

1 **RETAIL SALE OF TOBACCO PRODUCTS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Paul Ray**

5 Senate Sponsor: Allen M. Christensen

7 **LONG TITLE**

8 **General Description:**

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

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ amends the definition of tobacco paraphernalia;
- 15 ▶ clarifies the prohibition against the sale of tobacco paraphernalia to minors;
- 16 ▶ defines a retail tobacco specialty business;
- 17 ▶ beginning July 1, 2012, requires an entity doing business as a retail tobacco
18 specialty business to obtain a license from a municipality to conduct business;
- 19 ▶ restricts the location of a retail tobacco specialty business;
- 20 ▶ exempts current retail tobacco specialty businesses from the licensing requirements,
21 except in certain circumstances.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:

28 **76-10-104.1**, as enacted by Laws of Utah 2010, Chapter 316

29 ENACTS:

30 **10-8-41.6**, Utah Code Annotated 1953

31 **17-50-333**, Utah Code Annotated 1953

32

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

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

35 **10-8-41.6. Regulation of retail tobacco specialty business.**

36 (1) As used in this section:

37 (a) "Community location" means:

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

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

40 (iii) a trade or technical school;

41 (iv) a church;

42 (v) a public library;

43 (vi) a public playground;

44 (vii) a public park;

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

46 (ix) a public recreational facility; or

47 (x) a public arcade.

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

49 (i) the sale of tobacco products accounts for more than 35% of the total annual gross
50 receipts for the establishment;

51 (ii) food and beverage products, excluding gasoline sales, is less than 45% of the total
52 annual gross receipts for the establishment; and

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

55 (c) "Tobacco product" means:

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

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

58 (A) chewing tobacco; or
59 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;
60 and
61 (iii) tobacco paraphernalia as defined in Section 76-10-104.1.
62 (2) The regulation of a retail tobacco specialty business is an exercise of the police
63 powers of the state, and through delegation, to other governmental entities.
64 (3) (a) Except as provided in Subsection (7), and beginning July 1, 2012, a
65 municipality shall require an entity to be licensed as a retail tobacco specialty business to
66 conduct business as a retail tobacco specialty business in a municipality.
67 (b) A municipality may issue a retail tobacco specialty business license to an entity if
68 the entity complies with the provisions of Subsection (5).
69 (4) Except as provided in Subsection (7), and beginning July 1, 2012, a business entity
70 that conducts a retail tobacco specialty business in a municipality shall be licensed by the
71 municipality as a retail tobacco specialty business.
72 (5) (a) A municipality may not issue a license to a retail tobacco specialty business if it
73 is located within:
74 (i) 1,000 feet of a community location;
75 (ii) 600 feet of another retail tobacco specialty business; or
76 (iii) 600 feet from property used or zoned for:
77 (A) agriculture use; or
78 (B) residential use.
79 (b) For purposes of Subsection (5)(a), the proximity requirements shall be measured in
80 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
81 property boundary of the community location, or agricultural or residential use, without regard
82 to intervening structures or zoning districts.
83 (6) (a) Nothing in this section:
84 (i) requires a municipality to issue a business license to a retail tobacco specialty
85 business; or

86 (ii) prohibits a municipality from adopting more restrictive requirements on a tobacco
87 specialty business than provided for in this section.

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

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

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

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

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

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

100 (i) the business license is renewed continuously without relapse or permanent
101 revocation;

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

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

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

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

110 **17-50-333. Regulation of retail tobacco specialty business.**

111 (1) As used in this section:

112 (a) "Community location" means:

