

Representative Bradley G. Last proposes the following substitute bill:

AMENDMENTS TO TOBACCO REGULATIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley G. Last

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill establishes new requirements for the licensing of tobacco retail shops and amends the definition of smoking.

Highlighted Provisions:

This bill:

- ▶ amends municipal and county business license practices for a retail tobacco specialty business;
- ▶ amends the definition of smoking in the Utah Indoor Clean Air Act;
- ▶ beginning January 1, 2018, requires a retail tobacco specialty business to obtain a permit from the local health department;
- ▶ establishes requirements for the tobacco permit application;
- ▶ establishes the standards a local health department shall apply when determining whether to issue a permit to a retail tobacco specialty business;
- ▶ gives the local health department and the state Health Department enforcement authority; and
- ▶ provides penalties for violations of the tobacco permits.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **10-8-41.6**, as enacted by Laws of Utah 2012, Chapter 154

31 **17-50-333**, as enacted by Laws of Utah 2012, Chapter 154

32 **26-38-2**, as last amended by Laws of Utah 2012, Chapter 171

33 ENACTS:

34 **26-59-101**, Utah Code Annotated 1953

35 **26-59-102**, Utah Code Annotated 1953

36 **26-59-103**, Utah Code Annotated 1953

37 **26-59-104**, Utah Code Annotated 1953

38 **26-59-105**, Utah Code Annotated 1953

39 **26-59-106**, Utah Code Annotated 1953

40 **26-59-107**, Utah Code Annotated 1953

41 **26A-1-128**, Utah Code Annotated 1953



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

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

45 **10-8-41.6. Regulation of retail tobacco specialty business.**

46 (1) As used in this section:

47 (a) "Community location" means:

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

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

50 (iii) a trade or technical school;

51 (iv) a church;

52 (v) a public library;

53 (vi) a public playground;

54 (vii) a public park;

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

56 (ix) a public recreational facility; [~~or~~]

- 57 (x) a public arcade~~[-];~~ or
- 58 (xi) for a license issued on or after July 1, 2017, a homeless shelter.
- 59 (b) "Health Department" means the same as "department," as that term is defined in
- 60 Section 26-1-2.
- 61 (c) "Local health department" means the same as that term is defined in Section
- 62 26A-1-102.
- 63 ~~[(b)]~~ (d) "Retail tobacco specialty business" means a commercial establishment;
- 64 (i) in which:
- 65 ~~[(i)]~~ (A) the sale of tobacco products accounts for more than 35% of the total annual
- 66 gross receipts for the establishment;
- 67 ~~[(ii)]~~ (B) food and beverage products, excluding gasoline sales, is less than 45% of the
- 68 total annual gross receipts for the establishment; and
- 69 ~~[(iii)]~~ (C) the establishment is not licensed as a pharmacy under Title 58, Chapter 17b,
- 70 Pharmacy Practice Act~~[-];~~ or
- 71 (ii) 40% or more of the retail floor and shelf space is allocated to the offer, display, or
- 72 storage of tobacco products.
- 73 ~~[(e)]~~ (e) "Tobacco product" means:
- 74 (i) any cigar, cigarette, or electronic cigarette as defined in Section 76-10-101;
- 75 (ii) a tobacco product as defined in Section 59-14-102, including:
- 76 (A) chewing tobacco; or
- 77 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;
- 78 and
- 79 (iii) tobacco paraphernalia as defined in Section 76-10-104.1.
- 80 (2) The regulation of a retail tobacco specialty business is an exercise of the police
- 81 powers of the state, and through delegation, to other governmental entities.
- 82 (3) (a) Except as provided in Subsection ~~[(7)]~~ (8), and beginning July 1, 2012, a
- 83 municipality shall require an entity to be licensed as a retail tobacco specialty business to
- 84 conduct business as a retail tobacco specialty business in a municipality.
- 85 (b) A municipality may issue a retail tobacco specialty business license to an entity if
- 86 the entity complies with the provisions of ~~[Subsection (5)]~~ Subsections (5) and (6).
- 87 (4) ~~[Except as provided in Subsection (7), and beginning July 1, 2012, a]~~ A business

88 entity that ~~[conducts]~~ obtained a license as a retail tobacco specialty business in a municipality
89 ~~[shall be licensed by the municipality as a retail tobacco specialty business]~~ before July 1,
90 2017, or is operating under an exemption under Subsection (8) shall, on or before January 1,
91 2018, obtain a permit from a local health department under Title 26, Chapter 59, Tobacco
92 Retail Permit.

