

TOBACCO RETAILER AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

LONG TITLE

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

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.

(1) As used in this section:

- 33 (a) "Community location" means:
- 34 (i) a public or private kindergarten, elementary, middle, junior high, or high school;
- 35 (ii) a licensed child-care facility or preschool;
- 36 (iii) a trade or technical school;
- 37 (iv) a church;
- 38 (v) a public library;
- 39 (vi) a public playground;
- 40 (vii) a public park;
- 41 (viii) a youth center or other space used primarily for youth oriented activities;
- 42 (ix) a public recreational facility;
- 43 (x) a public arcade; or
- 44 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
- 45 (b) "Department" means the Department of Health, created in Section 26-1-4.
- 46 (c) "Local health department" means the same as that term is defined in Section
- 47 26A-1-102.
- 48 (d) "Permittee" means a person licensed under this section to conduct business as a
- 49 retail tobacco specialty business.
- 50 (e) "Retail tobacco specialty business" means a commercial establishment in which:
- 51 (i) the sale of tobacco products accounts for more than 35% of the total quarterly gross
- 52 receipts for the establishment;
- 53 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
- 54 storage of tobacco products;
- 55 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
- 56 tobacco products; [or]
- 57 (iv) the name of the business evidences that the business is a retail tobacco speciality
- 58 business; or
- 59 [~~(iv)~~] (v) the retail space features a self-service display for tobacco products.
- 60 (f) "Self-service display" means the same as that term is defined in Section
- 61 76-10-105.1.
- 62 (g) "Tobacco product" means:
- 63 (i) any cigar, cigarette, or electronic cigarette product, as those terms are defined in

64 Section 76-10-101;

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

66 (A) chewing tobacco; or

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

68 and

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

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

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

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

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

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

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

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

83 (A) agriculture use; or

84 (B) residential use.

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

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

93 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
94 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in

95 which the retail tobacco specialty business is located; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

126 premises or business operation; and

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

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

130 (B) zoning ordinances;

131 (C) building codes; and

132 (D) the requirements of a retail tobacco specialty business license issued before

133 December 31, 2015.

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

135 **17-50-333. Regulation of retail tobacco specialty business.**

136 (1) As used in this section:

137 (a) "Community location" means:

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

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

140 (iii) a trade or technical school;

141 (iv) a church;

142 (v) a public library;

143 (vi) a public playground;

144 (vii) a public park;

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

146 (ix) a public recreational facility;

147 (x) a public arcade; or

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

149 (b) "Department" means the Department of Health, created in Section 26-1-4.

150 (c) "Licensee" means a person licensed under this section to conduct business as a
151 retail tobacco specialty business.

152 (d) "Local health department" means the same as that term is defined in Section
153 26A-1-102.

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

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

- 157 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
158 storage of tobacco products;
- 159 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
160 tobacco products; [~~or~~]
- 161 (iv) the name of the business evidences that the business is a retail tobacco speciality
162 business; or
- 163 [~~(iv)~~] (v) the retail space features a self-service display for tobacco products.
- 164 (f) "Self-service display" means the same as that term is defined in Section
165 76-10-105.1.
- 166 (g) "Tobacco product" means:
- 167 (i) any cigar, cigarette, or electronic cigarette product as those terms are defined in
168 Section 76-10-101;
- 169 (ii) a tobacco product as that term is defined in Section 59-14-102, including:
170 (A) chewing tobacco; or
171 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;
172 and
- 173 (iii) tobacco paraphernalia as that term is defined in Section 76-10-104.1.
- 174 (2) The regulation of a retail tobacco specialty business is an exercise of the police
175 powers of the state, and through delegation, to other governmental entities.
- 176 (3) (a) A person may not operate a retail tobacco specialty business in a county unless
177 the person obtains a license from the county in which the retail tobacco specialty business is
178 located.
- 179 (b) A county may only issue a retail tobacco specialty business license to a person if
180 the person complies with the provisions of Subsections (4) and (5).
- 181 (4) (a) Except as provided in Subsection (7), a county may not issue a license for a
182 person to conduct business as a retail tobacco specialty business if the retail tobacco specialty
183 business is located within:
- 184 (i) 1,000 feet of a community location;
185 (ii) 600 feet of another retail tobacco specialty business; or
186 (iii) 600 feet from property used or zoned for:
187 (A) agriculture use; or

188 (B) residential use.

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

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

197 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
198 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in
199 which the retail tobacco specialty business is located; and

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

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

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

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

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

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

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

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

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

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

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

219 a business license and is operating in a county in accordance with all applicable laws except for
220 the requirement in Subsection (4), on or before December 31, 2015, is exempt from Subsection
221 (4).

