

Representative Jennifer Dailey-Provost proposes the following substitute bill:

RETAIL TOBACCO BUSINESS AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer Dailey-Provost

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill amends provisions relating to the sale of certain tobacco products.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends the definition of a retail tobacco specialty business to include any retailer that sells a flavored tobacco product;
- ▶ prohibits a manufacturer, wholesaler, or retailer from providing certain discounts or giveaways for tobacco products; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

10-8-41.6, as last amended by Laws of Utah 2018, Chapter 231

17-50-333, as last amended by Laws of Utah 2018, Chapter 231



26 [76-10-111](#), as last amended by Laws of Utah 2010, Chapter 114

27 [76-10-112](#), as enacted by Laws of Utah 1989, Chapter 193

28

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

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

31 **10-8-41.6. Regulation of retail tobacco specialty business.**

32 (1) As used in this section:

33 (a) "Community location" means:

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

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

36 (iii) a trade or technical school;

37 (iv) a church;

38 (v) a public library;

39 (vi) a public playground;

40 (vii) a public park;

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

42 (ix) a public recreational facility;

43 (x) a public arcade; or

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

45 (b) "Department" means the Department of Health, created in Section [26-1-4](#).

46 (c) (i) "Flavored tobacco product" means a tobacco product that has a taste or smell
47 that is distinguishable by an ordinary consumer either before or during use or consumption of
48 the tobacco product.

49 (ii) "Flavored tobacco product" includes a tobacco product that has a taste or smell of
50 any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice.

51 (iii) "Flavored tobacco product" does not include a tobacco product that has a taste or
52 smell of only tobacco or menthol.

53 [~~(c)~~] (d) "Local health department" means the same as that term is defined in Section
54 [26A-1-102](#).

55 [~~(d)~~] (e) "Permittee" means a person licensed under this section to conduct business as
56 a retail tobacco specialty business.

57 ~~(e)~~ (f) "Retail tobacco specialty business" means a commercial establishment in
58 which:

59 (i) the sale of tobacco products accounts for more than 35% of the total quarterly gross
60 receipts for the establishment;

61 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
62 storage of tobacco products;

63 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
64 tobacco products; ~~or~~

65 (iv) the retail space features a self-service display for tobacco products~~[-];~~ or

66 (v) any flavored tobacco product is sold.

67 ~~(f)~~ (g) "Self-service display" means the same as that term is defined in Section
68 76-10-105.1.

69 ~~(g)~~ (h) "Tobacco product" means:

70 (i) any cigar, cigarette, or electronic cigarette, as those terms are defined in Section
71 76-10-101;

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

73 (A) chewing tobacco; or

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

75 and

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

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

79 (3) (a) A person may not operate a retail tobacco specialty business in a municipality
80 unless the person obtains a license from the municipality in which the retail tobacco specialty
81 business is located.

82 (b) A municipality may only issue a retail tobacco specialty business license to a
83 person if the person complies with the provisions of Subsections (4) and (5).

84 (4) (a) Except as provided in Subsection (7), a municipality may not issue a license for
85 a person to conduct business as a retail tobacco specialty business if the retail tobacco specialty
86 business is located within:

87 (i) 1,000 feet of a community location;

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

89 (iii) 600 feet from property used or zoned for:

90 (A) agriculture use; or

91 (B) residential use.

92 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in
93 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
94 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard
95 to intervening structures or zoning districts.

96 (5) (a) Except as provided in Subsection (5)(b), beginning July 1, 2018, a municipality
97 may not issue or renew a license for a person to conduct business as a retail tobacco specialty
98 business until the person provides the municipality with proof that the retail tobacco specialty
99 business has:

100 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
101 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in
102 which the retail tobacco specialty business is located; and

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

104 (b) A person that was licensed to conduct business as a retail tobacco specialty
105 business in a municipality before July 1, 2018, shall obtain a permit from a local health
106 department under Title 26, Chapter 62, Tobacco Retail Permit, on or before January 1, 2019.

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

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

109 (ii) prohibits a municipality from adopting more restrictive requirements on a person
110 seeking a license or renewal of a license to conduct business as a retail tobacco specialty
111 business.

