

HB0095S01 compared with HB0095

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inserted text shows text that was not in HB0095 but was inserted into HB0095S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

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: _____

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;

HB0095S01 compared with HB0095

- ▶ requires a criminal background check for the owner of a retail tobacco specialty business;
- ▶ 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.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

ENACTS:

10-8-41.6, Utah Code Annotated 1953

17-50-333, Utah Code Annotated 1953

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

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

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;

HB0095S01 compared with HB0095

(ix) a public recreational facility; or

(x) a public arcade.

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

(i) the sale of tobacco products accounts for more than ~~20%~~30% of the total annual gross receipts for the establishment;

(ii) food and beverage products, excluding gasoline sales, is less than 50% of the total annual gross receipts for the establishment; and

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

(c) "Tobacco product" means:

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

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

(A) chewing tobacco; or

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

and

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

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

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

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

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

(5) (a) A municipality may not issue a license to a retail tobacco specialty business if it 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:

HB0095S01 compared with HB0095

(A) agriculture use; or

(B) residential use.

(b) For purposes of Subsection (5)(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 the community location, or agricultural or residential use, without regard to intervening structures or zoning districts.

(c) (i) A municipality shall require a criminal background check for an owner of a retail tobacco specialty business.

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

(A) a felony within the last five years;

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

(C) a class B misdemeanor within the last three years, related to the sale of a tobacco product.

(6) (a) Nothing in this section:

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

(ii) prohibits a municipality from adopting additional restrictions on a tobacco specialty business.

(b) A municipality may revoke a 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 the regulations restricting the sale and distribution of cigarettes and smokeless tobacco to protect children and adolescents issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140; or

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

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

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

HB0095S01 compared with HB0095

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

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

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

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

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

17-50-333. 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; or

(x) a public arcade.

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

(i) the sale of tobacco products accounts for more than 30% of the total annual gross receipts for the establishment;

(ii) food and beverage products, excluding gasoline sales, is less than 50% of the total annual gross receipts for the establishment; and

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

(c) "Tobacco product" means:

HB0095S01 compared with HB0095

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

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

(A) chewing tobacco; or

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

and

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

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

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

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

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

(5) (a) A municipality may not issue a license to a retail tobacco specialty business if it 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 (5)(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 the community location, or agricultural or residential use, without regard to intervening structures or zoning districts.

(c) (i) A municipality shall require a criminal background check for an owner of a retail tobacco specialty business.

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

HB0095S01 compared with HB0095

(A) a felony within the last five years;

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

(C) a class B misdemeanor within the last three years, related to the sale of a tobacco product.

(6) (a) Nothing in this section:

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

(ii) prohibits a municipality from adopting additional restrictions on a tobacco specialty business.

(b) A municipality may revoke a 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 the regulations restricting the sale and distribution of cigarettes and smokeless tobacco to protect children and adolescents issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140; or

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

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

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

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

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

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

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

Section ~~{2}~~3. Section **76-10-104.1** is amended to read:

HB0095S01 compared with HB0095

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

(1) For purposes of this section:

(a) "Provides":

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

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

(b) "Tobacco paraphernalia":

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

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

(B) water pipes;

(C) carburetion tubes and devices;

(D) smoking and carburetion masks;

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

(F) chamber pipes;

(G) carburetor pipes;

(H) electric pipes;

(I) air-driven pipes;

(J) chillums;

(K) bongs; and

(L) ice pipes or chillers; and

(ii) does not include matches or lighters.

(2) (a) ~~[Any person who]~~ It is unlawful for a person to, knowingly, under circumstances where a person should reasonably know, intentionally, recklessly, or with criminal negligence ~~[provides]~~ provide any tobacco paraphernalia to any person under 19 years of age[;].

HB0095S01 compared with HB0095

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

Section ~~{3}~~4. Section **76-10-1602** is amended to read:

76-10-1602. Definitions.

As used in this part:

(1) "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities.

