

88 ~~[(b)]~~ (e) "Retail tobacco specialty business" means a commercial establishment in
 89 which:

90 (i) the sale of tobacco products accounts for more than 35% of the total

90a ~~H→ [annual] quarterly ←H~~ gross
 91 receipts for the establishment;

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

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

96 ~~H→ [(ii) the name of the business evidences the business as a retail tobacco specialty~~
 97 ~~business;]~~

98 ~~[(iii)]~~ (ii) ~~←H~~ 20% or more of the public retail floor space is allocated to the offer,
 98a display, or
 99 storage of tobacco products;

100 ~~H→ [(iv)]~~ (iii) ~~←H~~ 20% or more of the total shelf space is allocated to the offer,
 100a display, or storage of
 101 tobacco products; or

102 ~~H→ [(v)]~~ (iv) ~~←H~~ the retail space features a self-service display for tobacco products.
 103 (f) "Self-service display" means the same as that term is defined in Section

104 76-10-105.1.

105 ~~[(e)]~~ (g) "Tobacco product" means:

106 (i) any cigar, cigarette, or electronic cigarette, as those terms are defined in Section
 107 76-10-101;

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

109 (A) chewing tobacco; or

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

111 and

112 (iii) tobacco paraphernalia, as that term is defined in Section 76-10-104.1.

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

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

118 (3) (a) A person may not operate a retail tobacco specialty business in a municipality

150 department under Title 26, Chapter 62, Tobacco Retail Permit, on or before January 1, 2019.

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

152 (i) requires a municipality to issue a [~~business license to a~~] retail tobacco specialty
153 business license; or

154 (ii) prohibits a municipality from adopting more restrictive requirements on a person
155 seeking a license or renewal of a license to conduct business as a retail tobacco specialty
156 business [~~than provided for in this section~~].

157 (b) A municipality may suspend or revoke a retail tobacco specialty business license
158 issued under this section:

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

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

164 (iii) upon the recommendation of the department or a local health department under
165 Title 26, Chapter 62, Tobacco Retail Permit; or

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

167 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business

167a ~~H→~~ [f] that

168 ~~has a business license and is operating S→ [lawfully] ←S in a municipality S→ in accordance~~
168a ~~with all applicable laws except for the requirement in Subsection (4), ←S on or before~~

168b ~~S→ [May 8, 2012] December 31, 2015 ←S , is~~

169 ~~exempt from [Subsections (4) and (5)] Subsection (4) S→, ←S [f] [is exempt from Subsection~~
169a ~~(4) if the person obtained the~~

170 ~~license to operate the retail tobacco specialty business before July 1, 2018.] ←H~~

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

173 (i) the retail tobacco specialty business license is renewed continuously without
174 [~~relapse~~] lapse or permanent revocation;

175 (ii) the retail tobacco specialty business [~~is~~] does not [closed] close for business or
176 otherwise [~~suspends~~] suspend the sale of tobacco products for more than 60 consecutive days;

177 (iii) the retail tobacco specialty business does not substantially change the business
178 premises or [~~its~~] business operation; and

179 (iv) the retail tobacco specialty business maintains the right to operate under the terms
180 of other applicable laws, including:

181 (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;
 182 (B) zoning ordinances[;];
 183 (C) building codes[;]; and [the]
 184 (D) the requirements of a retail tobacco specialty business license issued [prior to]
 185 before ~~§~~ → [May 8, 2012] December 31, 2015 ← ~~§~~ .

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

187 **17-50-333. Regulation of retail tobacco specialty business.**

188 (1) As used in this section:

189 (a) "Community location" means:

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

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

192 (iii) a trade or technical school;

193 (iv) a church;

194 (v) a public library;

195 (vi) a public playground;

196 (vii) a public park;

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

198 (ix) a public recreational facility; [or]

199 (x) a public arcade[;]; or

200 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.

201 (b) "Department" means the Department of Health, created in Section 26-1-4.

202 (c) "Licensee" means a person licensed under this section to conduct business as a
 203 retail tobacco specialty business.

