

**RETAIL TOBACCO SPECIALTY BUSINESS AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jennifer Dailey-Provost**

Senate Sponsor: Evan J. Vickers

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**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;
- ▶ requires a tobacco retailer to maintain certain records;
- ▶ 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:**

None

**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



28 76-10-112, as enacted by Laws of Utah 1989, Chapter 193

29 ENACTS:

30 26-62-206, Utah Code Annotated 1953



31  
32 *Be it enacted by the Legislature of the state of Utah:*

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

34 **10-8-41.6. Regulation of retail tobacco specialty business.**

35 (1) As used in this section:

36 (a) "Community location" means:

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

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

39 (iii) a trade or technical school;

40 (iv) a church;

41 (v) a public library;

42 (vi) a public playground;

43 (vii) a public park;

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

45 (ix) a public recreational facility;

46 (x) a public arcade; or

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

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

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

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

55 (iii) "Flavored tobacco product" does not include a tobacco product that:

56 (A) has a taste or smell of only tobacco; or

57 (B) has a taste or smell of only menthol and is not an electronic cigarette product as  
58 that term is defined in Section 59-14-802.

59           ~~[(e)]~~ (d) "Local health department" means the same as that term is defined in Section  
60 26A-1-102.

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

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

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

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

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

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

72 (v) any flavored tobacco product is sold.

73           ~~[(f)]~~ (g) "Self-service display" means the same as that term is defined in Section  
74 76-10-105.1.

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

76           (i) any cigar, cigarette, or electronic cigarette, as those terms are defined in Section  
77 76-10-101;

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

79           (A) chewing tobacco; or

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

81 and

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

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

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

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

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

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

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

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

- 106 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter  
107 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in  
108 which the retail tobacco specialty business is located; and
- 109 (ii) a valid license to sell tobacco products from the State Tax Commission.

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

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

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

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

- 120 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,

121 Part 16, Pattern of Unlawful Activity Act;

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

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

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

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

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

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

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

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

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

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

143 (B) zoning ordinances;

144 (C) building codes; and

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

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

148 **17-50-333. Regulation of retail tobacco specialty business.**

149 (1) As used in this section:

150 (a) "Community location" means:

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

- 152 (ii) a licensed child-care facility or preschool;
- 153 (iii) a trade or technical school;
- 154 (iv) a church;
- 155 (v) a public library;
- 156 (vi) a public playground;
- 157 (vii) a public park;
- 158 (viii) a youth center or other space used primarily for youth oriented activities;
- 159 (ix) a public recreational facility;
- 160 (x) a public arcade; or
- 161 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
- 162 (b) "Department" means the Department of Health, created in Section [26-1-4](#).
- 163 (c) (i) "Flavored tobacco product" means a tobacco product that has a taste or smell
- 164 that is distinguishable by an ordinary consumer either before or during use or consumption of
- 165 the tobacco product.
- 166 (ii) "Flavored tobacco product" includes a tobacco product that has a taste or smell of
- 167 any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, menthol, or
- 168 spice.
- 169 (iii) "Flavored tobacco product" does not include a tobacco product that:
- 170 (A) has a taste or smell of only tobacco; or
- 171 (B) has a taste or smell of only menthol and is not an electronic cigarette product as
- 172 that term is defined in Section [59-14-802](#).
- 173 [~~(c)~~] (d) "Licensee" means a person licensed under this section to conduct business as a
- 174 retail tobacco specialty business.
- 175 [~~(d)~~] (e) "Local health department" means the same as that term is defined in Section
- 176 [26A-1-102](#).
- 177 [~~(e)~~] (f) "Retail tobacco specialty business" means a commercial establishment in
- 178 which:
- 179 (i) the sale of tobacco products accounts for more than 35% of the total quarterly gross
- 180 receipts for the establishment;
- 181 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
- 182 storage of tobacco products;

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

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

186 (v) any flavored tobacco product is sold.

187 ~~(f)~~ (g) "Self-service display" means the same as that term is defined in Section  
188 76-10-105.1.

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

190 (i) any cigar, cigarette, or electronic cigarette as those terms are defined in Section  
191 76-10-101;

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

193 (A) chewing tobacco; or

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

195 and

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

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

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

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

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

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

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

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

210 (A) agriculture use; or

211 (B) residential use.

