

Representative Paul Ray proposes the following substitute bill:

RETAIL SALE OF TOBACCO PRODUCTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill authorizes a municipality to issue a business license for a retail tobacco specialty business, and creates certain restrictions on the location of a retail tobacco specialty business and the sale of tobacco paraphernalia.

Highlighted Provisions:

This bill:

- ▶ amends the definition of tobacco paraphernalia;
- ▶ clarifies the prohibition against the sale of tobacco paraphernalia to minors;
- ▶ defines a retail tobacco specialty business;
- ▶ beginning July 1, 2012, requires an entity doing business as a retail tobacco

specialty business to obtain a license from a municipality to conduct business;

- ▶ restricts the location of a retail tobacco specialty business;

~~H→ [→ requires a criminal background check for the owner of a retail tobacco specialty business;] ←H~~

▶ exempts current retail tobacco specialty businesses from the licensing requirements, except in certain circumstances; and

▶ provides that any act prohibited by the criminal provisions of the laws governing the sale of tobacco in the state are subject to the Pattern of Unlawful Activity Act.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **76-10-104.1**, as enacted by Laws of Utah 2010, Chapter 316

33 **76-10-1602**, as last amended by Laws of Utah 2011, Chapter 320

34 ENACTS:

35 **10-8-41.6**, Utah Code Annotated 1953

36 **17-50-333**, Utah Code Annotated 1953



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

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

40 **10-8-41.6. Regulation of retail tobacco specialty business.**

41 (1) As used in this section:

42 (a) "Community location" means:

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

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

45 (iii) a trade or technical school;

46 (iv) a church;

47 (v) a public library;

48 (vi) a public playground;

49 (vii) a public park;

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

51 (ix) a public recreational facility; or

52 (x) a public arcade.

53 (b) "Retail tobacco specialty business" means a commercial establishment in which:

54 (i) the sale of tobacco products accounts for more than ~~H~~→ [30%] 35% ←~~H~~ of the total
54a annual gross

55 receipts for the establishment;

56 (ii) food and beverage products, excluding gasoline sales, is less than ~~H~~→ [50%] 45% ←~~H~~a
of the total

57 annual gross receipts for the establishment; and

58 (iii) the establishment is not licensed as a pharmacy under Title 58, Chapter 17b,
59 Pharmacy Practice Act.

60 (c) "Tobacco product" means:

61 (i) any cigar, cigarette, or electronic cigarette as defined in Section 76-10-101;

62 (ii) a tobacco product as defined in Section 59-14-102, including:

63 (A) chewing tobacco; or

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

65 and

66 (iii) tobacco paraphernalia as defined in Section 76-10-104.1.

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

69 (3) (a) Except as provided in Subsection (7), and beginning July 1, 2012, a
70 municipality shall require an entity to be licensed as a retail tobacco specialty business to
71 conduct business as a retail tobacco specialty business in a municipality.

72 (b) A municipality may issue a retail tobacco specialty business license to an entity if
73 the entity complies with the provisions of Subsection (5).

74 (4) Except as provided in Subsection (7), and beginning July 1, 2012, a business entity
75 that conducts a retail tobacco specialty business in a municipality shall be licensed by the
76 municipality as a retail tobacco specialty business.

77 (5) (a) A municipality may not issue a license to a retail tobacco specialty business if it
78 is located within:

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

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

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

82 (A) agriculture use; or

83 (B) residential use.

84 (b) For purposes of Subsection (5)(a), the proximity requirements shall be measured in
85 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
86 property boundary of the community location, or agricultural or residential use, without regard
87 to intervening structures or zoning districts.

88 ~~H→ [(c) (i) A municipality shall require a criminal background check for an owner of a retail~~
 89 ~~tobacco specialty business.~~

90 ~~—— (ii) A municipality may not issue a retail tobacco specialty business license to a person~~
 91 ~~who has been convicted of:~~

92 ~~—— (A) a felony within the last five years;~~

93 ~~—— (B) a class A misdemeanor within the last five years; or~~

94 ~~—— (C) a class B misdemeanor within the last three years, related to the sale of a tobacco~~
 95 ~~product.] ←H~~

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

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

99 (ii) prohibits a municipality from adopting H→ [additional restrictions] more restrictive
 99a requirements ←H on a tobacco specialty

100 business H→ than provided for in this section ←H .

101 (b) A municipality may revoke a business license issued under this section:

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

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

107 (iii) under other provisions of state law or local ordinance.

108 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has
 109 a business license and is operating lawfully in a municipality on or before May 8, 2012, is
 110 exempt from Subsections (4) and (5).

