

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 **26-42-103**, as last amended by Laws of Utah 2015, Chapter 132

34 ENACTS:

35 **26-59-101**, Utah Code Annotated 1953

36 **26-59-102**, Utah Code Annotated 1953

37 **26-59-103**, Utah Code Annotated 1953

38 **26-59-104**, Utah Code Annotated 1953

39 **26-59-105**, Utah Code Annotated 1953

40 **26-59-106**, Utah Code Annotated 1953

41 **26-59-107**, Utah Code Annotated 1953

42 **26A-1-128**, Utah Code Annotated 1953



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

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

46 **10-8-41.6. Regulation of retail tobacco specialty business.**

47 (1) As used in this section:

48 (a) "Community location" means:

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

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

51 (iii) a trade or technical school;

52 (iv) a church;

53 (v) a public library;

54 (vi) a public playground;

55 (vii) a public park;

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

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

58 (x) a public arcade~~[-];~~ or

59 (xi) for a license issued on or after July 1, 2017, a homeless shelter.

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

61 Section 26-1-2.

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

63 26A-1-102.

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

65 (i) in which:

66 ~~[(i)]~~ (A) the sale of tobacco products accounts for more than 35% of the total annual

67 gross receipts for the establishment;

68 ~~[(ii)]~~ (B) food and beverage products, excluding gasoline sales, is less than 45% of the

69 total annual gross receipts for the establishment; and

70 ~~[(iii)]~~ (C) the establishment is not licensed as a pharmacy under Title 58, Chapter 17b,

71 Pharmacy Practice Act~~[-];~~ or

72 (ii) 40% or more of the retail floor and shelf space is allocated to the offer, display, or

73 storage of tobacco products.

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

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

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

77 (A) chewing tobacco; or

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

79 and

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

81 (2) The regulation of a retail tobacco specialty business is an exercise of the police

82 powers of the state, and through delegation, to other governmental entities.

83 (3) (a) Except as provided in Subsection ~~[(7)]~~ (8), and beginning July 1, 2012, a

84 municipality shall require an entity to be licensed as a retail tobacco specialty business to

85 conduct business as a retail tobacco specialty business in a municipality.

86 (b) A municipality may issue a retail tobacco specialty business license to an entity if

87 the entity complies with the provisions of ~~Subsection (5)]~~ Subsections (5) and (6).

88 (4) [~~Except as provided in Subsection (7), and beginning July 1, 2012, a~~] A business
89 entity that [~~conducts~~] obtained a license as a retail tobacco specialty business in a municipality
90 [~~shall be licensed by the municipality as a retail tobacco specialty business~~] before July 1,
91 2017, or is operating under an exemption under Subsection (8) shall, on or before January 1,
92 2018, obtain a permit from a local health department under Title 26, Chapter 59, Tobacco
93 Retail Permit.

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

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

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

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

- 107 (i) a permit for a retail tobacco specialty business issued under Title 26, Chapter 59,
108 Tobacco Retail Permit by the local health department in which the retail tobacco specialty
109 business is located; and
- 110 (ii) a license to sell tobacco products from the State Tax Commission.

111 (b) A retail tobacco specialty business that does not have a permit under Subsection (4)
112 or (6)(a):

- 113 (i) shall keep tobacco products and tobacco paraphernalia from public view;
- 114 (ii) may not display any advertisement related to tobacco or tobacco paraphernalia that
115 promotes the sale, distribution, or use of such products; and
- 116 (iii) may not sell, offer for sale, or offer to exchange for any form of consideration,
117 tobacco, tobacco products, or tobacco paraphernalia.

118 [~~(6)~~] (7) (a) Nothing in this section:

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

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

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

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

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

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

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

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

135 (b) A retail tobacco specialty business may maintain an exemption under Subsection
136 ~~[(7)]~~ (8)(a) if:

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

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

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

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

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 [~~(c)~~] (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, is exempt from Subsections (4) and (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~~] before May 8, 2012.

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

246 **26-38-2. Definitions.**

247 As used in this chapter:

248 (1) "E-cigarette":

249 (a) means any electronic oral device:

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

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

252 (b) includes an oral device that is:

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

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

255 (A) an e-cigarette;

256 (B) e-cigar;

257 (C) e-pipe; or

258 (D) any other product name or descriptor, if the function of the product meets the

259 definition of Subsection (1)(a).

