

## HB0370S01 compared with HB0370

~~text~~ shows text that was in HB0370 but was deleted in HB0370S01.

Inserted text shows text that was not in HB0370 but was inserted into HB0370S01.

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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: \_\_\_\_\_

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#### 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

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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

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

ENACTS:

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

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

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

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

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

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

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

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

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

Section 1. Section **10-8-41.6** is amended 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;

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- (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~~[-]; or~~
- (xi) for a license issued on or after July 1, 2017, a homeless shelter.

(b) "Health Department" means the same as "department," as that term is defined in Section 26-1-2.

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

~~(b)~~ (d) "Retail tobacco specialty business" means a commercial establishment;  
(i) in which:

(+) (A) the sale of tobacco products accounts for more than 35% of the total annual gross receipts for the establishment;

(+) (B) food and beverage products, excluding gasoline sales, is less than 45% of the total annual gross receipts for the establishment; and

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

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

~~(c)~~ (e) "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

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

(3) (a) Except as provided in Subsection [~~(7)~~] (8), 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)~~] Subsections (5) and (6).

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

(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.

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

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

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

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

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

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

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

~~[(6)]~~ (7) (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 more restrictive requirements on a tobacco specialty business than provided for in this section.

(b) A municipality may suspend or 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) upon the recommendation of the Health Department or a local health department under Title 26, Chapter 59, Tobacco Retail Permit; or

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

~~[(7)]~~ (8) (a) In accordance with Subsection ~~[(7)]~~ (8)(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)]~~ (8)(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

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of other applicable laws, including Title 26, Chapter 38, Utah Indoor Clean Air Act, zoning ordinances, building codes, and the business license issued prior to May 8, 2012 .

Section 2. Section **17-50-333** is amended 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~~[-]~~; or

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

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

Section 26-1-2.

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

26A-1-102.

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

(i) in which:

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

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

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

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

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~~[(e)]~~ (e) "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)]~~ (8), and beginning July 1, 2012, a county shall require an entity to be licensed as a retail tobacco specialty business to conduct business as a retail tobacco specialty business in a county.

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

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

(5) (a) A county 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.

(6) (a) Beginning July 1, 2017, a county may not issue a license to an applicant for a

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retail tobacco specialty business until the applicant provides the county with:

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

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

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

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

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

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

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

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

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

(b) A county may suspend or 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) upon the recommendation of the Health Department or a local health department under Title 26, Chapter 59, Tobacco Retail Permit; or

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

~~[(7)]~~ (8) (a) In accordance with Subsection ~~[(7)]~~ (8)(b), a retail tobacco specialty business that has a business license and is operating lawfully in a county 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)]~~ (8)(a) if:

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



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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 Title 26, Chapter 38, Utah Indoor Clean Air Act, zoning ordinances, building codes, and the business license issued [~~prior to~~] before May 8, 2012.

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

### **26-38-2. Definitions.**

As used in this chapter:

(1) "E-cigarette":

(a) means any electronic oral device:

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

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

(b) includes an oral device that is:

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

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

(A) an e-cigarette;

(B) e-cigar;

(C) e-pipe; or

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

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

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

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

(c) restaurants, cafes, or cafeterias;

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

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- (e) shopping malls, retail stores, grocery stores, or arcades;
  - (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical sites, auditoriums, or arenas;
  - (g) barber shops, hair salons, or laundromats;
  - (h) sports or fitness facilities;
  - (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and breakfast" lodging facilities, and other similar lodging facilities, including the lobbies, hallways, elevators, restaurants, cafeterias, other designated dining areas, and restrooms of any of these;
  - (j) (i) any child care facility or program subject to licensure or certification under this title, including those operated in private homes, when any child cared for under that license is present; and
    - (ii) any child care, other than child care as defined in Section 26-39-102, that is not subject to licensure or certification under this title, when any child cared for by the provider, other than the child of the provider, is present;
  - (k) public or private elementary or secondary school buildings and educational facilities or the property on which those facilities are located;
  - (l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or religious organization when used solely by the organization members or their guests or families;
  - (m) any facility rented or leased for private functions from which the general public is excluded and arrangements for the function are under the control of the function sponsor;
  - (n) any workplace that is not a place of public access or a publicly owned building or office but has one or more employees who are not owner-operators of the business;
  - (o) any area where the proprietor or manager of the area has posted a conspicuous sign stating "no smoking", "thank you for not smoking", or similar statement; and
  - (p) a holder of a club license, as defined in Section 32B-1-102.
- (3) "Publicly owned building or office" means any enclosed indoor place or portion of a place owned, leased, or rented by any state, county, or municipal government, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of federal, state, county, or municipal taxes.