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

113 (i) the business license is renewed continuously without relapse or permanent
 114 revocation;

115 (ii) the retail tobacco specialty business is not closed for business or otherwise
 116 suspends the sale of tobacco products for more than 60 consecutive days;

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

119 (iv) the retail tobacco specialty business maintains the right to operate under the terms
 120 of other applicable laws including zoning ordinances, building codes, and the business license
 121 issued prior to May 8, 2012.

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

123 **17-50-333. Regulation of retail tobacco specialty business.**

124 (1) As used in this section:

125 (a) "Community location" means:

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

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

128 (iii) a trade or technical school;

129 (iv) a church;

130 (v) a public library;

131 (vi) a public playground;

132 (vii) a public park;

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

134 (ix) a public recreational facility; or

135 (x) a public arcade.

136 (b) "Retail tobacco specialty business" means a commercial establishment in which:

137 (i) the sale of tobacco products accounts for more than ~~30%~~ **35%** ~~of~~ ~~the~~ ~~total~~
 137a annual gross

138 receipts for the establishment;

139 (ii) food and beverage products, excluding gasoline sales, is less than ~~50%~~
 139a **45%** ~~of~~ ~~the~~ ~~total~~

140 annual gross receipts for the establishment; and

141 (iii) the establishment is not licensed as a pharmacy under Title 58, Chapter 17b,
 142 Pharmacy Practice Act.

143 (c) "Tobacco product" means:

144 (i) any cigar, cigarette, or electronic cigarette as defined in Section 76-10-101;

145 (ii) a tobacco product as defined in Section 59-14-102, including:

146 (A) chewing tobacco; or

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

148 and

149 (iii) tobacco paraphernalia as defined in Section 76-10-104.1.

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

152 (3) (a) Except as provided in Subsection (7), and beginning July 1, 2012, a

153 ~~H~~→ [municipality] county ←~~H~~ shall require an entity to be licensed as a retail tobacco specialty
 153a business to

154 conduct business as a retail tobacco specialty business in a ~~H~~→ [municipality] county ←~~H~~ .

155 (b) A ~~H~~→ [municipality] county ←~~H~~ may issue a retail tobacco specialty business license
 155a to an entity if

156 the entity complies with the provisions of Subsection (5).

157 (4) Except as provided in Subsection (7), and beginning July 1, 2012, a business entity
 158 that conducts a retail tobacco specialty business in a ~~H~~→ [municipality] county ←~~H~~ shall be
 158a licensed by the

159 ~~H~~→ [municipality] county ←~~H~~ as a retail tobacco specialty business.

160 (5) (a) A ~~H~~→ [municipality] county ←~~H~~ may not issue a license to a retail tobacco
 160a specialty business if it

161 is located within:

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

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

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

165 (A) agriculture use; or

166 (B) residential use.

167 (b) For purposes of Subsection (5)(a), the proximity requirements shall be measured in
 168 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
 169 property boundary of the community location, or agricultural or residential use, without regard
 170 to intervening structures or zoning districts.

171 ~~H~~→ ~~[(c) (i) A municipality shall require a criminal background check for an owner of a retail~~
 172 ~~tobacco specialty business:~~

173 ~~— (ii) A municipality may not issue a retail tobacco specialty business license to a person~~
 174 ~~who has been convicted of:~~

175 ~~— (A) a felony within the last five years;~~

176 ~~— (B) a class A misdemeanor within the last five years; or~~

177 ~~— (C) a class B misdemeanor within the last three years, related to the sale of a tobacco~~
 178 ~~product.] ←~~H~~~~

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

180 (i) requires a ~~H~~→ [municipality] county ←~~H~~ to issue a business license to a retail tobacco
 180a specialty

181 business; or

182 (ii) prohibits a ~~H~~→ [municipality] county ←~~H~~ from adopting ~~H~~→ [additional restrictions]

182a more restrictive requirements ←~~H~~ on a tobacco specialty

183 business ~~H~~→ than provided for in this section ←~~H~~ .

184 (b) A ~~H~~→ [municipality] county ←~~H~~ may revoke a business license issued under this

184a section:

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

186 Part 16, Pattern of Unlawful Activity Act;

187 (ii) if a licensee violates the regulations restricting the sale and distribution of

188 cigarettes and smokeless tobacco to protect children and adolescents issued by the United

189 States Food and Drug Administration, 21 C.F.R. Part 1140; or

190 (iii) under other provisions of state law or local ordinance.

191 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has

192 a business license and is operating lawfully in a ~~H~~→ [municipality] county ←~~H~~ on or before

192a May 8, 2012, is

193 exempt from Subsections (4) and (5).