212 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in  
213 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest

214 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard  
215 to intervening structures or zoning districts.

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

220 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter  
221 62, Tobacco Retail Permit, by the local health department having jurisdiction over the area in  
222 which the retail tobacco specialty business is located; and

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

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

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

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

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

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

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

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

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

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

241 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has  
242 a business license and is operating in a county in accordance with all applicable laws except for  
243 the requirement in Subsection (4), on or before December 31, 2015, is exempt from Subsection  
244 (4).



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

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

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

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

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

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

256 (B) zoning ordinances;

257 (C) building codes; and

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

260 Section 3. Section **26-62-206** is enacted to read:

261 **26-62-206. Permit requirements for the sale of tobacco products.**

262 (1) A tobacco retailer shall:

263 (a) for each sale of a tobacco product, provide the customer with an itemized receipt  
264 that shows:

265 (i) the name of the tobacco product;

266 (ii) the amount charged for each tobacco product; and

267 (iii) the time and date of the sale; and

268 (b) maintain an itemized transaction log for each sale of a tobacco product that shows:

269 (i) the name of the tobacco product;

270 (ii) the amount charged for the tobacco product; and

271 (iii) the date and time of the sale.

272 (2) The itemized transaction log described in Subsection (1)(b) shall be:

273 (a) maintained for at least two years from the date of the sale of the tobacco product;

274 and

275 (b) made available to an enforcing agency or peace officer at the request of the

276 enforcing agency or peace officer.

277 Section 4. Section **76-10-111** is amended to read:

278 **76-10-111. Prohibition of gift or free distribution of smokeless tobacco or**  
279 **electronic cigarettes -- Exceptions.**

280 (1) The Legislature finds that:

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

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

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

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

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

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

292 (ii) except as provided in Subsection (2)(b), sell, offer for sale, or furnish any  
293 smokeless tobacco, chewing tobacco, or electronic cigarette at less than 90% of the cost of the  
294 product to the manufacturer, wholesaler, or retailer; or

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

298 (b) The price that a manufacturer, wholesaler, or retailer may charge under Subsection  
299 (2)(a)(ii) does not include a discount for:

300 (i) a manufacturer coupon:

301 (A) that is surrendered to the tobacco retailer at the time of sale; and

302 (B) for which the manufacturer will reimburse the wholesaler or retailer for the full  
303 amount of the discount described in the manufacturer coupon and provided to the purchaser;

304 (ii) a rebate that will be paid to the manufacturer, wholesaler, or retailer for the full  
305 amount of the rebate provided to the purchaser; or

306 (iii) a promotional fund that will be paid to the manufacturer, wholesaler, or retailer for

307 the full amount of the promotional fund provided to the purchaser.

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

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

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

316 Section 5. Section **76-10-112** is amended to read:

317 **76-10-112. Prohibition of distribution of cigarettes or other tobacco products --**  
318 **Exceptions.**

319 (1) (a) Except as provided in Subsection ~~[(2)]~~ (3), it is unlawful for a manufacturer,  
320 wholesaler, or retailer to:

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

322 (ii) except as provided in Subsection (2)(b), sell, offer for sale, or furnish any  
323 smokeless tobacco, chewing tobacco, or electronic cigarette at less than the cost of the product  
324 to the manufacturer, wholesaler, or retailer; or

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

328 (b) The price that a manufacturer, wholesaler, or retailer may charge under Subsection  
329 (2)(a)(ii) does not include a discount for:

330 (i) a manufacturer coupon:

331 (A) that is surrendered to the tobacco retailer at the time of sale; and

332 (B) for which the manufacturer will reimburse the wholesaler or retailer for the full  
333 amount of the discount described in the manufacturer coupon and provided to the purchaser;

334 (ii) a rebate that will be paid to the manufacturer, wholesaler, or retailer for the full  
335 amount of the rebate provided to the purchaser; or

336 (iii) a promotional fund that will be paid to the manufacturer, wholesaler, or retailer for  
337 the full amount of the promotional fund provided to the purchaser.

338           (2) Any person who violates this [~~subsection~~] section is guilty of a class C  
339 misdemeanor for the first offense and a class B misdemeanor for any subsequent offense.

340           ~~[(2)]~~ (3) Cigarettes and other tobacco products may be distributed to adults without  
341 charge at professional conventions where the general public is excluded.

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