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(4) "Smoking" means:

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

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

(i) tobacco;

(ii) nicotine; or

(iii) a natural or synthetic tobacco substitute or flavored ~~product~~; or

~~(iv) an herbal~~ product;

(c) [~~except as provided in Section 26-38-2.6;~~] using an e-cigarette; ~~or~~

(d) using an oral smoking device intended to circumvent the prohibition of smoking in this chapter ~~.~~ or

~~(e) carrying, holding or otherwise having control of a lighted pipe, lighted cigar, lighted cigarette, or other lighted tobacco paraphernalia as that term is defined in Section 76-10-104.1.~~

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

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

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

(a) upon the first violation, a penalty of not more than [~~\$300~~] \$1,000;

(b) upon a second violation at the same retail location, and within [~~12~~] 24 months of the first violation, a penalty of not more than [~~\$750~~] \$3,000; and

(c) upon a third or subsequent violation at the same retail location and within [~~12~~] 24 months of the first violation, a penalty of not more than [~~\$1,000~~] \$5,000.

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

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

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(a) by suspending the licensee's license to sell tobacco at that location for not more than 30 days, upon receipt of notification of a third violation under Subsection (1)(c); and

(b) by revoking the license to sell tobacco at that location held by the licensee, including any license under suspension, upon receipt of notification of a fourth violation under Subsection (1)(c).

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

(a) the day on which the time for filing an appeal of the revocation ends; or

(b) if the revocation is appealed, the day on which the decision to uphold the revocation becomes final.

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

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

### CHAPTER 59. TOBACCO RETAIL PERMIT

#### **26-59-101.** Title.

This chapter is known as "Tobacco Retail Permit."

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

#### **26-59-102.** Definitions.

(1) As used in this chapter:

(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;

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

(ix) a public recreational facility;

(x) a public arcade; or

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

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

(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.

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

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

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

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

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

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

(iii) whether a retail tobacco specialty business:

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

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

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

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

(2) (a) An applicant for a permit under this chapter shall submit an application for a permit to the local health department with jurisdiction for the business address for which the applicant seeks a permit and shall pay all applicable fees under Section 26-59-104.

(b) The application for a permit shall include:

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

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

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

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

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

(A) this chapter;

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

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

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

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

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

(vii) (A) sales data that shows whether the business' gross receipts from tobacco and tobacco paraphernalia at the location on the application for permit exceeds 35% of total annual

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gross receipts for the 12 months preceding the application; or

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

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

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

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

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

(c) For purposes of Subsection (2)(b)(viii), 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.

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

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

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

(c) the applicant meets the licensing requirements of Sections 10-8-41.6 and 17-50-333; and

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

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

(i) on or before May 8, 2012, in accordance with Subsections 10-8-41.6(8) and 17-50-333(8), is exempt from the proximity of a community location in Subsection (3)(d); or

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

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

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

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(ii) the retail tobacco specialty business does not close for business or otherwise suspend 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 business operation; and

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

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

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

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

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

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

(b) inspections and enforcement of licensing requirements under Section 10-8-41.6 and Section 17-50-333; and

(c) enforcement of this chapter.

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

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

(a) the information required in Section 26-59-103;

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

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

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

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

(1) A tobacco retail permit is nontransferable.

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

(3) Violations of this chapter or Section 10-8-41.6 or 17-50-333 that occur at a retail tobacco specialty business location shall stay on the record for the retail tobacco specialty



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business location unless:

- (a) the retail tobacco specialty business has been transferred to a new proprietor; and
- (b) the new proprietor provides documentation to the local health department that the new proprietor is acquiring the retail tobacco specialty business in an arm's length transaction from the previous proprietor.

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

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

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

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

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

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

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

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

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

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

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

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

(a) this chapter;

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

(c) Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic Chemical

Solvents;

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The department or a local health department:

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

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

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

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

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

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

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

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

Section 12. Section **26A-1-128** is enacted to read:

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

A local health department:

(1) shall:

(a) establish a tobacco permit process in accordance with Title 26, Chapter 59,

Tobacco Retail Permits; and

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

(2) may:

(a) enforce licensing requirements for entities that hold a business license to sell tobacco products under Section ~~10-4-41~~10-8-41.6 or 17-50-333; and

(b) recommend to a municipality or county that the business license of a tobacco retail specialty business be suspended or revoked for violations of this chapter or Section ~~10-4-41~~10-8-41.6 or 17-50-333.

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**Legislative Review Note**

**Office of Legislative Research and General Counsel†**