260 (2) "Place of public access" means any enclosed indoor place of business, commerce,

261 banking, financial service, or other service-related activity, whether publicly or privately owned

262 and whether operated for profit or not, to which persons not employed at the place of public

263 access have general and regular access or which the public uses, including:

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

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

266 (c) restaurants, cafes, or cafeterias;

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

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

269 (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical

270 sites, auditoriums, or arenas;

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

272 (h) sports or fitness facilities;

273 (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and

274 breakfast" lodging facilities, and other similar lodging facilities, including the lobbies,
275 hallways, elevators, restaurants, cafeterias, other designated dining areas, and restrooms of any
276 of these;

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

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

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

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

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

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

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

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

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

299 (4) "Smoking" means:

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

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

304 (i) tobacco;

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

310 Section 4. Section **26-42-103** is amended to read:

311 **26-42-103. Violations and penalties -- Imposition by enforcing agency and tax**
312 **commission.**

313 (1) If, following an investigation or issuance of a citation or information under Section
314 77-39-101, an enforcing agency determines under Section 26-42-104 that a licensee or any
315 employee has sold tobacco to a person younger than 19 years of age, as prohibited by Section
316 76-10-104, the enforcing agency may impose upon the licensee the following administrative
317 penalties:

- 318 (a) upon the first violation, a penalty of not more than [~~\$300~~] \$1,000;
- 319 (b) upon a second violation at the same retail location, and within [~~12~~] 24 months of
320 the first violation, a penalty of not more than [~~\$750~~] \$3,000; and
- 321 (c) upon a third or subsequent violation at the same retail location and within [~~12~~] 24
322 months of the first violation, a penalty of not more than [~~\$1,000~~] \$5,000.

323 (2) The enforcing agency shall notify the commission in writing of any order or order
324 of default finding a violation of Subsection (1) which is a third or fourth violation.

325 (3) The commission, upon receipt of the written notification under Subsection (2), shall
326 take action under Section 59-14-203.5 or 59-14-301.5 against the license to sell tobacco:

- 327 (a) by suspending the licensee's license to sell tobacco at that location for not more
328 than 30 days, upon receipt of notification of a third violation under Subsection (1)(c); and
- 329 (b) by revoking the license to sell tobacco at that location held by the licensee,
330 including any license under suspension, upon receipt of notification of a fourth violation under
331 Subsection (1)(c).

332 (4) When the commission revokes a license under Subsection (3)(b), the commission
333 may not issue to the licensee, or to the business entity using the license that is revoked, a
334 license under Section 59-14-202, 59-14-301, or 59-14-803 to sell tobacco at the location for
335 which the license was issued for one year after:

- 336 (a) the day on which the time for filing an appeal of the revocation ends; or
- 337 (b) if the revocation is appealed, the day on which the decision to uphold the
- 338 revocation becomes final.

339 (5) This section does not prevent any bona fide purchaser of the business, who is not a
340 sole proprietor, director, corporate officer, or partner or other holder of significant interest in
341 the entity selling the business, from immediately applying for and obtaining a license to sell
342 tobacco.

343 Section 5. Section **26-59-101** is enacted to read:

344 **CHAPTER 59. TOBACCO RETAIL PERMIT**

345 **26-59-101. Title.**

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

347 Section 6. Section **26-59-102** is enacted to read:

348 **26-59-102. Definitions.**

349 (1) As used in this chapter:

350 (a) "Community location" means:

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

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

353 (iii) a trade or technical school;

354 (iv) a church;

355 (v) a public library;

356 (vi) a public playground;

357 (vii) a public park;

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

359 (ix) a public recreational facility;

360 (x) a public arcade; or

361 (xi) for a license issued by a municipality under Section [10-8-41.6](#) or a county under

362 Section [17-50-333](#), on or after July 1, 2017, a homeless shelter.

363 (b) "Retail tobacco specialty business" means the same as that term is defined in

364 Sections [10-8-41.6](#) and [17-50-333](#).

365 (c) "Tobacco product" means:

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

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

368 (A) chewing tobacco; or

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

370 and

371 (iii) tobacco paraphernalia as defined in Section [76-10-104.1](#).