194 (b) A retail tobacco specialty business may maintain an exemption under Subsection

195 (7)(a) if:

196 (i) the business license is renewed continuously without relapse or permanent

197 revocation;

198 (ii) the retail tobacco specialty business is not closed for business or otherwise

199 suspends the sale of tobacco products for more than 60 consecutive days;

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

201 premises or its business operation; and

202 (iv) the retail tobacco specialty business maintains the right to operate under the terms

203 of other applicable laws including zoning ordinances, building codes, and the business license

204 issued prior to May 8, 2012.

205 Section 3. Section **76-10-104.1** is amended to read:

206 **76-10-104.1. Providing tobacco paraphernalia to minors -- Penalties.**

207 (1) For purposes of this section:

208 (a) "Provides":

209 (i) includes selling, giving, furnishing, sending, or causing to be sent; and

210 (ii) does not include the acts of the United States Postal Service or other common

211 carrier when engaged in the business of transporting and delivering packages for others or the

212 acts of a person, whether compensated or not, who transports or delivers a package for another
213 person without any reason to know of the package's content.

214 (b) "Tobacco paraphernalia":

215 (i) means any equipment, product, or material of any kind which is used, [or] intended
216 for use, or designed for use to package, repackage, store, contain, conceal, ingest, inhale, or
217 otherwise introduce a cigar, cigarette, or tobacco in any form into the human body, including:

218 (A) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
219 screens, permanent screens, hashish heads, or punctured metal bowls;

220 (B) water pipes;

221 (C) carburetion tubes and devices;

222 (D) smoking and carburetion masks;

223 (E) roach clips: meaning objects used to hold burning material, such as a cigarette, that
224 has become too small or too short to be held in the hand;

225 (F) chamber pipes;

226 (G) carburetor pipes;

227 (H) electric pipes;

228 (I) air-driven pipes;

229 (J) chillums;

230 (K) bongs; and

231 (L) ice pipes or chillers; and

232 (ii) does not include matches or lighters.

233 (2) (a) [~~Any person who~~] It is unlawful for a person to, knowingly, ~~to~~ **→** [under

234 circumstances where a person should reasonably know,] ~~to~~ **←** intentionally, recklessly, or with

235 criminal negligence [~~provides~~] provide any tobacco paraphernalia to any person under 19 years

236 of age[;].

237 (b) A person who violates this section is guilty of a class C misdemeanor on the first
238 offense and a class B misdemeanor on subsequent offenses.

239 Section 4. Section **76-10-1602** is amended to read:

240 **76-10-1602. Definitions.**

241 As used in this part:

242 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,

243 business trust, association, or other legal entity, and any union or group of individuals
244 associated in fact although not a legal entity, and includes illicit as well as licit entities.

245 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
246 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
247 have the same or similar purposes, results, participants, victims, or methods of commission, or
248 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
249 demonstrate continuing unlawful conduct and be related either to each other or to the
250 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
251 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
252 activity as defined by this part shall have occurred within five years of the commission of the
253 next preceding act alleged as part of the pattern.

254 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
255 interest in property, including state, county, and local governmental entities.

256 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
257 command, encourage, or intentionally aid another person to engage in conduct which would
258 constitute any offense described by the following crimes or categories of crimes, or to attempt
259 or conspire to engage in an act which would constitute any of those offenses, regardless of
260 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
261 or a felony:

262 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
263 Recording Practices Act;

264 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality
265 Code, Sections 19-1-101 through 19-7-109;

266 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary
267 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources
268 Code of Utah, or Section 23-20-4;

269 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title
270 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;

271 (e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal
272 Offenses and Procedure Act;

273 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform

274 Land Sales Practices Act;

275 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah

276 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,

277 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,

278 Clandestine Drug Lab Act;

279 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform

280 Securities Act;

281 (i) any act prohibited by the criminal provisions of Title 63G, Chapter 6, Utah

282 Procurement Code;

283 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;

284 (k) a threat of terrorism, Section 76-5-107.3;

285 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;

286 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;

287 (n) sexual exploitation of a minor, Section 76-5b-201;

288 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;

289 (p) causing a catastrophe, Section 76-6-105;

290 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;

291 (r) burglary of a vehicle, Section 76-6-204;

292 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;

293 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;

294 (u) theft, Section 76-6-404;

295 (v) theft by deception, Section 76-6-405;

296 (w) theft by extortion, Section 76-6-406;

297 (x) receiving stolen property, Section 76-6-408;

298 (y) theft of services, Section 76-6-409;

299 (z) forgery, Section 76-6-501;

300 (aa) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, 76-6-506.5, and

301 76-6-506.6;

302 (bb) deceptive business practices, Section 76-6-507;

303 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or

304 criticism of goods, Section 76-6-508;

