

TOBACCO RETAILER AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon Hawkins

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

Committee Note:

The Judiciary Interim Committee recommended this bill.

Legislative Vote: 12 voting for 0 voting against 4 absent

General Description:

This bill amends provisions related to tobacco retailers.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the definition of a retail tobacco specialty business;
- ▶ amends the number of times that a peace officer may conduct an investigation of a retail shop for underage tobacco sales;
- ▶ amends permit violations for tobacco retailers; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

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



28 [17-50-333](#), as last amended by Laws of Utah 2018, Chapter 231
 29 [26-62-305](#) (Effective 07/01/20), as last amended by Laws of Utah 2019, Chapter 232
 30 [76-10-101](#), as last amended by Laws of Utah 2015, Chapters 66, 132 and last amended
 31 by Coordination Clause, Laws of Utah 2015, Chapter 132
 32 [77-39-101](#) (Effective 07/01/20), as last amended by Laws of Utah 2019, Chapter 232

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

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

36 **10-8-41.6. Regulation of retail tobacco specialty business.**

37 (1) As used in this section:

38 (a) "Community location" means:

- 39 (i) a public or private kindergarten, elementary, middle, junior high, or high school;
- 40 (ii) a licensed child-care facility or preschool;
- 41 (iii) a trade or technical school;
- 42 (iv) a church;
- 43 (v) a public library;
- 44 (vi) a public playground;
- 45 (vii) a public park;
- 46 (viii) a youth center or other space used primarily for youth oriented activities;
- 47 (ix) a public recreational facility;
- 48 (x) a public arcade; or
- 49 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.

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

51 (c) "Local health department" means the same as that term is defined in Section
 52 [26A-1-102](#).

53 (d) "Permittee" means a person licensed under this section to conduct business as a
 54 retail tobacco specialty business.

55 (e) "Retail tobacco specialty business" means a commercial establishment in which:

- 56 (i) the sale of tobacco products accounts for more than 35% of the total quarterly gross
 57 receipts for the establishment;
- 58 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or

59 storage of tobacco products;

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

62 (iv) the name of the business evidences that the business is a retail tobacco specialty
63 business; or

64 [~~(iv)~~] (v) the retail space features a self-service display for tobacco products.

65 (f) "Self-service display" means the same as that term is defined in Section
66 76-10-105.1.

67 (g) "Tobacco product" means:

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

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

71 (A) chewing tobacco; or

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

73 and

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

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

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

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

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

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

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

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

88 (A) agriculture use; or

89 (B) residential use.

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

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

98 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
99 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in
100 which the retail tobacco specialty business is located; and

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

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

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

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

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

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

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

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

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

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

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

121 a business license and is operating in a municipality in accordance with all applicable laws
122 except for the requirement in Subsection (4), on or before December 31, 2015, is exempt from
123 Subsection (4).

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

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

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

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

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

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

135 (B) zoning ordinances;

136 (C) building codes; and

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

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

140 **17-50-333. Regulation of retail tobacco specialty business.**

141 (1) As used in this section:

142 (a) "Community location" means:

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

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

145 (iii) a trade or technical school;

146 (iv) a church;

147 (v) a public library;

148 (vi) a public playground;

149 (vii) a public park;

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

151 (ix) a public recreational facility;

