

1 **TOBACCO RETAILER AMENDMENTS**

2 2020 SIXTH SPECIAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Evan J. Vickers**

5 House Sponsor: Jon Hawkins

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7 **LONG TITLE**

8 **General Description:**

9 This bill amends and clarifies provisions relating to tobacco retailers.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ amends and clarifies the requirements that a retail tobacco specialty business must  
13 meet in order to receive an exemption from certain community location distancing  
14 provisions; and

15 ▶ makes technical and corresponding changes.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 This bill provides a special effective date.

20 This bill provides retrospective operation.

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **10-8-41.6**, as last amended by Laws of Utah 2020, Chapters 302, 347 and last amended  
24 by Coordination Clause, Laws of Utah 2020, Chapter 302

25 **17-50-333**, as last amended by Laws of Utah 2020, Chapters 302, 347 and last amended  
26 by Coordination Clause, Laws of Utah 2020, Chapter 302

27 **26-62-202**, as last amended by Laws of Utah 2020, Chapter 347

28 **63I-1-210**, as last amended by Laws of Utah 2020, Chapter 302

29 **63I-1-217**, as last amended by Laws of Utah 2020, Chapters 154 and 302

30

31 *Be it enacted by the Legislature of the state of Utah:*32 Section 1. Section **10-8-41.6** is amended to read:33 **10-8-41.6. Regulation of retail tobacco specialty business.**

34 (1) As used in this section:

35 (a) "Community location" means:

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

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

38 (iii) a trade or technical school;

39 (iv) a church;

40 (v) a public library;

41 (vi) a public playground;

42 (vii) a public park;

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

44 (ix) a public recreational facility;

45 (x) a public arcade; or

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

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

48 (c) "Electronic cigarette product" means the same as that term is defined in Section

49 [76-10-101](#).

50 (d) "Flavored electronic cigarette product" means the same as that term is defined in

51 Section [76-10-101](#).

52 (e) "Licensee" means a person licensed under this section to conduct business as a

53 retail tobacco specialty business.

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

55 [26A-1-102](#).56 (g) "Nicotine product" means the same as that term is defined in Section [76-10-101](#).

57 (h) "Retail tobacco specialty business" means a commercial establishment in which:

- 58 (i) sales of tobacco products, electronic cigarette products, and nicotine products
- 59 account for more than 35% of the total quarterly gross receipts for the establishment;
- 60 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
- 61 storage of tobacco products, electronic cigarette products, or nicotine products;
- 62 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
- 63 tobacco products, electronic cigarette products, or nicotine products;
- 64 (iv) the commercial establishment:
- 65 (A) holds itself out as a retail tobacco specialty business; and
- 66 (B) causes a reasonable person to believe the commercial establishment is a retail
- 67 tobacco specialty business;
- 68 (v) any flavored electronic cigarette product is sold; or
- 69 (vi) the retail space features a self-service display for tobacco products, electronic
- 70 cigarette products, or nicotine products.

71 (i) "Self-service display" means the same as that term is defined in Section  
72 [76-10-105.1](#).

- 73 (j) "Tobacco product" means:
- 74 (i) a tobacco product as defined in Section [76-10-101](#); or
- 75 (ii) tobacco paraphernalia as defined in Section [76-10-101](#).

76 (2) The regulation of a retail tobacco specialty business is an exercise of the police  
77 powers of the state by the state or by delegation of the state's police powers to other  
78 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 municipality may not issue or renew a license for a person to conduct business as  
97 a retail tobacco specialty business until the person provides the municipality with proof that the  
98 retail tobacco specialty business has:

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

103 (b) (i) for a retailer that sells a tobacco product, a valid license issued by the State Tax  
104 Commission in accordance with Section 59-14-201 or 59-14-301 to sell a tobacco product; and

105 (ii) for a retailer that sells an electronic cigarette product or a nicotine product, a valid  
106 license issued by the State Tax Commission in accordance with Section 59-14-803 to sell an  
107 electronic cigarette product or a nicotine product.