- 305 (dd) bribery of a labor official, Section 76-6-509;
- 306 (ee) defrauding creditors, Section 76-6-511;
- 307 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 308 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 309 (hh) bribery or threat to influence contest, Section 76-6-514;
- 310 (ii) making a false credit report, Section 76-6-517;
- 311 (jj) criminal simulation, Section 76-6-518;
- 312 (kk) criminal usury, Section 76-6-520;
- 313 (ll) fraudulent insurance act, Section 76-6-521;
- 314 (mm) retail theft, Section 76-6-602;
- 315 (nn) computer crimes, Section 76-6-703;
- 316 (oo) identity fraud, Section 76-6-1102;
- 317 (pp) mortgage fraud, Section 76-6-1203;
- 318 (qq) sale of a child, Section 76-7-203;
- 319 (rr) bribery to influence official or political actions, Section 76-8-103;
- 320 (ss) threats to influence official or political action, Section 76-8-104;
- 321 (tt) receiving bribe or bribery by public servant, Section 76-8-105;
- 322 (uu) receiving bribe or bribery for endorsement of person as public servant, Section
- 323 76-8-106;
- 324 (vv) official misconduct, Sections 76-8-201 and 76-8-202;
- 325 (ww) obstruction of justice, Section 76-8-306;
- 326 (xx) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 327 (yy) false or inconsistent material statements, Section 76-8-502;
- 328 (zz) false or inconsistent statements, Section 76-8-503;
- 329 (aaa) written false statements, Section 76-8-504;
- 330 (bbb) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 331 (ccc) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 332 (ddd) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 333 (eee) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
- 334 76-8-1205;
- 335 (fff) unemployment insurance fraud, Section 76-8-1301;

- 336 (ggg) intentionally or knowingly causing one animal to fight with another, Subsection
- 337 76-9-301(2)(d) or (e), or Section 76-9-301.1;
- 338 (hhh) possession, use, or removal of explosives, chemical, or incendiary devices or
- 339 parts, Section 76-10-306;
- 340 (iii) delivery to common carrier, mailing, or placement on premises of an incendiary
- 341 device, Section 76-10-307;
- 342 (jjj) possession of a deadly weapon with intent to assault, Section 76-10-507;
- 343 (kkk) unlawful marking of pistol or revolver, Section 76-10-521;
- 344 (lll) alteration of number or mark on pistol or revolver, Section 76-10-522;
- 345 (mmm) forging or counterfeiting trademarks, trade name, or trade device, Section
- 346 76-10-1002;
- 347 (nnn) selling goods under counterfeited trademark, trade name, or trade devices,
- 348 Section 76-10-1003;
- 349 (ooo) sales in containers bearing registered trademark of substituted articles, Section
- 350 76-10-1004;
- 351 (ppp) selling or dealing with article bearing registered trademark or service mark with
- 352 intent to defraud, Section 76-10-1006;
- 353 (qqq) gambling, Section 76-10-1102;
- 354 (rrr) gambling fraud, Section 76-10-1103;
- 355 (sss) gambling promotion, Section 76-10-1104;
- 356 (ttt) possessing a gambling device or record, Section 76-10-1105;
- 357 (uuu) confidence game, Section 76-10-1109;
- 358 (vvv) distributing pornographic material, Section 76-10-1204;
- 359 (www) inducing acceptance of pornographic material, Section 76-10-1205;
- 360 (xxx) dealing in harmful material to a minor, Section 76-10-1206;
- 361 (yyy) distribution of pornographic films, Section 76-10-1222;
- 362 (zzz) indecent public displays, Section 76-10-1228;
- 363 (aaaa) prostitution, Section 76-10-1302;
- 364 (bbbb) aiding prostitution, Section 76-10-1304;
- 365 (cccc) exploiting prostitution, Section 76-10-1305;
- 366 (dddd) aggravated exploitation of prostitution, Section 76-10-1306;

367 (eeee) communications fraud, Section 76-10-1801;
368 (ffff) any act prohibited by the criminal provisions of Chapter 10, Part 19, Money
369 Laundering and Currency Transaction Reporting Act;
370 (gggg) vehicle compartment for contraband, Section 76-10-2801;
371 (hhhh) any act prohibited by the criminal provisions of the laws governing taxation in
372 this state; ~~and~~
373 (iiii) any act illegal under the laws of the United States and enumerated in 18 U.S.C.
374 Sec. 1961 (1)(B), (C), and (D)[:]; and
375 ~~H→ [(jjj) any act prohibited by the criminal provisions of the laws governing the sale of~~
376 ~~tobacco products as defined in Section 10-8-41.6 in this state.] ←H~~