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

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

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

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

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

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

233 (B) zoning ordinances;

234 (C) building codes; and

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

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

238 **26-62-305 (Effective 07/01/20). Penalties.**

239 (1) ~~[(a)]~~ If, following an inspection by an enforcing agency, or an investigation or
240 issuance of a citation or information under Section 77-39-101, an enforcing agency determines
241 that a person has violated the terms of a permit issued under this chapter, the enforcing agency
242 may impose the penalties described in this section.

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

246 ~~[(2)]~~ (3) (a) The administrative penalty for a first violation at a retail location is a
247 penalty of not more than \$500.

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

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

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

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

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

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

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

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

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

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

266 (5) If a violation is found in an investigation under Section 77-39-101, the department
267 or a local health department may:

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

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

271 (ii) beginning July 1, 2021, 21 years old; and

272 (b) if applicable, recommend to a municipality or county that the retail tobacco
273 specialty business license issued under Section 10-8-41.6 or 17-50-333 be suspended or
274 revoked.

275 ~~[(4)]~~ (6) (a) Except when a transfer described in Subsection ~~[(5)]~~ (7) occurs, a local
276 health department may not issue a permit to:

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

279 (ii) a tobacco retailer that has the same proprietor, director, corporate officer, partner,
280 or other holder of significant interest as another tobacco retailer for whom a permit is

281 suspended or revoked under Subsection (3) or (4).

282 (b) A person whose permit:

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

286 (ii) is revoked may not apply for a new permit for any tobacco retailer for a period of
287 24 months after the day on which an enforcing agency revokes the permit.

288 ~~[(5)]~~ (7) Violations of this chapter, Section 10-8-41.6, or Section 17-50-333 that occur
289 at a tobacco retailer location shall stay on the record for that tobacco retailer location unless:

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

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

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

295 **76-10-101. Definitions.**

296 As used in this part:

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

301 (2) "Cigarette" means a product that contains nicotine, is intended to be burned under
302 ordinary conditions of use, and consists of:

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

304 (b) any roll of tobacco wrapped in any substance containing tobacco which, because of
305 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to
306 be offered to, or purchased by, consumers as a cigarette described in Subsection (2)(a).

307 ~~[(3) "Electronic cigarette" means an electronic cigarette product, as defined in Section~~
308 ~~59-14-802.]~~

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

310 (i) an electronic device used to deliver or capable of delivering vapor containing
311 nicotine to an individual's respiratory system;

- 312 (ii) a component of the device described in Subsection (3)(a)(i); or
313 (iii) an accessory sold in the same package as the device described in Subsection
314 (3)(a)(i).
- 315 (b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section
316 26-38-2.
- 317 (4) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette
318 substance, or a prefilled electronic cigarette.
- 319 (5) "Electronic cigarette substance" means any substance, including liquid containing
320 nicotine, used or intended for use in an electronic cigarette.
- 321 [~~(4)~~] (6) "Place of business" includes:
- 322 (a) a shop;
323 (b) a store;
324 (c) a factory;
325 (d) a public garage;
326 (e) an office;
327 (f) a theater;
328 (g) a recreation hall;
329 (h) a dance hall;
330 (i) a poolroom;
331 (j) a café;
332 (k) a cafeteria;
333 (l) a cabaret;
334 (m) a restaurant;
335 (n) a hotel;
336 (o) a lodging house;
337 (p) a streetcar;
338 (q) a bus;
339 (r) an interurban or railway passenger coach;
340 (s) a waiting room; and
341 (t) any other place of business.
- 342 (7) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled

343 with an electronic cigarette substance.

344 [~~(5)~~] (8) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other
345 lighted smoking equipment.

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

347 **77-39-101 (Effective 07/01/20). Investigation of sales of alcohol, tobacco, and**
348 **electronic cigarettes to underage individuals.**

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

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

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

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

358 (A) a cigar;

359 (B) a cigarette;

360 (C) tobacco in any form; or

361 (D) an electronic cigarette product.

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

364 (c) Immediately following a purchase or attempted purchase₂, or as soon as practical,
365 the supervising peace officer shall inform the cashier and the proprietor or manager of the retail
366 establishment that the attempted purchaser was under the legal age to purchase:

367 (i) alcohol; or

368 (ii) (A) a cigar;

369 (B) a cigarette;

370 (C) tobacco in any form; or

371 (D) an electronic cigarette product.

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

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

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

376 (ii) beginning July 1, 2021, 21 years old.

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

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

381 (i) be a trained volunteer; or

382 (ii) receive payment, but may not be paid based on the number of successful purchases
383 of alcohol, tobacco, or an electronic cigarette product.

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

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

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

394 (i) on a random basis; and

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

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

398 (I) a cigar;

399 (II) a cigarette;

400 (III) tobacco in any form; or

401 (IV) an electronic cigarette product; and

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

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

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

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

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

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

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

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

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

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

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

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

422 Section 6. **Effective date.**

423 This bill takes effect on July 1, 2020.