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

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

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

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

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

(c) taking, destroying, or possessing wildlife or parts of wildlife for the primary purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources

HB0095S01 compared with HB0095

Code of Utah, or Section 23-20-4;

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

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

(f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

(g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d, Clandestine Drug Lab Act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HB0095S01 compared with HB0095

- (z) forgery, Section 76-6-501;
- (aa) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, 76-6-506.5, and 76-6-506.6;
- (bb) deceptive business practices, Section 76-6-507;
- (cc) bribery or receiving bribe by person in the business of selection, appraisal, or criticism of goods, Section 76-6-508;
- (dd) bribery of a labor official, Section 76-6-509;
- (ee) defrauding creditors, Section 76-6-511;
- (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- (hh) bribery or threat to influence contest, Section 76-6-514;
- (ii) making a false credit report, Section 76-6-517;
- (jj) criminal simulation, Section 76-6-518;
- (kk) criminal usury, Section 76-6-520;
- (ll) fraudulent insurance act, Section 76-6-521;
- (mm) retail theft, Section 76-6-602;
- (nn) computer crimes, Section 76-6-703;
- (oo) identity fraud, Section 76-6-1102;
- (pp) mortgage fraud, Section 76-6-1203;
- (qq) sale of a child, Section 76-7-203;
- (rr) bribery to influence official or political actions, Section 76-8-103;
- (ss) threats to influence official or political action, Section 76-8-104;
- (tt) receiving bribe or bribery by public servant, Section 76-8-105;
- (uu) receiving bribe or bribery for endorsement of person as public servant, Section 76-8-106;
- (vv) official misconduct, Sections 76-8-201 and 76-8-202;
- (ww) obstruction of justice, Section 76-8-306;
- (xx) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- (yy) false or inconsistent material statements, Section 76-8-502;
- (zz) false or inconsistent statements, Section 76-8-503;
- (aaa) written false statements, Section 76-8-504;

HB0095S01 compared with HB0095

- (bbb) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- (ccc) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- (ddd) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- (eee) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or 76-8-1205;
- (fff) unemployment insurance fraud, Section 76-8-1301;
- (ggg) intentionally or knowingly causing one animal to fight with another, Subsection 76-9-301(2)(d) or (e), or Section 76-9-301.1;
- (hhh) possession, use, or removal of explosives, chemical, or incendiary devices or parts, Section 76-10-306;
- (iii) delivery to common carrier, mailing, or placement on premises of an incendiary device, Section 76-10-307;
- (jjj) possession of a deadly weapon with intent to assault, Section 76-10-507;
- (kkk) unlawful marking of pistol or revolver, Section 76-10-521;
- (lll) alteration of number or mark on pistol or revolver, Section 76-10-522;
- (mmm) forging or counterfeiting trademarks, trade name, or trade device, Section 76-10-1002;
- (nnn) selling goods under counterfeited trademark, trade name, or trade devices, Section 76-10-1003;
- (ooo) sales in containers bearing registered trademark of substituted articles, Section 76-10-1004;
- (ppp) selling or dealing with article bearing registered trademark or service mark with intent to defraud, Section 76-10-1006;
- (qqq) gambling, Section 76-10-1102;
- (rrr) gambling fraud, Section 76-10-1103;
- (sss) gambling promotion, Section 76-10-1104;
- (ttt) possessing a gambling device or record, Section 76-10-1105;
- (uuu) confidence game, Section 76-10-1109;
- (vvv) distributing pornographic material, Section 76-10-1204;
- (www) inducing acceptance of pornographic material, Section 76-10-1205;
- (xxx) dealing in harmful material to a minor, Section 76-10-1206;

HB0095S01 compared with HB0095

(yyy) distribution of pornographic films, Section 76-10-1222;

(zzz) indecent public displays, Section 76-10-1228;

(aaaa) prostitution, Section 76-10-1302;

(bbbb) aiding prostitution, Section 76-10-1304;

(cccc) exploiting prostitution, Section 76-10-1305;

(dddd) aggravated exploitation of prostitution, Section 76-10-1306;

(eeee) communications fraud, Section 76-10-1801;

(ffff) any act prohibited by the criminal provisions of Chapter 10, Part 19, Money Laundering and Currency Transaction Reporting Act;

(gggg) vehicle compartment for contraband, Section 76-10-2801;

(hhhh) any act prohibited by the criminal provisions of the laws governing taxation in this state; ~~and~~

(iiii) any act illegal under the laws of the United States and enumerated in 18 U.S.C. Sec. 1961 (1)(B), (C), and (D)[-]; and

(jjjj) any act prohibited by the criminal provisions of the laws governing the sale of tobacco products as defined in Section 10-8-41.6 in this state.

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Legislative Review Note

~~as of 1-16-12 6:15 PM~~

~~Office of Legislative Research and General Counsel~~