- 152 (x) a public arcade; or
- 153 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
- 154 (b) "Department" means the Department of Health, created in Section 26-1-4.
- 155 (c) "Licensee" means a person licensed under this section to conduct business as a
- 156 retail tobacco specialty business.
- 157 (d) "Local health department" means the same as that term is defined in Section
- 158 26A-1-102.
- 159 (e) "Retail tobacco specialty business" means a commercial establishment in which:
- 160 (i) the sale of tobacco products accounts for more than 35% of the total quarterly gross
- 161 receipts for the establishment;
- 162 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
- 163 storage of tobacco products;
- 164 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
- 165 tobacco products; ~~or~~
- 166 (iv) the name of the business evidences that the business is a retail tobacco speciality
- 167 business; or
- 168 ~~(iv)]~~ (v) the retail space features a self-service display for tobacco products.
- 169 (f) "Self-service display" means the same as that term is defined in Section
- 170 76-10-105.1.
- 171 (g) "Tobacco product" means:
- 172 (i) any cigar, cigarette, or electronic cigarette product as those terms are defined in
- 173 Section 76-10-101;
- 174 (ii) a tobacco product as that term is defined in Section 59-14-102, including:
- 175 (A) chewing tobacco; or
- 176 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;
- 177 and
- 178 (iii) tobacco paraphernalia as that term is defined in Section 76-10-104.1.
- 179 (2) The regulation of a retail tobacco specialty business is an exercise of the police
- 180 powers of the state, and through delegation, to other governmental entities.
- 181 (3) (a) A person may not operate a retail tobacco specialty business in a county unless
- 182 the person obtains a license from the county in which the retail tobacco specialty business is

183 located.

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

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

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

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

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

192 (A) agriculture use; or

193 (B) residential use.

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

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

202 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
203 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in
204 which the retail tobacco specialty business is located; and

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

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

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

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

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

213 (b) A county may suspend or revoke a retail tobacco specialty business license issued

214 under this section:

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

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

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

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

223 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has
224 a business license and is operating in a county in accordance with all applicable laws except for
225 the requirement in Subsection (4), on or before December 31, 2015, is exempt from Subsection
226 (4).

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

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

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

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

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

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

238 (B) zoning ordinances;

239 (C) building codes; and

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

242 Section 3. Section **26-62-305 (Effective 07/01/20)** is amended to read:

243 **26-62-305 (Effective 07/01/20). Penalties.**

244 (1) [~~(a)~~] If, following an inspection by an enforcing agency, or an investigation or

245 issuance of a citation or information under Section [77-39-101](#), an enforcing agency determines
246 that a person has violated the terms of a permit issued under this chapter, the enforcing agency
247 may impose the penalties described in this section.

248 ~~[(b)]~~ (2) If multiple violations are found in a single inspection ~~[or investigation]~~ by an
249 enforcing agency, only one violation shall count toward the penalties described in ~~[this section]~~
250 Subsection (3).

251 ~~[(2)]~~ (3) (a) The administrative penalty for a first violation at a retail location is a
252 penalty of not more than \$500.

253 (b) The administrative penalty for a second violation at the same retail location that
254 occurs within one year of a previous violation is a penalty of not more than \$750.

255 (c) The administrative penalty for a third or subsequent violation at the same retail
256 location that occurs within two years after two or more previous violations is:

257 (i) a suspension of the retail tobacco business permit for 30 consecutive business days
258 within 60 days after the day on which the third or subsequent violation occurs; or

259 (ii) a penalty of not more than \$1,000.

260 ~~[(3) The]~~ (4) For the penalties described in Subsection (3), the department or a local
261 health department may:

262 (a) revoke a permit if a fourth violation occurs within two years of three previous
263 violations; and

264 ~~[(b) in addition to a monetary penalty imposed under Subsection (2), suspend the~~
265 ~~permit if the violation is due to a sale of tobacco products to an individual under:]~~

266 ~~[(i) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and]~~

267 ~~[(ii) beginning July 1, 2021, 21 years old; and]~~

268 ~~[(c)]~~ (b) if applicable, recommend to a municipality or county that a retail tobacco
269 specialty business license issued under Section [10-8-41.6](#) or [17-50-333](#) be suspended or
270 revoked.

271 (5) If a violation is found in an investigation under Section [77-39-101](#), the department
272 or a local health department may:

273 (a) revoke a permit for the tobacco retailer in violation, if the violation is due to a sale
274 of a tobacco product to an individual under:

275 (i) beginning July 1, 2020, and ending June 30, 2021, 20 years old; or

276 (ii) beginning July 1, 2021, 21 years old; and
 277 (b) if applicable, recommend to a municipality or county that the retail tobacco
 278 specialty business license issued under Section 10-8-41.6 or 17-50-333 be suspended or
 279 revoked.