93 (5) (a) A municipality may not issue a license to a retail tobacco specialty business if it
94 is located within:

- 95 (i) 1,000 feet of a community location;
- 96 (ii) 600 feet of another retail tobacco specialty business; or
- 97 (iii) 600 feet from property used or zoned for:
 - 98 (A) agriculture use; or
 - 99 (B) residential use.

100 (b) For purposes of Subsection (5)(a), the proximity requirements shall be measured in
101 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
102 property boundary of the community location, or agricultural or residential use, without regard
103 to intervening structures or zoning districts.

104 (6) (a) Beginning July 1, 2017, a ~~Ŝ~~ ~~→~~ ~~[county]~~ ~~municipality~~ ~~←~~ ~~Ŝ~~ may not issue a license to
104a an applicant for a
105 retail tobacco specialty business until the applicant provides the ~~Ŝ~~ ~~→~~ ~~[county]~~ ~~municipality~~ ~~←~~ ~~Ŝ~~
105a with:

- 106 (i) a permit for a retail tobacco specialty business issued under Title 26, Chapter 59,
107 Tobacco Retail Permit by the local health department in which the retail tobacco specialty
108 business is located; and
- 109 (ii) a license to sell tobacco products from the State Tax Commission.
- 110 (b) A retail tobacco specialty business that does not have a permit under Subsection (4)
111 or (6)(a):
 - 112 (i) shall keep tobacco products and tobacco paraphernalia from public view;
 - 113 (ii) may not display any advertisement related to tobacco or tobacco paraphernalia that
114 promotes the sale, distribution, or use of such products; and
 - 115 (iii) may not sell, offer for sale, or offer to exchange for any form of consideration,
116 tobacco, tobacco products, or tobacco paraphernalia.

117 ~~[(6)]~~ (7) (a) Nothing in this section:

- 118 (i) requires a municipality to issue a business license to a retail tobacco specialty

119 business; or

120 (ii) prohibits a municipality from adopting more restrictive requirements on a tobacco
121 specialty business than provided for in this section.

122 (b) A municipality may suspend or revoke a business license issued under this section:

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

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

128 (iii) upon the recommendation of the Health Department or a local health department
129 under Title 26, Chapter 59, Tobacco Retail Permit; or

130 ~~[(iii)]~~ (iv) under other provisions of state law or local ordinance.

131 ~~[(7)]~~ (8) (a) In accordance with Subsection ~~[(7)]~~ (8)(b), a retail tobacco specialty
132 business that has a business license and is operating lawfully in a municipality on or before
133 ~~[May 8, 2012]~~ January 1, 2017, is exempt from ~~[Subsections (4) and]~~ Subsection (5).

134 (b) A retail tobacco specialty business may maintain an exemption under Subsection
135 ~~[(7)]~~ (8)(a) if:

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

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

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

142 (iv) the retail tobacco specialty business maintains the right to operate under the terms
143 of other applicable laws, including Title 26, Chapter 38, Utah Indoor Clean Air Act, zoning
144 ordinances, building codes, and the business license issued prior to ~~[May 8, 2012]~~ January 1,
145 2017.

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

147 **17-50-333. Regulation of retail tobacco specialty business.**

148 (1) As used in this section:

149 (a) "Community location" means:

- 150 (i) a public or private kindergarten, elementary, middle, junior high, or high school;
- 151 (ii) a licensed child-care facility or preschool;
- 152 (iii) a trade or technical school;
- 153 (iv) a church;
- 154 (v) a public library;
- 155 (vi) a public playground;
- 156 (vii) a public park;
- 157 (viii) a youth center or other space used primarily for youth oriented activities;
- 158 (ix) a public recreational facility; [or]
- 159 (x) a public arcade[?]; or
- 160 (xi) for a license issued on or after July 1, 2017, a homeless shelter.