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

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

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

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

121 (iv) under any other provision of state law or local ordinance.

122 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has
123 a business license and is operating in a municipality in accordance with all applicable laws
124 except for the requirement in Subsection (4), on or before December 31, 2015, is exempt from
125 Subsection (4).

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

128 (i) the retail tobacco specialty business license is renewed continuously without lapse
129 or permanent revocation;

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

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

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

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

137 (B) zoning ordinances;

138 (C) building codes; and

139 (D) the requirements of a retail tobacco specialty business license issued before
140 December 31, 2015.

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

142 **17-50-333. Regulation of retail tobacco specialty business.**

143 (1) As used in this section:

144 (a) "Community location" means:

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

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

147 (iii) a trade or technical school;

148 (iv) a church;

149 (v) a public library;

- 150 (vi) a public playground;
- 151 (vii) a public park;
- 152 (viii) a youth center or other space used primarily for youth oriented activities;
- 153 (ix) a public recreational facility;
- 154 (x) a public arcade; or
- 155 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
- 156 (b) "Department" means the Department of Health, created in Section 26-1-4.
- 157 (c) (i) "Flavored tobacco product" means a tobacco product that has a taste or smell
- 158 that is distinguishable by an ordinary consumer either before or during use or consumption of
- 159 the tobacco product.
- 160 (ii) "Flavored tobacco product" includes a tobacco product that has a taste or smell of
- 161 any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice.
- 162 (iii) "Flavored tobacco product" does not include a tobacco product that has a taste or
- 163 smell of only tobacco or menthol.
- 164 [~~e~~] (d) "Licensee" means a person licensed under this section to conduct business as a
- 165 retail tobacco specialty business.
- 166 [~~d~~] (e) "Local health department" means the same as that term is defined in Section
- 167 26A-1-102.
- 168 [~~e~~] (f) "Retail tobacco specialty business" means a commercial establishment in
- 169 which:
- 170 (i) the sale of tobacco products accounts for more than 35% of the total quarterly gross
- 171 receipts for the establishment;
- 172 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
- 173 storage of tobacco products;
- 174 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
- 175 tobacco products; [~~or~~]
- 176 (iv) the retail space features a self-service display for tobacco products[~~;~~]; or
- 177 (v) any flavored tobacco product is sold.
- 178 [~~f~~] (g) "Self-service display" means the same as that term is defined in Section
- 179 76-10-105.1.
- 180 [~~g~~] (h) "Tobacco product" means:

181 (i) any cigar, cigarette, or electronic cigarette as those terms are defined in Section
182 76-10-101;

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

184 (A) chewing tobacco; or

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

186 and

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

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

190 (3) (a) A person may not operate a retail tobacco specialty business in a county unless
191 the person obtains a license from the county in which the retail tobacco specialty business is
192 located.

193 (b) A county may only issue a retail tobacco specialty business license to a person if
194 the person complies with the provisions of Subsections (4) and (5).

195 (4) (a) Except as provided in Subsection (7), a county may not issue a license for a
196 person to conduct business as a retail tobacco specialty business if the retail tobacco specialty
197 business is located within:

198 (i) 1,000 feet of a community location;

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

200 (iii) 600 feet from property used or zoned for:

201 (A) agriculture use; or

202 (B) residential use.

203 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in
204 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
205 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard
206 to intervening structures or zoning districts.

207 (5) (a) Except as provided in Subsection (5)(b), beginning July 1, 2018, a county may
208 not issue or renew a license for a person to conduct business as a retail tobacco specialty
209 business until the person provides the county with proof that the retail tobacco specialty
210 business has:

211 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter

212 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in
213 which the retail tobacco specialty business is located; and

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

215 (b) A person that was licensed to conduct business as a retail tobacco specialty
216 business in a county before July 1, 2018, shall obtain a permit from a local health department
217 under Title 26, Chapter 62, Tobacco Retail Permit, on or before January 1, 2019.

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

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

220 (ii) prohibits a county from adopting more restrictive requirements on a person seeking
221 a license or renewal of a license to conduct business as a retail tobacco specialty business.

