (3) ~~(a)~~ Smokeless tobacco, chewing tobacco, or an electronic cigarette may be
311 distributed to adults without charge at professional conventions where the general public is
312 excluded.

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

316 Section 5. Section **76-10-112** is amended to read:

317 **76-10-112. Prohibition of distribution of cigarettes or other tobacco products --**
318 **Exceptions.**

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

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

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

325 (iii) give, distribute, sell, offer for sale, or furnish any smokeless tobacco, chewing
326 tobacco, or electronic cigarette for free or at a lower price because the purchaser makes another
327 purchase.

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

330 (i) a manufacturer coupon:

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

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

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

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

338 (2) Any person who violates this [~~subsection~~] section is guilty of a class C
339 misdemeanor for the first offense and a class B misdemeanor for any subsequent offense.

340 ~~[(2)]~~ (3) Cigarettes and other tobacco products may be distributed to adults without
341 charge at professional conventions where the general public is excluded.

342 ~~[(3) The prohibition described in Subsection (1) does not apply to retailers,~~
343 ~~manufacturers, or distributors who give cigarettes or other tobacco products to persons of legal~~
344 ~~age upon their purchase of cigarettes or other tobacco products.]~~