

RETAIL TOBACCO SPECIALTY BUSINESS AMENDMENTS

2019 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 flavored 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; 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

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.



- 28 (1) As used in this section:
- 29 (a) "Community location" means:
- 30 (i) a public or private kindergarten, elementary, middle, junior high, or high school;
- 31 (ii) a licensed child-care facility or preschool;
- 32 (iii) a trade or technical school;
- 33 (iv) a church;
- 34 (v) a public library;
- 35 (vi) a public playground;
- 36 (vii) a public park;
- 37 (viii) a youth center or other space used primarily for youth oriented activities;
- 38 (ix) a public recreational facility;
- 39 (x) a public arcade; or
- 40 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
- 41 (b) "Department" means the Department of Health, created in Section [26-1-4](#).
- 42 (c) (i) "Flavored tobacco product" means a tobacco product that has a taste or smell
- 43 that is distinguishable by an ordinary consumer either before or during use or consumption of
- 44 the tobacco product.
- 45 (ii) "Flavored tobacco product" includes a tobacco product that has a taste or smell of
- 46 any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice.
- 47 (iii) "Flavored tobacco product" does not include a tobacco product that has a taste or
- 48 smell of only tobacco or menthol.
- 49 ~~(d)~~ (d) "Local health department" means the same as that term is defined in Section
- 50 [26A-1-102](#).
- 51 ~~(e)~~ (e) "Permittee" means a person licensed under this section to conduct business as
- 52 a retail tobacco specialty business.
- 53 ~~(f)~~ (f) "Retail tobacco specialty business" means a commercial establishment in
- 54 which:
- 55 (i) the sale of tobacco products accounts for more than 35% of the total quarterly gross
- 56 receipts for the establishment;
- 57 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
- 58 storage of tobacco products;

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

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

62 (v) any flavored tobacco product is sold.

63 [~~(f)~~] (g) "Self-service display" means the same as that term is defined in Section
64 76-10-105.1.

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

66 (i) any cigar, cigarette, or electronic cigarette, as those terms are defined in Section
67 76-10-101;

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

69 (A) chewing tobacco; or

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

71 and

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

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

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

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

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

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

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

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

86 (A) agriculture use; or

87 (B) residential use.

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

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

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

96 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
97 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in
98 which the retail tobacco specialty business is located; and

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

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

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

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

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

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

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

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

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

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

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

121 Subsection (4).

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

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

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

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

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

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

133 (B) zoning ordinances;

134 (C) building codes; and

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

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

138 **17-50-333. Regulation of retail tobacco specialty business.**

139 (1) As used in this section:

140 (a) "Community location" means:

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

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

143 (iii) a trade or technical school;

144 (iv) a church;

145 (v) a public library;

146 (vi) a public playground;

147 (vii) a public park;

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

149 (ix) a public recreational facility;

150 (x) a public arcade; or

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

- 152 (b) "Department" means the Department of Health, created in Section 26-1-4.
- 153 (c) (i) "Flavored tobacco product" means a tobacco product that has a taste or smell
154 that is distinguishable by an ordinary consumer either before or during use or consumption of
155 the tobacco product.
- 156 (ii) "Flavored tobacco product" includes a tobacco product that has a taste or smell of
157 any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice.
- 158 (iii) "Flavored tobacco product" does not include a tobacco product that has a taste or
159 smell of only tobacco or menthol.
- 160 [~~(c)~~] (d) "Licensee" means a person licensed under this section to conduct business as a
161 retail tobacco specialty business.
- 162 [~~(d)~~] (e) "Local health department" means the same as that term is defined in Section
163 26A-1-102.
- 164 [~~(e)~~] (f) "Retail tobacco specialty business" means a commercial establishment in
165 which:
- 166 (i) the sale of tobacco products accounts for more than 35% of the total quarterly gross
167 receipts for the establishment;
- 168 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
169 storage of tobacco products;
- 170 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
171 tobacco products; [~~or~~]
- 172 (iv) the retail space features a self-service display for tobacco products[~~;~~]; or
- 173 any flavored tobacco product is sold.
- 174 [~~(f)~~] (g) "Self-service display" means the same as that term is defined in Section
175 76-10-105.1.
- 176 [~~(g)~~] (h) "Tobacco product" means:
- 177 (i) any cigar, cigarette, or electronic cigarette as those terms are defined in Section
178 76-10-101;
- 179 (ii) a tobacco product as that term is defined in Section 59-14-102, including:
- 180 (A) chewing tobacco; or
- 181 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;
- 182 and

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

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

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

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

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

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

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

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

- 207 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
208 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in
209 which the retail tobacco specialty business is located; and
- 210 (ii) a valid license to sell tobacco products from the State Tax Commission.

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

214 (6) (a) Nothing in this section:
215 (i) requires a county to issue a retail tobacco specialty business license; or
216 (ii) prohibits a county from adopting more restrictive requirements on a person seeking
217 a license or renewal of a license to conduct business as a retail tobacco specialty business.
218 (b) A county may suspend or revoke a retail tobacco specialty business license issued
219 under this section:
220 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,
221 Part 16, Pattern of Unlawful Activity Act;
222 (ii) if a licensee violates the regulations restricting the sale and distribution of
223 cigarettes and smokeless tobacco to protect children and adolescents issued by the United
224 States Food and Drug Administration, 21 C.F.R. Part 1140;
225 (iii) upon the recommendation of the department or a local health department under
226 Title 26, Chapter 62, Tobacco Retail Permit; or
227 (iv) under any other provision of state law or local ordinance.
228 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has
229 a business license and is operating in a county in accordance with all applicable laws except for
230 the requirement in Subsection (4), on or before December 31, 2015, is exempt from Subsection
231 (4).
232 (b) A retail tobacco specialty business may maintain an exemption under Subsection
233 (7)(a) if:
234 (i) the retail tobacco specialty business license is renewed continuously without lapse
235 or permanent revocation;
236 (ii) the retail tobacco specialty business does not close for business or otherwise
237 suspend the sale of tobacco products for more than 60 consecutive days;
238 (iii) the retail tobacco specialty business does not substantially change the business
239 premises or business operation; and
240 (iv) the retail tobacco specialty business maintains the right to operate under the terms
241 of other applicable laws, including:
242 (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;
243 (B) zoning ordinances;
244 (C) building codes; and

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