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

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

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

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

231 (iv) under any other provision of state law or local ordinance.

232 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has
233 a business license and is operating in a county in accordance with all applicable laws except for
234 the requirement in Subsection (4), on or before December 31, 2015, is exempt from Subsection
235 (4).

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

238 (i) the retail tobacco specialty business license is renewed continuously without lapse
239 or permanent revocation;

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

242 (iii) the retail tobacco specialty business does not substantially change the business

243 premises or business operation; and

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

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

247 (B) zoning ordinances;

248 (C) building codes; and

249 (D) the requirements of a retail tobacco specialty business license issued before
250 December 31, 2015.

251 Section 3. Section **76-10-111** is amended to read:

252 **76-10-111. Restrictions on sale of smokeless tobacco or electronic cigarettes --**

253 **Exceptions.**

254 (1) The Legislature finds that:

255 (a) smokeless tobacco, or chewing tobacco, is harmful to the health of individuals who
256 use those products because research indicates that they may cause mouth or oral cancers;

257 (b) the use of smokeless tobacco among juveniles in this state is increasing rapidly;

258 (c) the use of electronic cigarettes may lead to unhealthy behavior such as the use of
259 tobacco products; and

260 (d) it is necessary to restrict the gift of the products described in this Subsection (1) in
261 the interest of the health of the citizens of this state.

262 (2) (a) Except as provided in Subsection (3), it is unlawful for a manufacturer,
263 wholesaler, and retailer to:

264 (i) give or distribute without charge any smokeless tobacco, chewing tobacco, or
265 electronic cigarette in this state[-];

266 (ii) sell, offer for sale, or furnish any smokeless tobacco, chewing tobacco, or
267 electronic cigarette at less than the cost of the product to the manufacturer, wholesaler, or
268 retailer; or

269 (iii) give, distribute, sell, offer for sale, or furnish any smokeless tobacco, chewing
270 tobacco, or electronic cigarette for free or at a lower price because the purchaser makes another
271 purchase.

272 (b) Any person who violates this section is guilty of a class C misdemeanor for the first
273 offense, and is guilty of a class B misdemeanor for any subsequent offense.

274 (3) ~~[(a)]~~ Smokeless tobacco, chewing tobacco, or an electronic cigarette may be
275 distributed to adults without charge at professional conventions where the general public is
276 excluded.

277 ~~[(b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who gives~~
278 ~~smokeless tobacco, chewing tobacco, or an electronic cigarette to a person of legal age upon~~
279 ~~the person's purchase of another tobacco product or electronic cigarette.]~~

280 Section 4. Section 76-10-112 is amended to read:

281 **76-10-112. Prohibition of distribution of cigarettes or other tobacco products --**

282 **Exceptions.**

283 (1) As used in this section, "tobacco product" means the same as that term is defined in
284 Section 26-62-102.

285 ~~[(+)]~~ (2) (a) Except as provided in Subsection (2), it is unlawful for a manufacturer,
286 wholesaler, or retailer to:

287 (i) give or distribute cigarettes or other tobacco products in this state without charge[-];

288 (ii) sell, offer for sale, or furnish cigarettes or other tobacco products at less than the
289 cost of the product to the manufacturer, wholesaler, or retailer; or

290 (iii) give, distribute, sell, offer for sale, or furnish cigarettes or other tobacco products
291 for free or at a lower price because the purchaser makes another purchase.

292 (b) Any person who violates this subsection is guilty of a class C misdemeanor for the
293 first offense and a class B misdemeanor for any subsequent offense.

294 ~~[(2)]~~ (3) Cigarettes and other tobacco products may be distributed to adults without
295 charge at professional conventions where the general public is excluded.

296 ~~[(3) The prohibition described in Subsection (1) does not apply to retailers,~~
297 ~~manufacturers, or distributors who give cigarettes or other tobacco products to persons of legal~~
298 ~~age upon their purchase of cigarettes or other tobacco products.]~~

299 Section 5. **Effective date.**

300 This bill takes effect on July 1, 2019.