280 ~~[(4)]~~ (6) (a) Except when a transfer described in Subsection ~~[(5)]~~ (7) occurs, a local
 281 health department may not issue a permit to:

282 (i) a tobacco retailer for whom a permit is suspended or revoked under Subsection (3)
 283 or (4); or

284 (ii) a tobacco retailer that has the same proprietor, director, corporate officer, partner,
 285 or other holder of significant interest as another tobacco retailer for whom a permit is
 286 suspended or revoked under Subsection (3) or (4).

287 (b) A person whose permit:

288 (i) is suspended under this section may not apply for a new permit for any other
 289 tobacco retailer for a period of 12 months after the day on which an enforcing agency suspends
 290 the permit; and

291 (ii) is revoked may not apply for a new permit for any tobacco retailer for a period of
 292 24 months after the day on which an enforcing agency revokes the permit.

293 ~~[(5)]~~ (7) Violations of this chapter, Section 10-8-41.6, or Section 17-50-333 that occur
 294 at a tobacco retailer location shall stay on the record for that tobacco retailer location unless:

295 (a) the tobacco retailer is transferred to a new proprietor; and

296 (b) the new proprietor provides documentation to the local health department that the
 297 new proprietor is acquiring the tobacco retailer in an arm's length transaction from the previous
 298 proprietor.

299 Section 4. Section 76-10-101 is amended to read:

300 **76-10-101. Definitions.**

301 As used in this part:

302 (1) "Cigar" means a product that contains nicotine, is intended to be burned under
 303 ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in
 304 any substance containing tobacco, other than any roll of tobacco that is a cigarette as described
 305 in Subsection (2).

306 (2) "Cigarette" means a product that contains nicotine, is intended to be burned under

307 ordinary conditions of use, and consists of:

308 (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

309 (b) any roll of tobacco wrapped in any substance containing tobacco which, because of

310 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to

311 be offered to, or purchased by, consumers as a cigarette described in Subsection (2)(a).

312 [~~(3)~~ "Electronic cigarette" means an electronic cigarette product, as defined in Section

313 [59-14-802](#).]

314 (3) (a) "Electronic cigarette" means:

315 (i) an electronic device used to deliver or capable of delivering vapor containing

316 nicotine to an individual's respiratory system;

317 (ii) a component of the device described in Subsection (3)(a)(i); or

318 (iii) an accessory sold in the same package as the device described in Subsection

319 (3)(a)(i).

320 (b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section

321 [26-38-2](#).

322 (4) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette

323 substance, or a prefilled electronic cigarette.

324 (5) "Electronic cigarette substance" means any substance, including liquid containing

325 nicotine, used or intended for use in an electronic cigarette.

326 [~~(4)~~] (6) "Place of business" includes:

327 (a) a shop;

328 (b) a store;

329 (c) a factory;

330 (d) a public garage;

331 (e) an office;

332 (f) a theater;

333 (g) a recreation hall;

334 (h) a dance hall;

335 (i) a poolroom;

336 (j) a café;

337 (k) a cafeteria;

- 338 (l) a cabaret;
- 339 (m) a restaurant;
- 340 (n) a hotel;
- 341 (o) a lodging house;
- 342 (p) a streetcar;
- 343 (q) a bus;
- 344 (r) an interurban or railway passenger coach;
- 345 (s) a waiting room; and
- 346 (t) any other place of business.

347 (7) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled
 348 with an electronic cigarette substance.

349 [~~(5)~~] (8) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other
 350 lighted smoking equipment.

351 Section 5. Section 77-39-101 (Effective 07/01/20) is amended to read:

352 **77-39-101 (Effective 07/01/20). Investigation of sales of alcohol, tobacco, and**
 353 **electronic cigarettes to underage individuals.**

354 (1) As used in this section, [~~"electronic cigarette" is as]~~ "electronic cigarette product"
 355 means the same as that term is defined in Section 76-10-101.