372 Section 7. Section **26-59-103** is enacted to read:

373 **26-59-103. Tobacco retail permit -- Tobacco retail license -- Enforcement powers.**

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

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

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

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

383 (iii) whether a retail tobacco specialty business:

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

386 (B) violated the regulations restricting the sale and distribution of cigarettes and
387 smokeless tobacco issued by the United States Food and Drug Administration, 21 C.F.R. Part
388 1140, to protect children and adolescents; and

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

391 (c) If the department or a local health department determines that a retail tobacco
392 specialty business is in violation of the permit issued under this chapter or a license issued
393 under Section [10-8-41.6](#) or [17-50-333](#), the local health department may take action under
394 Section [26-59-107](#) and may recommend to a county or municipality that a license issued under
395 Section [10-8-41.6](#) or [17-50-333](#) be suspended or revoked.

396 (2) (a) An applicant for a permit under this chapter shall submit an application for a
397 permit to the local health department with jurisdiction for the business address for which the

398 applicant seeks a permit and shall pay all applicable fees under Section 26-59-104.

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

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

401 (ii) the business name, address, and telephone number of the single fixed location for

402 which a tobacco retail permit is sought;

403 (iii) the name and mailing address of each proprietor authorized to receive permit

404 related communication and notices;

405 (iv) evidence that the location for which a tobacco retail permit is sought has been

406 issued a valid tobacco license from the State Tax Commission;

407 (v) information regarding whether any proprietor has been determined to have violated,

408 or has been a proprietor at a location that has been determined to have violated:

409 (A) this chapter;

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

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

412 (D) regulations restricting the sale and distribution of cigarettes and smokeless tobacco

413 issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140, to protect

414 children and adolescents; or

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

416 (vi) if the person has provided information under Subsection (2)(b)(v), the dates and

417 locations of all violations listed under Subsection (2)(b)(v);

418 (vii) (A) sales data that shows whether the business' gross receipts from tobacco and

419 tobacco paraphernalia at the location on the application for permit exceeds 35% of total annual

420 gross receipts for the 12 months preceding the application; or

421 (B) for a new businesses without 12 months of sales data, a statement of the business

422 model for the location and an affidavit declaring whether the applicant intends to receive gross

423 revenues from tobacco products that exceed 35% of the annual gross revenues; and

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

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

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

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

428 (c) For purposes of Subsection (2)(b)(viii), the proximity requirements shall be

429 measured in a straight line from the nearest entrance of the retail tobacco specialty business to
430 the nearest property boundary of the community location, or agricultural or residential use,
431 without regard to intervening structures or zoning districts.

432 (3) The local health department may not issue a permit under this chapter to a retail
433 tobacco specialty business unless the local health department determines from the application
434 that:

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

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

437 (c) the applicant meets the licensing requirements of Sections [10-8-41.6](#) and
438 [17-50-333](#); and

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

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

443 (i) on or before May 8, 2012, in accordance with Subsections [10-8-41.6\(8\)](#) and

444 [17-50-333\(8\)](#), is exempt from the proximity of a community location in Subsection (3)(d); or

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

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

449 (i) the business permit under this chapter is renewed continually without relapse or
450 permanent revocation;

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

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

455 (iv) the retail tobacco specialty business maintains the right to operate under the terms
456 of other applicable laws, including Chapter 38, Utah Indoor Clean Air Act, zoning ordinances,
457 building codes, and the business license issued before May 8, 2012.

458 Section 8. Section **26-59-104** is enacted to read:

459 **26-59-104. Permit term and renewal fees.**

460 (1) The term of a tobacco retail permit is one year.

461 (2) The local health department may establish fees for a permit to recover the cost to
462 the local health department for:

463 (a) enforcement and administration of permit requirements under this chapter;

464 (b) inspections and enforcement of licensing requirements under Section [10-8-41.6](#) and
465 Section [17-50-333](#); and

466 (c) enforcement of this chapter.

467 (3) A tobacco retail permit holder may apply for a renewal of a permit no later than 30
468 days before the expiration of the permit term.

469 (4) A retail tobacco specialty business that fails to renew a permit under Subsection (3)
470 shall submit:

471 (a) the information required in Section [26-59-103](#);

472 (b) the renewal fee plus a late fee of 10% of the renewal fee; and

473 (c) a signed affidavit affirming that the proprietor has not sold tobacco products or
474 tobacco paraphernalia during the time the permit was expired.