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

- 114 (ii) a licensed child-care facility or preschool;
- 115 (iii) a trade or technical school;
- 116 (iv) a church;
- 117 (v) a public library;
- 118 (vi) a public playground;
- 119 (vii) a public park;
- 120 (viii) a youth center or other space used primarily for youth oriented activities;
- 121 (ix) a public recreational facility; or
- 122 (x) a public arcade.
- 123 (b) "Retail tobacco specialty business" means a commercial establishment in which:
- 124 (i) the sale of tobacco products accounts for more than 35% of the total annual gross
- 125 receipts for the establishment;
- 126 (ii) food and beverage products, excluding gasoline sales, is less than 45% of the total
- 127 annual gross receipts for the establishment; and
- 128 (iii) the establishment is not licensed as a pharmacy under Title 58, Chapter 17b,
- 129 Pharmacy Practice Act.
- 130 (c) "Tobacco product" means:
- 131 (i) any cigar, cigarette, or electronic cigarette as defined in Section 76-10-101;
- 132 (ii) a tobacco product as defined in Section 59-14-102, including:
- 133 (A) chewing tobacco; or
- 134 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;
- 135 and
- 136 (iii) tobacco paraphernalia as defined in Section 76-10-104.1.
- 137 (2) The regulation of a retail tobacco specialty business is an exercise of the police
- 138 powers of the state, and through delegation, to other governmental entities.
- 139 (3) (a) Except as provided in Subsection (7), and beginning July 1, 2012, a county shall
- 140 require an entity to be licensed as a retail tobacco specialty business to conduct business as a
- 141 retail tobacco specialty business in a county.

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

144 (4) Except as provided in Subsection (7), and beginning July 1, 2012, a business entity
145 that conducts a retail tobacco specialty business in a county shall be licensed by the county as a
146 retail tobacco specialty business.

147 (5) (a) A county may not issue a license to a retail tobacco specialty business if it is
148 located within:

- 149 (i) 1,000 feet of a community location;
- 150 (ii) 600 feet of another retail tobacco specialty business; or
- 151 (iii) 600 feet from property used or zoned for:
 - 152 (A) agriculture use; or
 - 153 (B) residential use.

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

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

- 159 (i) requires a county to issue a business license to a retail tobacco specialty business; or
- 160 (ii) prohibits a county from adopting more restrictive requirements on a tobacco
161 specialty business than provided for in this section.

162 (b) A county may revoke a business license issued under this section:

- 163 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,
164 Part 16, Pattern of Unlawful Activity Act;
- 165 (ii) if a licensee violates the regulations restricting the sale and distribution of
166 cigarettes and smokeless tobacco to protect children and adolescents issued by the United
167 States Food and Drug Administration, 21 C.F.R. Part 1140; or
- 168 (iii) under other provisions of state law or local ordinance.

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

170 a business license and is operating lawfully in a county on or before May 8, 2012, is exempt
171 from Subsections (4) and (5).

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

174 (i) the business license is renewed continuously without relapse or permanent
175 revocation;

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

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

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

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

184 **76-10-104.1. Providing tobacco paraphernalia to minors -- Penalties.**

185 (1) For purposes of this section:

186 (a) "Provides":

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

188 (ii) does not include the acts of the United States Postal Service or other common
189 carrier when engaged in the business of transporting and delivering packages for others or the
190 acts of a person, whether compensated or not, who transports or delivers a package for another
191 person without any reason to know of the package's content.

192 (b) "Tobacco paraphernalia":

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

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

- 198 (B) water pipes;
- 199 (C) carburetion tubes and devices;
- 200 (D) smoking and carburetion masks;
- 201 (E) roach clips: meaning objects used to hold burning material, such as a cigarette, that
- 202 has become too small or too short to be held in the hand;
- 203 (F) chamber pipes;
- 204 (G) carburetor pipes;
- 205 (H) electric pipes;
- 206 (I) air-driven pipes;
- 207 (J) chillums;
- 208 (K) bongs; and
- 209 (L) ice pipes or chillers; and
- 210 (ii) does not include matches or lighters.
- 211 (2) (a) [Any person who] It is unlawful for a person to, knowingly, intentionally,
- 212 recklessly, or with criminal negligence [~~provides~~] provide any tobacco paraphernalia to any
- 213 person under 19 years of age[;].
- 214 (b) A person who violates this section is guilty of a class C misdemeanor on the first
- 215 offense and a class B misdemeanor on subsequent offenses.