161 (b) "Health Department" means the same as "department," as that term is defined in

162 Section 26-1-2.

163 (c) "Local health department" means the same as that term is defined in Section

164 26A-1-102.

165 [~~(b)~~] (d) "Retail tobacco specialty business" means a commercial establishment;

166 (i) in which:

167 [~~(i)~~] (A) the sale of tobacco products accounts for more than 35% of the total annual
168 gross receipts for the establishment;

169 [~~(ii)~~] (B) food and beverage products, excluding gasoline sales, is less than 45% of the
170 total annual gross receipts for the establishment; and

171 [~~(iii)~~] (C) the establishment is not licensed as a pharmacy under Title 58, Chapter 17b,
172 Pharmacy Practice Act[?]; or

173 (ii) 40% or more of the retail floor and shelf space is allocated to the offer, display, or
174 storage of tobacco products.

175 [~~(e)~~] (e) "Tobacco product" means:

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

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

178 (A) chewing tobacco; or

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

180 and

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

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

184 (3) (a) Except as provided in Subsection [~~(7)~~] (8), and beginning July 1, 2012, a county
185 shall require an entity to be licensed as a retail tobacco specialty business to conduct business
186 as a retail tobacco specialty business in a county.

187 (b) A county may issue a retail tobacco specialty business license to an entity if the
188 entity complies with the provisions of [~~Subsection (5)~~] Subsections (5) and (6).

189 (4) [~~Except as provided in Subsection (7), and beginning July 1, 2012, a~~] A business
190 entity that [~~conducts~~] obtained a retail tobacco specialty business in a county [~~shall be licensed~~
191 by the county as a retail tobacco specialty business] before July 1, 2017, or is operating under
192 an exemption under Subsection (8), shall, on or before January 1, 2018, obtain a permit from a
193 local health department under Title 26, Chapter 59, Tobacco Retail Permit.

194 (5) (a) A county may not issue a license to a retail tobacco specialty business if it is
195 located within:

- 196 (i) 1,000 feet of a community location;
197 (ii) 600 feet of another retail tobacco specialty business; or
198 (iii) 600 feet from property used or zoned for:
199 (A) agriculture use; or
200 (B) residential use.

201 (b) For purposes of Subsection (5)(a), the proximity requirements shall be measured in
202 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
203 property boundary of the community location, or agricultural or residential use, without regard
204 to intervening structures or zoning districts.

205 (6) (a) Beginning July 1, 2017, a county may not issue a license to an applicant for a
206 retail tobacco specialty business until the applicant provides the county with:

207 (i) a permit for a retail tobacco specialty business issued under Title 26, Chapter 59,
208 Tobacco Retail Permit, by the local health department in which the tobacco specialty business
209 is located; and

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

211 (b) A retail tobacco specialty business that does not have a permit under Subsection (4)

212 or (6)(a):

213 (i) shall keep tobacco products and tobacco paraphernalia from public view;

214 (ii) may not display any advertisement related to tobacco or tobacco paraphernalia that
215 promotes the sale, distribution, or use of such products; and

216 (iii) may not sell, offer for sale, or offer to exchange for any form of consideration,
217 tobacco, tobacco products, or tobacco paraphernalia.

218 [(6)] (7) (a) Nothing in this section:

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

220 (ii) prohibits a county from adopting more restrictive requirements on a tobacco
221 specialty business than provided for in this section.

222 (b) A county may suspend or revoke a business license issued under this section:

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

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

228 (iii) upon the recommendation of the Health Department or a local health department
229 under Title 26, Chapter 59, Tobacco Retail Permit; or

230 [(iii)] (iv) under other provisions of state law or local ordinance.

231 [(7)] (8) (a) In accordance with Subsection [(7)] (8)(b), a retail tobacco specialty
232 business that has a business license and is operating lawfully in a county on or before [May 8,
233 2012] January 1, 2017, is exempt from [Subsections (4) and] Subsection (5).

