

Effective 7/1/2024

Superseded 5/7/2025

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

(1) As used in this section:

(a) "Community location" means:

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

(b) "Department" means the Department of Health and Human Services created in Section 26B-1-201.

(c) "Electronic cigarette product" means the same as that term is defined in Section 76-10-101.

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

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

(f) "Nicotine product" means the same as that term is defined in Section 76-10-101.

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

- (i) sales of tobacco products, electronic cigarette products, and nicotine products account for more than 35% of the total quarterly gross receipts for the establishment;
- (ii) 20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, or nicotine products;
- (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, or nicotine products;
- (iv) the commercial establishment:
 - (A) holds itself out as a retail tobacco specialty business; and
 - (B) causes a reasonable person to believe the commercial establishment is a retail tobacco specialty business; or
- (v) the retail space features a self-service display for tobacco products, electronic cigarette products, or nicotine products.

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

(i) "Tobacco product" means:

- (i) a tobacco product as defined in Section 76-10-101; or
- (ii) tobacco paraphernalia as defined in Section 76-10-101.

(2) The regulation of a retail tobacco specialty business is an exercise of the police powers of the state by the state or by delegation of the state's police powers to other governmental entities.

(3)

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

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

- (4)
- (a) Except as provided in Subsection (7), a municipality may not issue a license for a person to conduct business as a retail tobacco specialty business if the retail tobacco specialty business is located within:
 - (i) 1,000 feet of a community location;
 - (ii) 600 feet of another retail tobacco specialty business; or
 - (iii) 600 feet from property used or zoned for:
 - (A) agriculture use; or
 - (B) residential use.
 - (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in a straight line from the nearest entrance of the retail tobacco specialty business to the nearest property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard to intervening structures or zoning districts.
- (5) A municipality may not issue or renew a license for a person to conduct business as a retail tobacco specialty business until the person provides the municipality with proof that the retail tobacco specialty business has:
- (a) a valid permit for a retail tobacco specialty business issued under Title 26B, Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine Products, by the local health department having jurisdiction over the area in which the retail tobacco specialty business is located; and
 - (b)
 - (i) for a retailer that sells a tobacco product, a valid license issued by the State Tax Commission in accordance with Section 59-14-201 or 59-14-301 to sell a tobacco product; and
 - (ii) for a retailer that sells an electronic cigarette product or a nicotine product, a valid license issued by the State Tax Commission in accordance with Section 59-14-803 to sell an electronic cigarette product or a nicotine product.
- (6)
- (a) Nothing in this section:
 - (i) requires a municipality to issue a retail tobacco specialty business license; or
 - (ii) prohibits a municipality from adopting more restrictive requirements on a person seeking a license or renewal of a license to conduct business as a retail tobacco specialty business.
 - (b) A municipality may suspend or revoke a retail tobacco specialty business license issued under this section:
 - (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
 - (ii) if a licensee violates federal law or federal regulations restricting the sale and distribution of tobacco products or electronic cigarette products to protect children and adolescents;
 - (iii) upon the recommendation of the department or a local health department under Title 26B, Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine Products; or
 - (iv) under any other provision of state law or local ordinance.
- (7)
- (a) A retail tobacco specialty business is exempt from Subsection (4) if:
 - (i) on or before December 31, 2018, the retail tobacco specialty business was issued a license to conduct business as a retail tobacco specialty business;
 - (ii) the retail tobacco specialty business is operating in a municipality in accordance with all applicable laws except for the requirement in Subsection (4); and
 - (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

- (b) A retail tobacco specialty business may maintain an exemption under Subsection (7)(a) if:
 - (i) the license described in Subsection (7)(a)(i) is renewed continuously without lapse or permanent revocation;
 - (ii) the retail tobacco specialty business does not close for business or otherwise suspend the sale of tobacco products, electronic cigarette products, or nicotine products for more than 60 consecutive days;
 - (iii) the retail tobacco specialty business does not substantially change the business premises or business operation; and
 - (iv) the retail tobacco specialty business maintains the right to operate under the terms of other applicable laws, including:
 - (A) Section 26B-7-503;
 - (B) zoning ordinances;
 - (C) building codes; and
 - (D) the requirements of the license described in Subsection (7)(a)(i).
- (c) A retail tobacco specialty business that does not qualify for an exemption under Subsection (7)(a) is exempt from Subsection (4) if:
 - (i) on or before December 31, 2018, the retail tobacco specialty business was issued a general tobacco retailer permit or a retail tobacco specialty business permit under Title 26B, Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine Products, by the local health department having jurisdiction over the area in which the retail tobacco specialty business is located;
 - (ii) the retail tobacco specialty business is operating in the municipality in accordance with all applicable laws except for the requirement in Subsection (4); and
 - (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.
- (d) Except as provided in Subsection (7)(e), a retail tobacco specialty business may maintain an exemption under Subsection (7)(c) if:
 - (i) on or before December 31, 2020, the retail tobacco specialty business receives a retail tobacco specialty business permit from the local health department having jurisdiction over the area in which the retail tobacco specialty business is located;
 - (ii) the permit described in Subsection (7)(d)(i) is renewed continuously without lapse or permanent revocation;
 - (iii) the retail tobacco specialty business does not close for business or otherwise suspend the sale of tobacco products, electronic cigarette products, or nicotine products for more than 60 consecutive days;
 - (iv) the retail tobacco specialty business does not substantially change the business premises or business operation as the business existed when the retail tobacco specialty business received a permit under Subsection (7)(d)(i); and
 - (v) the retail tobacco specialty business maintains the right to operate under the terms of other applicable laws, including:
 - (A) Section 26B-7-503;
 - (B) zoning ordinances;
 - (C) building codes; and
 - (D) the requirements of the retail tobacco permit described in Subsection (7)(d)(i).
- (e) A retail tobacco specialty business described in Subsection (7)(a) or (b) that is located within 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school before July 1, 2022, is exempt from Subsection (4)(a)(iii)(B) if the retail tobacco specialty business:

- (i) relocates, before July 1, 2022, to a property that is used or zoned for commercial use and located within a group of architecturally unified commercial establishments built on a site that is planned, developed, owned, and managed as an operating unit; and
- (ii) continues to meet the requirements described in Subsection (7)(b) that are not directly related to the relocation described in this Subsection (7)(e).