204 (d) "Local health department" means the same as that term is defined in Section
 205 26A-1-102.

206 [~~(b)~~] (e) "Retail tobacco specialty business" means a commercial establishment in
 207 which:

208 (i) the sale of tobacco products accounts for more than 35% of the total

208a ~~H~~ → [annual] quarterly ← ~~H~~ gross

209 receipts for the establishment;

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

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

214 ~~H→ [(ii) the name of the business evidences the business as a retail tobacco specialty~~
 215 ~~business;]~~

216 ~~[(iii)] (ii) ←H 20% or more of the public retail floor space is allocated to the offer,~~
 216a ~~display, or~~
 217 ~~storage of tobacco products;~~

218 ~~H→ [(iv)] (iii) ←H 20% or more of the total shelf space is allocated to the offer,~~
 218a ~~display, or storage of~~
 219 ~~tobacco products; or~~

220 ~~H→ [(v)] (iv) ←H the retail space features a self-service display for tobacco products.~~

221 ~~(f) "Self-service display" means the same as that term is defined in Section~~

222 ~~76-10-105.1.~~

223 ~~[(e)] (g) "Tobacco product" means:~~

224 ~~(i) any cigar, cigarette, or electronic cigarette as those terms are defined in Section~~
 225 ~~76-10-101;~~

226 ~~(ii) a tobacco product as that term is defined in Section 59-14-102, including:~~

227 ~~(A) chewing tobacco; or~~

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

229 ~~and~~

230 ~~(iii) tobacco paraphernalia as that term is defined in Section 76-10-104.1.~~

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

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

236 ~~(3) (a) A person may not operate a retail tobacco specialty business in a county unless~~
 237 ~~the person obtains a license from the county in which the retail tobacco specialty business is~~
 238 ~~located.~~

239 ~~(b) A county may only issue a retail tobacco specialty business license to [an entity] a~~
 240 ~~person if the [entity] person complies with the provisions of [Subsection] Subsections (4) and~~
 241 ~~(5).~~

242 ~~[(4) Except as provided in Subsection (7), and beginning July 1, 2012, a business entity~~

274 provided for in this section].

275 (b) A county may suspend or revoke a retail tobacco specialty business license issued
276 under this section:

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

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

282 (iii) upon the recommendation of the department or a local health department under
283 Title 26, Chapter 62, Tobacco Retail Permit; or

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

285 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business

285a ~~H~~→ [f] that

286 has a business license and is operating ~~S~~→ [lawfully] ~~←S~~ in a county ~~S~~→ in accordance with
286a all applicable laws except for the requirement in Subsection (4), ~~←S~~ on or before ~~S~~→ [May 8,
286b 2012] December 31, 2015 ~~←S~~ , is

287 exempt from [Subsections (4) and (5)] Subsection (4) ~~S~~→, ~~←S~~ [f] [~~is exempt from Subsection~~
287a ~~(4) if the person obtained the~~

288 license to operate the retail tobacco specialty business before July 1, 2018.] ~~←H~~

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

291 (i) the retail tobacco specialty business license is renewed continuously without
292 [~~relapse~~] lapse or permanent revocation;

293 (ii) the retail tobacco specialty business [is] does not [~~closed~~] close for business or
294 otherwise [~~suspends~~] suspend the sale of tobacco products for more than 60 consecutive days;

295 (iii) the retail tobacco specialty business does not substantially change the business
296 premises or [~~its~~] business operation; and

297 (iv) the retail tobacco specialty business maintains the right to operate under the terms
298 of other applicable laws, including:

299 (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;

300 (B) zoning ordinances[;];

301 (C) building codes[;]; and [~~the~~]

302 (D) the requirements of a retail tobacco specialty business license issued [~~prior to~~]

303 before ~~S~~→ [May 8, 2012] December 31, 2015 ~~←S~~ .

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

491 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
492 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard
493 to intervening structures or zoning districts.