234 (b) A retail tobacco specialty business may maintain an exemption under Subsection
235 [(7)] (8)(a) if:

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

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

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

242 (iv) the retail tobacco specialty business maintains the right to operate under the terms

243 of other applicable laws, including Title 26, Chapter 38, Utah Indoor Clean Air Act, zoning
244 ordinances, building codes, and the business license issued [~~prior to May 8, 2012~~] before
245 January 1, 2017.

246 Section 3. Section **26-38-2** is amended to read:

247 **26-38-2. Definitions.**

248 As used in this chapter:

249 (1) "E-cigarette":

250 (a) means any electronic oral device:

251 (i) that provides an aerosol or a vapor of nicotine or other substance; and

252 (ii) which simulates smoking through its use or through inhalation of the device; and

253 (b) includes an oral device that is:

254 (i) composed of a heating element, battery, or electronic circuit; and

255 (ii) marketed, manufactured, distributed, or sold as:

256 (A) an e-cigarette;

257 (B) e-cigar;

258 (C) e-pipe; or

259 (D) any other product name or descriptor, if the function of the product meets the
260 definition of Subsection (1)(a).

261 (2) "Place of public access" means any enclosed indoor place of business, commerce,
262 banking, financial service, or other service-related activity, whether publicly or privately owned
263 and whether operated for profit or not, to which persons not employed at the place of public
264 access have general and regular access or which the public uses, including:

265 (a) buildings, offices, shops, elevators, or restrooms;

266 (b) means of transportation or common carrier waiting rooms;

267 (c) restaurants, cafes, or cafeterias;

268 (d) taverns as defined in Section [32B-1-102](#), or cabarets;

269 (e) shopping malls, retail stores, grocery stores, or arcades;

270 (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical
271 sites, auditoriums, or arenas;

272 (g) barber shops, hair salons, or laundromats;

273 (h) sports or fitness facilities;

274 (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and
275 breakfast" lodging facilities, and other similar lodging facilities, including the lobbies,
276 hallways, elevators, restaurants, cafeterias, other designated dining areas, and restrooms of any
277 of these;

278 (j) (i) any child care facility or program subject to licensure or certification under this
279 title, including those operated in private homes, when any child cared for under that license is
280 present; and

281 (ii) any child care, other than child care as defined in Section 26-39-102, that is not
282 subject to licensure or certification under this title, when any child cared for by the provider,
283 other than the child of the provider, is present;

284 (k) public or private elementary or secondary school buildings and educational
285 facilities or the property on which those facilities are located;

286 (l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or
287 religious organization when used solely by the organization members or their guests or
288 families;

289 (m) any facility rented or leased for private functions from which the general public is
290 excluded and arrangements for the function are under the control of the function sponsor;

291 (n) any workplace that is not a place of public access or a publicly owned building or
292 office but has one or more employees who are not owner-operators of the business;

293 (o) any area where the proprietor or manager of the area has posted a conspicuous sign
294 stating "no smoking", "thank you for not smoking", or similar statement; and

295 (p) a holder of a club license, as defined in Section 32B-1-102.

296 (3) "Publicly owned building or office" means any enclosed indoor place or portion of
297 a place owned, leased, or rented by any state, county, or municipal government, or by any
298 agency supported by appropriation of, or by contracts or grants from, funds derived from the
299 collection of federal, state, county, or municipal taxes.

300 (4) "Smoking" means:

301 (a) the possession of any lighted or heated tobacco product in any form;

302 (b) inhaling, exhaling, burning, or ~~[heating a substance containing tobacco or nicotine~~
303 ~~intended for inhalation through a]~~ carrying any lighted or heated cigar, cigarette, pipe, or
304 hookah[;] that contains:

- 305 (i) tobacco;
- 306 (ii) nicotine; or
- 307 (iii) a natural or synthetic tobacco substitute or flavored product;
- 308 (c) [~~except as provided in Section 26-38-2.6;~~] using an e-cigarette; or
- 309 (d) using an oral smoking device intended to circumvent the prohibition of smoking in
- 310 this chapter.

311 Section 4. Section **26-59-101** is enacted to read:

CHAPTER 59. TOBACCO RETAIL PERMIT

26-59-101. Title.