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

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

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

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

114 issued under this section:

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

117 (ii) if a licensee violates federal law or federal regulations restricting the sale and  
118 distribution of tobacco products or electronic cigarette products to protect children and  
119 adolescents;

120 (iii) upon the recommendation of the department or a local health department under  
121 Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit; or

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

123 (7) (a) [~~Except as provided in Subsection (8), a~~] A retail tobacco specialty business  
124 [~~that has a~~] is exempt from Subsection (4) if:

125 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a  
126 license [and] to conduct business as a retail tobacco specialty business;

127 (ii) the retail tobacco specialty business is operating in a municipality in accordance  
128 with all applicable laws except for the requirement in Subsection (4)[, on or before December  
129 31, 2018, is exempt from Subsection (4).]; and

130 (iii) beginning July 1, 2021, the retail tobacco specialty business is not located within  
131 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

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 described in Subsection (7)(a)(i) is  
135 renewed continuously without lapse or permanent revocation;

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

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

141 (iv) the retail tobacco specialty business maintains the right to operate under the terms

142 of other applicable laws, including:

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

144 (B) zoning ordinances;

145 (C) building codes; and

146 ~~[(D) the requirements of a retail tobacco specialty business license issued before~~  
147 ~~December 31, 2018.]~~

148 ~~[(8) Beginning August 15, 2020, a retail tobacco specialty business that has a business~~  
149 ~~license and is operating in a municipality may not be located within 1,000 feet of any school.]~~

150 (D) the requirements of the license described in Subsection (7)(a)(i).

151 (c) A retail tobacco specialty business that does not qualify for an exemption under  
152 Subsection (7)(a) is exempt from Subsection (4) if:

153 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a  
154 general tobacco retailer permit or a retail tobacco specialty business permit under Title 26,  
155 Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local  
156 health department having jurisdiction over the area in which the retail tobacco specialty  
157 business is located;

158 (ii) the retail tobacco specialty business is operating in the municipality in accordance  
159 with all applicable laws except for the requirement in Subsection (4); and

160 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within  
161 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

162 (d) A retail tobacco specialty business may maintain an exemption under Subsection  
163 (7)(c) if:

164 (i) on or before December 31, 2020, the retail tobacco specialty business receives a  
165 retail tobacco specialty business permit from the local health department having jurisdiction  
166 over the area in which the retail tobacco specialty business is located;

167 (ii) the permit described in Subsection (7)(d)(i) is renewed continuously without lapse  
168 or permanent revocation;

169 (iii) the retail tobacco specialty business does not close for business or otherwise

170 suspend the sale of tobacco products, electronic cigarette products, or nicotine products for  
171 more than 60 consecutive days; and

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

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

175 (B) zoning ordinances;

176 (C) building codes; and

177 (D) the requirements of the retail tobacco permit described in Subsection (7)(d)(i).

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

179 **17-50-333. Regulation of retail tobacco specialty business.**

180 (1) As used in this section:

181 (a) "Community location" means:

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

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

184 (iii) a trade or technical school;

185 (iv) a church;

186 (v) a public library;

187 (vi) a public playground;

188 (vii) a public park;

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

190 (ix) a public recreational facility;

191 (x) a public arcade; or

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

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

194 (c) "Electronic cigarette product" means the same as that term is defined in Section  
195 [76-10-101](#).

196 (d) "Flavored electronic cigarette product" means the same as that term is defined in  
197 Section [76-10-101](#).

198 (e) "Licensee" means a person licensed under this section to conduct business as a  
199 retail tobacco specialty business.

200 (f) "Local health department" means the same as that term is defined in Section  
201 26A-1-102.

202 (g) "Nicotine product" means the same as that term is defined in Section 76-10-101.

203 (h) "Retail tobacco specialty business" means a commercial establishment in which:

204 (i) sales of tobacco products, electronic cigarette products, and nicotine products  
205 account for more than 35% of the total quarterly gross receipts for the establishment;

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

208 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of  
209 tobacco products, electronic cigarette products, or nicotine products;

210 (iv) the commercial establishment:

211 (A) holds itself out as a retail tobacco specialty business; and

212 (B) causes a reasonable person to believe the commercial establishment is a retail  
213 tobacco specialty business;

214 (v) any flavored electronic cigarette product is sold; or

215 (vi) the retail space features a self-service display for tobacco products, electronic  
216 cigarette products, or nicotine products.

217 (i) "Self-service display" means the same as that term is defined in Section  
218 76-10-105.1.