475 Section 9. Section **26-59-105** is enacted to read:

476 **26-59-105. Permit nontransferable.**

477 (1) A tobacco retail permit is nontransferable.

478 (2) A retail tobacco specialty business shall apply for a new permit if the information
479 required in the permit application in Section [26-59-103](#) changes.

480 (3) Violations of this chapter or Section [10-8-41.6](#) or [17-50-333](#) that occur at a retail
481 tobacco specialty business location shall stay on the record for the retail tobacco specialty
482 business location unless:

483 (a) the retail tobacco specialty business has been transferred to a new proprietor; and

484 (b) the new proprietor provides documentation to the local health department that the
485 new proprietor is acquiring the retail tobacco specialty business in an arm's length transaction
486 from the previous proprietor.

487 Section 10. Section **26-59-106** is enacted to read:

488 **26-59-106. Other permit requirements and prohibitions.**

489 (1) A retail tobacco specialty business holding a tobacco retail permit shall:

490 (a) prominently display in a publicly and readily visible location the tobacco retail

491 permit;

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

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

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

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

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

500 Section 11. Section **26-59-107** is enacted to read:

501 **26-59-107. Permit violation.**

502 (1) A retail tobacco specialty business is in violation of the tobacco retail permit if the
503 retail tobacco specialty business violates:

504 (a) this chapter;

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

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

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

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

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

513 (2) (a) If following an investigation or issuance of a citation or information the
514 department or a local health department determines under Subsection (2) that a retail tobacco
515 specialty business is in violation of a tobacco retail permit issued under this chapter, the
516 department or a local health department may suspend or revoke the permit issued under this
517 chapter and may impose the administrative penalties in Subsection (2)(b).

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

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

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

522 (ii) The penalty for a second violation within 24 months of the first violation is:
523 (A) a suspension of the tobacco retail specialty business permit for five consecutive
524 business days; or
525 (B) a penalty of not more than \$3,000.
526 (iii) The penalty for a third or subsequent violation within 24 months of the first
527 violation is:
528 (A) a suspension of the retail tobacco specialty business permit or license for 30
529 consecutive business days within 90 days of the third or subsequent violation; or
530 (B) a penalty of not more than \$5,000.
531 (3) The department or a local health department:
532 (a) may revoke a tobacco retail permit under this chapter if within 24 months of a first
533 violation of the permit, a fourth violation occurs; and
534 (b) may suspend a tobacco retail permit and impose a monetary penalty as described in
535 Section [26-42-103](#), if the violation is due to a tobacco sale to a person under the age of 19
536 years.
537 (4) (a) Except as provided in Subsection (4)(b), a local health department may not issue
538 a tobacco retail permit to:
539 (i) a retail tobacco specialty business that has violated the tobacco retail permit under
540 Subsection (1) and had a permit suspended or revoked; or
541 (ii) another retail tobacco specialty business having the same proprietor that has
542 violated a tobacco retail permit under Subsection (1) and had a permit suspended or revoked.
543 (b) A person described in Subsection (4)(a) whose tobacco retail permit:
544 (i) has been suspended, may not apply for a new permit under this chapter for any retail
545 tobacco specialty business for a period of 12 months from the date the tobacco retail permit
546 was suspended; or
547 (ii) has been revoked, may not apply for a new permit under this chapter for any retail
548 tobacco specialty business for a period of 24 months from the date the tobacco retail permit
549 was revoked.
550 Section 12. Section **26A-1-128** is enacted to read:
551 **26A-1-128. Tobacco permits -- Enforcement.**
552 A local health department:

553 (1) shall:
554 (a) establish a tobacco permit process in accordance with Title 26, Chapter 59,
555 Tobacco Retail Permits; and
556 (b) enforce the requirements of Title 26, Chapter 59, Tobacco Retail Permits; and
557 (2) may:
558 (a) enforce licensing requirements for entities that hold a business license to sell
559 tobacco products under Section [10-8-41.6](#) or [17-50-333](#); and
560 (b) recommend to a municipality or county that the business license of a tobacco retail
561 specialty business be suspended or revoked for violations of this chapter or Section [10-8-41.6](#)
562 or [17-50-333](#).