

## HB0274S01 compared with HB0274

~~deleted text~~ shows text that was in HB0274 but was deleted in HB0274S01.

Inserted text shows text that was not in HB0274 but was inserted into HB0274S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Jennifer Dailey-Provost proposes the following substitute bill:

### RETAIL TOBACCO~~{SPECIALTY}~~ BUSINESS AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jennifer ~~{Dailey-Provost}~~Dailey-Provost**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill amends provisions relating to the sale of ~~{flavored}~~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

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### Other Special Clauses:

~~{ None }~~ 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

**76-10-111**, as last amended by Laws of Utah 2010, Chapter 114

**76-10-112**, as enacted by Laws of Utah 1989, Chapter 193

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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;

(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;

(x) a public arcade; or

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

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

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

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

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

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

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

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

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

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

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

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

(v) any flavored tobacco product is sold.

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

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

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

(ii) a tobacco product, as that term is 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 that term is 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) A person may not operate a retail tobacco specialty business in a municipality unless the person obtains a license from the municipality in which the retail tobacco specialty business is located.

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

(4) (a) Except as provided in Subsection (7), a municipality may not issue a license for a person to conduct business as a retail tobacco specialty business if the retail tobacco specialty business 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 (4)(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 a location described in Subsections (4)(a)(i) through (iii), without regard to intervening structures or zoning districts.

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

- (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in which the retail tobacco specialty business is located; and
- (ii) a valid license to sell tobacco products from the State Tax Commission.

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

(6) (a) Nothing in this section:

- (i) requires a municipality to issue a retail tobacco specialty business license; or
- (ii) prohibits a municipality from adopting more restrictive requirements on a person seeking a license or renewal of a license to conduct business as a retail tobacco specialty business.

(b) A municipality may suspend or revoke a retail tobacco specialty business license

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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;

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

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

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

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

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

(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:

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

(B) zoning ordinances;

(C) building codes; and

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

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:

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(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;

(x) a public arcade; or

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

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

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

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

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

~~(d)~~ (d) "Licensee" means a person licensed under this section to conduct business as a retail tobacco specialty business.

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

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

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

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

(iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of

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tobacco products; ~~[or]~~

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

(v) any flavored tobacco product is sold.

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

~~[(g)]~~ (h) "Tobacco product" means:

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

(ii) a tobacco product as that term is 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 that term is 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) A person may not operate a retail tobacco specialty business in a county unless the person obtains a license from the county in which the retail tobacco specialty business is located.

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

(4) (a) Except as provided in Subsection (7), a county may not issue a license for a person to conduct business as a retail tobacco specialty business if the retail tobacco specialty business 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 (4)(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 a location described in Subsections (4)(a)(i) through (iii), without regard

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to intervening structures or zoning districts.

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

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

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

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

(6) (a) Nothing in this section:

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

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

(b) A county may suspend or revoke a retail tobacco specialty 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;

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

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

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

(b) A retail tobacco specialty business may maintain an exemption under Subsection



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(7)(a) if:

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

(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:

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

(B) zoning ordinances;

(C) building codes; and

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

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

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

### Exceptions.

(1) The Legislature finds that:

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

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

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

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

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

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

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

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retailer; or

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

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

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

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

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

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

### Exceptions.

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

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

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

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

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

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

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

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

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**Section 5. Effective date.**

**This bill takes effect on July 1, 2019.**