219 (j) "Tobacco product" means:

220 (i) the same as that term is defined in Section 76-10-101; or

221 (ii) tobacco paraphernalia as defined in Section 76-10-101.

222 (2) The regulation of a retail tobacco specialty business is an exercise of the police  
223 powers of the state by the state or by the delegation of the state's police power to other  
224 governmental entities.

225 (3) (a) A person may not operate a retail tobacco specialty business in a county unless



226 the person obtains a license from the county in which the retail tobacco specialty business is  
227 located.

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

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

- 233 (i) 1,000 feet of a community location;
- 234 (ii) 600 feet of another retail tobacco specialty business; or
- 235 (iii) 600 feet from property used or zoned for:
  - 236 (A) agriculture use; or
  - 237 (B) residential use.

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

242 (5) A county may not issue or renew a license for a person to conduct business as a  
243 retail tobacco specialty business until the person provides the county with proof that the retail  
244 tobacco specialty business has:

245 (a) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter  
246 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local health  
247 department having jurisdiction over the area in which the retail tobacco specialty business is  
248 located; and

249 (b) (i) for a retailer that sells a tobacco product, a valid license issued by the State Tax  
250 Commission in accordance with Section 59-14-201 or 59-14-301 to sell a tobacco product; or

251 (ii) for a retailer that sells an electronic cigarette product or a nicotine product, a valid  
252 license issued by the State Tax Commission in accordance with Section 59-14-803 to sell an  
253 electronic cigarette product or a nicotine product.

254 (6) (a) Nothing in this section:  
255 (i) requires a county to issue a retail tobacco specialty business license; or  
256 (ii) prohibits a county from adopting more restrictive requirements on a person seeking  
257 a license or renewal of a license to conduct business as a retail tobacco specialty business.  
258 (b) A county may suspend or revoke a retail tobacco specialty business license issued  
259 under this section:  
260 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,  
261 Part 16, Pattern of Unlawful Activity Act;  
262 (ii) if a licensee violates federal law or federal regulations restricting the sale and  
263 distribution of tobacco products or electronic cigarette products to protect children and  
264 adolescents;  
265 (iii) upon the recommendation of the department or a local health department under  
266 Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit; or  
267 (iv) under any other provision of state law or local ordinance.  
268 (7) (a) ~~[Except as provided in Subsection (8), a]~~ A retail tobacco specialty business  
269 ~~[that has a]~~ is exempt from Subsection (4) if:  
270 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a  
271 license [and] to conduct business as a retail tobacco specialty business;  
272 (ii) the retail tobacco specialty business is operating in a county in accordance with all  
273 applicable laws except for the requirement in Subsection (4)~~[, on or before December 31, 2018,~~  
274 is exempt from Subsection (4).]; and  
275 (iii) beginning July 1, 2021, the retail tobacco specialty business is not located within  
276 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.  
277 (b) A retail tobacco specialty business may maintain an exemption under Subsection  
278 (7)(a) if:  
279 (i) the ~~[retail tobacco specialty business]~~ license described in Subsection (7)(a)(i) is  
280 renewed continuously without lapse or permanent revocation;  
281 (ii) the retail tobacco specialty business does not close for business or otherwise

282 suspend the sale of tobacco products, electronic cigarette products, or nicotine products for  
283 more than 60 consecutive days;

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

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

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

289 (B) zoning ordinances;

290 (C) building codes; and

291 ~~[(D) the requirements of a retail tobacco specialty business license issued before  
292 December 31, 2018:]~~

293 ~~[(8) Beginning August 15, 2020, a retail tobacco specialty business that has a business  
294 license and is operating in a county may not be located within 1,000 feet of any school.]~~

295 (D) the requirements of the license described in Subsection (7)(a)(i).