494 (5) The department or a local health department may not deny a permit to a retail
495 tobacco specialty business under Subsection (4) if the person obtained a license to operate the
496 retail tobacco specialty business before ~~§~~ → [July 1, 2018] December 31, 2015 ← ~~§~~ , from:

497 (a) a municipality under Section [10-8-41.6](#); or

498 (b) a county under Section [17-50-333](#).

499 (6) (a) The department shall establish by rule made in accordance with Title 63G,
500 Chapter 3, Utah Administrative Rulemaking Act, a permit process for local health departments
501 in accordance with this chapter.

502 (b) The permit process established by the department under Subsection (6)(a) may not
503 require any information in an application that is not required by this section.

504 Section 9. Section **26-62-203** is enacted to read:

505 **26-62-203. Permit term and fees.**

506 (1) (a) The term of a permit issued under this chapter to a retail tobacco specialty
507 business is one year.

508 (b) The term of a permit issued under this chapter to a general tobacco retailer is two
509 years.

510 (2) (a) A local health department may not issue a permit under this chapter until the
511 applicant has paid a permit fee to the local health department of:

512 (i) \$30 for a new permit;

513 (ii) \$20 for a permit renewal; or

514 (iii) \$30 for reinstatement of a permit that has been revoked, suspended, or allowed to
515 expire.

516 (b) A local health department that collects fees under Subsection (2)(a) shall use the
517 fees to administer the permit requirements under this chapter.

518 (c) In addition to the fee described in Subsection (2)(a), a local health department may
519 establish and collect a fee to perform a plan review for a retail tobacco specialty business
520 permit.

521 (3) A permit holder may apply for a renewal of a permit no earlier than 30 days before

770 ~~[(a) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; or]~~

771 ~~[(b) Title 26, Chapter 57, Electronic Cigarette Regulation Act.]~~

772 ~~[(6) If the commission revokes a person's license to sell an electronic cigarette product~~
 773 ~~under Subsection (5), the commission may not issue a license to sell an electronic cigarette~~
 774 ~~product, a license to sell cigarettes under Section 59-14-201, or a license to sell tobacco under~~
 775 ~~Section 59-14-301 to the person until one year after:]~~

776 ~~[(a) the day on which the time for filing an appeal of the revocation ends, as~~
 777 ~~determined by the enforcing agency; or]~~

778 ~~[(b) if the person appeals the enforcing agency's decision to revoke the license to sell~~
 779 ~~an electronic cigarette product, the day on which the enforcing agency's decision to uphold the~~
 780 ~~revocation is final.]~~

781 ~~[(7) If the commission revokes a person's license under Subsection (5), the commission~~
 782 ~~shall also revoke the person's license to sell cigarettes under Section 59-14-201, if any, and the~~
 783 ~~person's license to sell tobacco under Section 59-14-301, if any.]~~

784 ~~[(8)]~~ (5) The commission may make rules in accordance with Title 63G, Chapter 3,
 785 Utah Administrative Rulemaking Act, to establish the additional information described in
 786 Subsection (3)~~[(a)(iii)]~~(c) that a person must provide in the application described in Subsection
 787 (3)~~[(a)]~~.

788 ~~[(9)]~~ (6) It is a class B misdemeanor for a person to violate Subsection (1).

789 (7) The commission may not charge a fee for a license under this

789a **H→ [chapter] section ←H** .

790 Section 22. Section **76-10-105.1** is amended to read:

791 **76-10-105.1. Requirement of direct, face-to-face sale of cigarettes, tobacco, and**
 792 **electronic cigarettes -- Minors not allowed in tobacco specialty shop -- Penalties.**

793 (1) As used in this section:

794 (a) "Cigarette" means the same as that term is defined in Section 59-14-102.

795 (b) (i) "Face-to-face exchange" means a transaction made in person between an
 796 individual and a retailer or retailer's employee.

797 (ii) "Face-to-face exchange" does not include a sale through a:

798 (A) vending machine; or

799 (B) self-service display.

800 (c) "Retailer" means a person who: