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**RETAIL SALE OF TOBACCO PRODUCTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: \_\_\_\_\_

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**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;
- ▶ 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

H.B. 95



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **76-10-104.1**, as enacted by Laws of Utah 2010, Chapter 316

33 **76-10-1602**, as last amended by Laws of Utah 2011, Chapter 320

34 ENACTS:

35 **10-8-41.6**, Utah Code Annotated 1953



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

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

39 **10-8-41.6. Regulation of retail tobacco specialty business.**

40 (1) As used in this section:

41 (a) "Community location" means:

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

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

44 (iii) a trade or technical school;

45 (iv) a church;

46 (v) a public library;

47 (vi) a public playground;

48 (vii) a public park;

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

50 (ix) a public recreational facility; or

51 (x) a public arcade.

52 (b) "Retail tobacco specialty business" means a commercial establishment in which the  
53 sale of tobacco products accounts for more than 20% of the total annual gross receipts for the  
54 establishment.

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

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

87 (A) a felony within the last five years;

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

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

90 product.

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

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

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

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

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

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

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

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

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

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

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

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

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

117 Section 2. Section **76-10-104.1** is amended to read:

118 **76-10-104.1. Providing tobacco paraphernalia to minors -- Penalties.**

119 (1) For purposes of this section:

120 (a) "Provides":

121 (i) includes selling, giving, furnishing, sending, or causing to be sent; and  
122 (ii) does not include the acts of the United States Postal Service or other common  
123 carrier when engaged in the business of transporting and delivering packages for others or the  
124 acts of a person, whether compensated or not, who transports or delivers a package for another  
125 person without any reason to know of the package's content.

126 (b) "Tobacco paraphernalia":

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

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

132 (B) water pipes;

133 (C) carburetion tubes and devices;

134 (D) smoking and carburetion masks;

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

137 (F) chamber pipes;

138 (G) carburetor pipes;

139 (H) electric pipes;

140 (I) air-driven pipes;

141 (J) chillums;

142 (K) bongs; and

143 (L) ice pipes or chillers; and

144 (ii) does not include matches or lighters.

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

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

151 Section 3. Section **76-10-1602** is amended to read:

152           **76-10-1602. Definitions.**

153           As used in this part:

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

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

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

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

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

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

178           (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary  
179 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources  
180 Code of Utah, or Section 23-20-4;

181           (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title  
182 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;

- 183 (e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal  
184 Offenses and Procedure Act;
- 185 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform  
186 Land Sales Practices Act;
- 187 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah  
188 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,  
189 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,  
190 Clandestine Drug Lab Act;
- 191 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform  
192 Securities Act;
- 193 (i) any act prohibited by the criminal provisions of Title 63G, Chapter 6, Utah  
194 Procurement Code;
- 195 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- 196 (k) a threat of terrorism, Section 76-5-107.3;
- 197 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- 198 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- 199 (n) sexual exploitation of a minor, Section 76-5b-201;
- 200 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 201 (p) causing a catastrophe, Section 76-6-105;
- 202 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 203 (r) burglary of a vehicle, Section 76-6-204;
- 204 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 205 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 206 (u) theft, Section 76-6-404;
- 207 (v) theft by deception, Section 76-6-405;
- 208 (w) theft by extortion, Section 76-6-406;
- 209 (x) receiving stolen property, Section 76-6-408;
- 210 (y) theft of services, Section 76-6-409;
- 211 (z) forgery, Section 76-6-501;
- 212 (aa) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, 76-6-506.5, and  
213 76-6-506.6;