314 This chapter is known as "Tobacco Retail Permit."

315 Section 5. Section **26-59-102** is enacted to read:

26-59-102. Definitions.

317 (1) As used in this chapter:

318 (a) "Community location" means:

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

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

321 (iii) a trade or technical school;

322 (iv) a church;

323 (v) a public library;

324 (vi) a public playground;

325 (vii) a public park;

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

327 (ix) a public recreational facility;

328 (x) a public arcade; or

329 (xi) for a license issued by a municipality under Section 10-8-41.6 or a county under
330 Section 17-50-333, on or after July 1, 2017, a homeless shelter.

331 (b) "Permit" means a tobacco retail permit issued to a retail tobacco specialty business
332 under this chapter.

333 (c) "Retail tobacco specialty business" means the same as that term is defined in
334 Sections 10-8-41.6 and 17-50-333.

335 (d) "Tobacco product" means:

- 336 (i) any cigar, cigarette, or electronic cigarette as defined in Section 76-10-101;
- 337 (ii) a tobacco product as defined in Section 59-14-102, including:
- 338 (A) chewing tobacco; or
- 339 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;
- 340 and
- 341 (iii) tobacco paraphernalia as defined in Section 76-10-104.1.

342 Section 6. Section **26-59-103** is enacted to read:

343 **26-59-103. Tobacco retail permit -- Enforcement powers.**

344 (1) (a) The regulation of a retail tobacco specialty business is an exercise of the police
345 powers of the state, and, through delegation, by the department and by local health
346 departments.

347 (b) A local health department and the department may inspect a retail tobacco specialty
348 business to determine:

349 (i) whether a retail tobacco specialty business continues to meet the qualifications for
350 the permit issued under this chapter;

351 (ii) whether a retail tobacco specialty business has violated any of the requirements for
352 a license under Section 10-8-41.6 or 17-50-333;

353 (iii) whether a retail tobacco specialty business:

354 (A) engaged in a pattern of unlawful activity under Title 76, Chapter 10, Part 16,
355 Pattern of Unlawful Activity Act; or

356 (B) violated the regulations restricting the sale and distribution of cigarettes and
357 smokeless tobacco issued by the United States Food and Drug Administration, 21 C.F.R. Part
358 1140, to protect children and adolescents; and

359 (iv) whether a retail tobacco specialty business has violated other provisions of state
360 law or local ordinance.

361 (c) If the department or a local health department determines that a retail tobacco
362 specialty business is in violation of the permit issued under this chapter or a license issued
363 under Section 10-8-41.6 or 17-50-333, the local health department may take action under
364 Section 26-59-107 and may recommend to a county or municipality that a license issued under
365 Section 10-8-41.6 or 17-50-333 be suspended or revoked.

366 (2) (a) An applicant for a permit under this chapter shall submit an application for a

367 permit to the local health department with jurisdiction for the business address for which the
368 applicant seeks a permit and shall pay all applicable fees under Section [26-59-104](#).

369 (b) The application for a permit shall include:

370 (i) the name, address, and telephone number of each proprietor;

371 (ii) the business name, address, and telephone number of the single fixed location for
372 which a tobacco retail permit is sought;

373 (iii) the name and mailing address of each proprietor authorized to receive permit
374 related communication and notices;

375 (iv) evidence that the location for which a tobacco retail permit is sought has been
376 issued a valid tobacco license from the State Tax Commission;

377 (v) information regarding whether any proprietor has been determined to have violated,
378 or has been a proprietor at a location that has been determined to have violated:

379 (A) this chapter;

380 (B) Chapter 38, Utah Indoor Clean Air Act;

381 (C) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;

382 (D) regulations restricting the sale and distribution of cigarettes and smokeless tobacco
383 issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140, to protect
384 children and adolescents; or

385 (E) other provisions of state law or local ordinance;

386 (vi) if the person has provided information under Subsection (2)(b)(v), the dates and
387 locations of all violations listed under Subsection (2)(b)(v);

388 (vii) (A) sales data that shows whether the business' gross receipts from tobacco and
389 tobacco paraphernalia at the location on the application for permit exceeds 35% of total annual
390 gross receipts for the 12 months preceding the application; or

391 (B) for a new businesses without 12 months of sales data, a statement of the business
392 model for the location and an affidavit declaring whether the applicant intends to receive gross
393 revenues from tobacco products that exceed 35% of the annual gross revenues; and

394 (viii) evidence regarding whether the business location is within:

395 (A) 1,000 feet of a community location;

396 (B) 600 feet of another retail tobacco specialty business; or

397 (C) 600 feet from property used or zoned for agricultural use or residential use.