296 (c) A retail tobacco specialty business that does not qualify for an exemption under  
297 Subsection (7)(a) is exempt from Subsection (4) if:

298 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a  
299 general tobacco retailer permit or a retail tobacco specialty business permit under Title 26,  
300 Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local  
301 health department having jurisdiction over the area in which the retail tobacco specialty  
302 business is located;

303 (ii) the retail tobacco specialty business is operating in the county in accordance with  
304 all applicable laws except for the requirement in Subsection (4); and

305 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within  
306 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

307 (d) A retail tobacco specialty business may maintain an exemption under Subsection  
308 (7)(c) if:

309 (i) on or before December 31, 2020, the retail tobacco specialty business receives a

310 retail tobacco specialty business permit from the local health department having jurisdiction  
311 over the area in which the retail tobacco specialty business is located;

312 (ii) the permit described in Subsection (7)(d)(i) is renewed continuously without lapse  
313 or permanent revocation;

314 (iii) the retail tobacco specialty business does not close for business or otherwise  
315 suspend the sale of tobacco products, electronic cigarette products, or nicotine products for  
316 more than 60 consecutive days; and

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

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

320 (B) zoning ordinances;

321 (C) building codes; and

322 (D) the requirements of the retail tobacco permit described in Subsection (7)(d)(i).

323 Section 3. Section **26-62-202** is amended to read:

324 **26-62-202. Permit application.**

325 (1) A local health department shall issue a permit under this chapter for a tobacco  
326 retailer if the local health department determines that the applicant:

327 (a) accurately provided all information required under Subsection (3) and, if applicable,  
328 Subsection (4); and

329 (b) meets all requirements for a permit under this chapter.

330 (2) An applicant for a permit shall:

331 (a) submit an application described in Subsection (3) to the local health department  
332 with jurisdiction over the area where the tobacco retailer is located; and

333 (b) pay all applicable fees described in Section [26-62-203](#).

334 (3) The application for a permit shall include:

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

336 (b) the name and mailing address of each proprietor authorized to receive  
337 permit-related communication and notices;

338 (c) the business name, address, and telephone number of the single, fixed location for  
339 which a permit is sought;

340 (d) evidence that the location for which a permit is sought has a valid tax commission  
341 license;

342 (e) information regarding whether, in the past 24 months, any proprietor of the tobacco  
343 retailer has been determined to have violated, or has been a proprietor at a location that has  
344 been determined to have violated:

345 (i) a provision of this chapter;

346 (ii) Chapter 38, Utah Indoor Clean Air Act;

347 (iii) Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic Chemical  
348 Solvents;

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

350 (v) regulations restricting the sale and distribution of cigarettes and smokeless tobacco  
351 issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140; or

352 (vi) any other provision of state law or local ordinance regarding the sale, marketing, or  
353 distribution of a tobacco product, an electronic cigarette product, or a nicotine product; and

354 (f) the dates of all violations disclosed under this Subsection (3).

355 (4) (a) In addition to the information described in Subsection (3), an applicant for a  
356 retail tobacco specialty business permit shall include evidence showing whether the business is  
357 located within:

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

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

360 (iii) 600 feet of property used or zoned for agricultural or residential use.

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

365 (5) The department or a local health department may not deny a permit to a retail

366 tobacco specialty business under Subsection (4) if the retail tobacco specialty business  
367 [obtained a license to operate the retail tobacco specialty business before December 31, 2015,  
368 from:] meets the requirements described in Subsection [10-8-41.6\(7\)](#) or [17-50-333\(7\)](#).

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

370 [~~(b) a county under Section [17-50-333](#);~~

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

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

376 Section 4. Section **63I-1-210** is amended to read:

377 **63I-1-210. Repeal dates, Title 10.**

378 [~~(1) Subsection [10-8-41.6\(7\)](#), the language that states "December 31, 2018" is repealed  
379 July 1, 2022, and replaced with "December 31, 2015".]~~

380 [~~(2)~~] Section [10-9a-526](#) is repealed December 31, 2020.

381 Section 5. Section **63I-1-217** is amended to read:

382 **63I-1-217. Repeal dates, Title 17.**

383 (1) Subsection [17-16-21\(2\)\(d\)](#) is repealed July 1, 2023.

384 (2) Title 17, Chapter 21a, Part 3, Administration and Standards, which creates the Utah  
385 Electronic Recording Commission, is repealed July 1, 2022.

386 [~~(3) Subsection [17-50-333\(7\)](#), the language that states "December 31, 2018" is repealed  
387 July 1, 2022, and replaced with "December 31, 2015".]~~

388 Section 6. **Effective date -- Retrospective operation.**

389 (1) If approved by two-thirds of all the members elected to each house, this bill takes  
390 effect upon approval by the governor, or the day following the constitutional time limit of Utah  
391 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
392 the date of veto override.

393 (2) This bill has retrospective operation to August 15, 2020.