- 214 (bb) deceptive business practices, Section 76-6-507;
- 215 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or  
216 criticism of goods, Section 76-6-508;
- 217 (dd) bribery of a labor official, Section 76-6-509;
- 218 (ee) defrauding creditors, Section 76-6-511;
- 219 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 220 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 221 (hh) bribery or threat to influence contest, Section 76-6-514;
- 222 (ii) making a false credit report, Section 76-6-517;
- 223 (jj) criminal simulation, Section 76-6-518;
- 224 (kk) criminal usury, Section 76-6-520;
- 225 (ll) fraudulent insurance act, Section 76-6-521;
- 226 (mm) retail theft, Section 76-6-602;
- 227 (nn) computer crimes, Section 76-6-703;
- 228 (oo) identity fraud, Section 76-6-1102;
- 229 (pp) mortgage fraud, Section 76-6-1203;
- 230 (qq) sale of a child, Section 76-7-203;
- 231 (rr) bribery to influence official or political actions, Section 76-8-103;
- 232 (ss) threats to influence official or political action, Section 76-8-104;
- 233 (tt) receiving bribe or bribery by public servant, Section 76-8-105;
- 234 (uu) receiving bribe or bribery for endorsement of person as public servant, Section  
235 76-8-106;
- 236 (vv) official misconduct, Sections 76-8-201 and 76-8-202;
- 237 (ww) obstruction of justice, Section 76-8-306;
- 238 (xx) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 239 (yy) false or inconsistent material statements, Section 76-8-502;
- 240 (zz) false or inconsistent statements, Section 76-8-503;
- 241 (aaa) written false statements, Section 76-8-504;
- 242 (bbb) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 243 (ccc) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 244 (ddd) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;



- 245 (eee) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
- 246 76-8-1205;
- 247 (fff) unemployment insurance fraud, Section 76-8-1301;
- 248 (ggg) intentionally or knowingly causing one animal to fight with another, Subsection
- 249 76-9-301(2)(d) or (e), or Section 76-9-301.1;
- 250 (hhh) possession, use, or removal of explosives, chemical, or incendiary devices or
- 251 parts, Section 76-10-306;
- 252 (iii) delivery to common carrier, mailing, or placement on premises of an incendiary
- 253 device, Section 76-10-307;
- 254 (jjj) possession of a deadly weapon with intent to assault, Section 76-10-507;
- 255 (kkk) unlawful marking of pistol or revolver, Section 76-10-521;
- 256 (lll) alteration of number or mark on pistol or revolver, Section 76-10-522;
- 257 (mmm) forging or counterfeiting trademarks, trade name, or trade device, Section
- 258 76-10-1002;
- 259 (nnn) selling goods under counterfeited trademark, trade name, or trade devices,
- 260 Section 76-10-1003;
- 261 (ooo) sales in containers bearing registered trademark of substituted articles, Section
- 262 76-10-1004;
- 263 (ppp) selling or dealing with article bearing registered trademark or service mark with
- 264 intent to defraud, Section 76-10-1006;
- 265 (qqq) gambling, Section 76-10-1102;
- 266 (rrr) gambling fraud, Section 76-10-1103;
- 267 (sss) gambling promotion, Section 76-10-1104;
- 268 (ttt) possessing a gambling device or record, Section 76-10-1105;
- 269 (uuu) confidence game, Section 76-10-1109;
- 270 (vvv) distributing pornographic material, Section 76-10-1204;
- 271 (www) inducing acceptance of pornographic material, Section 76-10-1205;
- 272 (xxx) dealing in harmful material to a minor, Section 76-10-1206;
- 273 (yyy) distribution of pornographic films, Section 76-10-1222;
- 274 (zzz) indecent public displays, Section 76-10-1228;
- 275 (aaaa) prostitution, Section 76-10-1302;

276 (bbbb) aiding prostitution, Section 76-10-1304;  
277 (cccc) exploiting prostitution, Section 76-10-1305;  
278 (dddd) aggravated exploitation of prostitution, Section 76-10-1306;  
279 (eeee) communications fraud, Section 76-10-1801;  
280 (ffff) any act prohibited by the criminal provisions of Chapter 10, Part 19, Money  
281 Laundering and Currency Transaction Reporting Act;  
282 (gggg) vehicle compartment for contraband, Section 76-10-2801;  
283 (hhhh) any act prohibited by the criminal provisions of the laws governing taxation in  
284 this state; ~~and~~  
285 (iiii) any act illegal under the laws of the United States and enumerated in 18 U.S.C.  
286 Sec. 1961 (1)(B), (C), and (D)~~[-]; and~~  
287 (jjjj) any act prohibited by the criminal provisions of the laws governing the sale of  
288 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**