398 (c) For purposes of Subsection (2)(b)(viii), the proximity requirements shall be
399 measured in a straight line from the nearest entrance of the retail tobacco specialty business to
400 the nearest property boundary of the community location, or agricultural or residential use,
401 without regard to intervening structures or zoning districts.

402 (3) The local health department may issue a permit under this chapter to a retail
403 tobacco specialty business if the local health department determines from the application that:

404 (a) the applicant has not violated any of the provisions of Subsection (1);

405 (b) the retail tobacco specialty business meets the requirements of this chapter;

406 (c) the applicant meets the licensing requirements of Sections [10-8-41.6](#) and
407 [17-50-333](#); and

408 (d) except as provided in Subsection (4), the establishment is not within the proximity
409 of a community location as described in Subsection (2)(b).

410 (4) (a) A retail tobacco specialty business that has a business license and is operating
411 lawfully in a municipality or county:

412 (i) on or before January 1, 2017, in accordance with Subsections [10-8-41.6\(8\)](#) and
413 [17-50-333\(8\)](#), is exempt from the proximity of a community location in Subsection (3)(d); or

414 (ii) on or before July 1, 2017, is exempt from the proximity requirement for a homeless
415 shelter.

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

418 (i) the permit under this chapter is renewed continually without relapse or permanent
419 revocation;

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

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

424 (iv) the retail tobacco specialty business maintains the right to operate under the terms
425 of other applicable laws, including Chapter 38, Utah Indoor Clean Air Act, zoning ordinances,
426 building codes, and the business license issued before January 1, 2017.

427 Section 7. Section **26-59-104** is enacted to read:

428 **26-59-104. Permit term and renewal fees.**

- 429 (1) The term of a permit is one year.
- 430 (2) The local health department may establish fees for a permit to recover the cost to
431 the local health department for:
- 432 (a) enforcement and administration of permit requirements under this chapter;
433 (b) inspections and enforcement of licensing requirements under Section [10-8-41.6](#) and
434 Section [17-50-333](#); and
- 435 (c) enforcement of this chapter.
- 436 (3) A permit holder may apply for a renewal of a permit no later than 30 days before
437 the expiration of the permit term.
- 438 (4) A retail tobacco specialty business that fails to renew a permit under Subsection (3)
439 shall submit:
- 440 (a) the information required in Section [26-59-103](#);
441 (b) the renewal fee plus a late fee of 10% of the renewal fee; and
442 (c) a signed affidavit affirming that the proprietor has not sold tobacco products or
443 tobacco paraphernalia during the time the permit was expired.

444 Section 8. Section **26-59-105** is enacted to read:

445 **26-59-105. Permit nontransferable.**

- 446 (1) A permit is nontransferable.
- 447 (2) A retail tobacco specialty business shall apply for a new permit if the information
448 required in the permit application in Section [26-59-103](#) changes.
- 449 (3) Violations of this chapter or Section [10-8-41.6](#) or [17-50-333](#) that occur at a retail
450 tobacco specialty business location shall stay on the record for the retail tobacco specialty
451 business location unless:
- 452 (a) the retail tobacco specialty business has been transferred to a new proprietor; and
453 (b) the new proprietor provides documentation to the local health department that the
454 new proprietor is acquiring the retail tobacco specialty business in an arm's length transaction
455 from the previous proprietor.