356 (2) (a) A peace officer, as defined by Title 53, Chapter 13, Peace Officer
 357 Classifications, may investigate the possible violation of:

358 (i) Section 32B-4-403₂ by requesting an individual under 21 years old to enter into and
 359 attempt to purchase or make a purchase of alcohol from a retail establishment; or

360 (ii) Section 76-10-104₂ by requesting an individual under the age specified in
 361 Subsection (2)(e) to enter into and attempt to purchase or make a purchase from a retail
 362 establishment of:

- 363 (A) a cigar;
- 364 (B) a cigarette;
- 365 (C) tobacco in any form; or
- 366 (D) an electronic cigarette product.

367 (b) A peace officer who is present at the site of a proposed purchase shall direct,
 368 supervise, and monitor the individual requested to make the purchase.

369 (c) Immediately following a purchase or attempted purchase, or as soon as practical,
370 the supervising peace officer shall inform the cashier and the proprietor or manager of the retail
371 establishment that the attempted purchaser was under the legal age to purchase:

- 372 (i) alcohol; or
- 373 (ii) (A) a cigar;
- 374 (B) a cigarette;
- 375 (C) tobacco in any form; or
- 376 (D) an electronic cigarette product.

377 (d) If a citation or information is issued, [it] the citation or information shall be issued
378 within seven days of the purchase.

379 (e) For purposes of Subsection (2)(a)(ii), the individual is younger than:

- 380 (i) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and
- 381 (ii) beginning July 1, 2021, 21 years old.

382 (3) (a) If an individual under the age of 18 years old is requested to attempt a purchase,
383 a written consent of that individual's parent or guardian shall be obtained prior to that
384 individual participating in any attempted purchase.

385 (b) An individual requested by the peace officer to attempt a purchase may:

- 386 (i) be a trained volunteer; or
- 387 (ii) receive payment, but may not be paid based on the number of successful purchases
388 of alcohol, tobacco, or an electronic cigarette product.

389 (4) The individual requested by the peace officer to attempt a purchase and anyone
390 accompanying the individual attempting a purchase may not during the attempted purchase
391 misrepresent the age of the individual by false or misleading identification documentation in
392 attempting the purchase.

393 (5) An individual requested to attempt to purchase or make a purchase pursuant to this
394 section is immune from prosecution, suit, or civil liability for the purchase of, attempted
395 purchase of, or possession of alcohol, a cigar, a cigarette, tobacco in any form, or an electronic
396 cigarette product if a peace officer directs, supervises, and monitors the individual.

397 (6) (a) Except as provided in Subsection (6)(b), a purchase attempted under this section
398 shall be conducted:

- 399 (i) on a random basis; and

400 (ii) within a 12-month period at any one retail establishment location [~~not more often~~
401 ~~than~~]:

402 (A) at minimum, two times for the attempted purchase of:

403 (I) a cigar;

404 (II) a cigarette;

405 (III) tobacco in any form; or

406 (IV) an electronic cigarette product; and

407 (B) not more often than four times for the attempted purchase of alcohol.

408 (b) This section does not prohibit an investigation or an attempt to purchase tobacco
409 under this section if:

410 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a
411 cigar, a cigarette, tobacco in any form, or an electronic cigarette product to an individual under
412 the age established by Section [32B-4-403](#) or [76-10-104](#); and

413 (ii) the supervising peace officer makes a written record of the grounds for the
414 reasonable suspicion.

415 (7) (a) The peace officer exercising direction, supervision, and monitoring of the
416 attempted purchase shall make a report of the attempted purchase, whether or not a purchase
417 was made.

418 (b) The report required by this Subsection (7) shall include:

419 (i) the name of the supervising peace officer;

420 (ii) the name of the individual attempting the purchase;

421 (iii) a photograph of the individual attempting the purchase showing how that
422 individual appeared at the time of the attempted purchase;

423 (iv) the name and description of the cashier or proprietor from whom the individual
424 attempted the purchase;

425 (v) the name and address of the retail establishment; and

426 (vi) the date and time of the attempted purchase.

427 **Section 6. Effective date.**

428 This bill takes effect on July 1, 2020.