456 Section 9. Section **26-59-106** is enacted to read:

457 **26-59-106. Other permit requirements and prohibitions.**

- 458 (1) A retail tobacco specialty business holding a permit shall:
- 459 (a) prominently display in a publicly and readily visible location the permit;

460 (b) inspect the photographic-identification of a purchaser of a tobacco product to
461 confirm that the purchaser is of legal age to purchase the tobacco product; and

462 (c) prominently display at the point of purchase a sign that states that the sale of
463 tobacco is prohibited to a person under the age of 19 years.

464 (2) A business holding a permit under Subsection 26-59-103(3) shall:

465 (a) not allow any person under the age of 19 years inside the business; and

466 (b) clearly display a sign on the public entrance of the business that a person under the
467 age of 19 years is prohibited from entering.

468 Section 10. Section 26-59-107 is enacted to read:

469 **26-59-107. Permit violation.**

470 (1) A retail tobacco specialty business is in violation of the permit issued under this
471 chapter if the retail tobacco specialty business violates:

472 (a) this chapter;

473 (b) licensing laws under Section 10-8-41.6 or 17-50-333;

474 (c) Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic Chemical
475 Solvents;

476 (d) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;

477 (e) regulations restricting the sale and distribution of cigarettes and smokeless tobacco
478 issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140, to protect
479 children and adolescents; or

480 (f) other provisions of state law or local ordinance.

481 (2) (a) If following an investigation or issuance of a citation or information the
482 department or a local health department determines under Subsection (2) that a retail tobacco
483 specialty business is in violation of a permit issued under this chapter, the department or a local
484 health department may suspend or revoke the permit issued under this chapter to the retail
485 tobacco specialty business, and may impose the administrative penalties in Subsection (2)(b).

486 (b) (i) The penalty for a first violation is:

487 (A) a suspension of the tobacco retail specialty business permit for one business day
488 within 30 days of the citation; or

489 (B) a penalty of not more than \$1,000.

490 (ii) The penalty for a second violation within 24 months of the first violation is:

491 (A) a suspension of the tobacco retail specialty business permit for five consecutive
492 business days; or

493 (B) a penalty of not more than \$3,000.

494 (iii) The penalty for a third or subsequent violation within 24 months of the first
495 violation is:

496 (A) a suspension of the retail tobacco specialty business permit or license for 30
497 consecutive business days within 90 days of the third or subsequent violation; or

498 (B) a penalty of not more than \$5,000.

499 (3) The department or a local health department:

500 (a) may revoke a tobacco retail specialty business permit under this chapter if within 24
501 months of a first violation of the permit, a fourth violation occurs; and

502 (b) may suspend a tobacco retail specialty business permit and impose a monetary
503 penalty as described in Section 26-42-103, if the violation is due to a tobacco sale to a person
504 under the age of 19 years.

505 (4) (a) Except as provided in Subsection (4)(b), a local health department may not issue
506 a permit to:

507 (i) a retail tobacco specialty business that has violated the permit under Subsection (1)
508 and had a permit suspended or revoked; or

509 (ii) another retail tobacco specialty business having the same proprietor that has
510 violated a permit under Subsection (1) and had a permit suspended or revoked.

511 (b) A person described in Subsection (4)(a) whose permit:

512 (i) has been suspended, may not apply for a new permit under this chapter for any retail
513 tobacco specialty business for a period of 12 months from the date the permit was suspended;

514 or

515 (ii) has been revoked, may not apply for a new permit under this chapter for any retail
516 tobacco specialty business for a period of 24 months from the date the permit was revoked.

517 Section 11. Section **26A-1-128** is enacted to read:

518 **26A-1-128. Tobacco permits -- Enforcement.**

519 A local health department:

520 (1) shall:

521 (a) establish a permit process in accordance with Title 26, Chapter 59, Tobacco Retail

522 Permits; and

523 (b) enforce the requirements of Title 26, Chapter 59, Tobacco Retail Permits; and

524 (2) may:

525 (a) enforce licensing requirements for entities that hold a business license to sell

526 tobacco products under Section [10-8-41.6](#) or [17-50-333](#); and

527 (b) recommend to a municipality or county that the business license of a tobacco retail

528 specialty business be suspended or revoked for violations of this chapter or Section [10-8-41.6](#)

529 or [17-50-333](#).