

# RULE 384-324 FREQUENTLY ASKED QUESTIONS



WORKING TOGETHER WE CAN HELP PREVENT ILLEGAL YOUTH ACCESS TO TOBACCO!

HB 324 Tobacco Regulations Amendments:

- amends municipal and county business license practices for a retail tobacco specialty business
- amends the definition of smoking in the Utah Indoor Clean Air Act;
- requires a tobacco retailer to obtain a permit from the local health department;
- establishes requirements for a tobacco retail permit application;
- establishes the standards that a local health department shall apply when determining whether to issue a permit to a tobacco retailer;
- incorporates civil penalties for tobacco sales to underage persons into the provisions relating to a tobacco retail permit;
- provides penalties for violations of tobacco permitting requirements;
- and changes the fee provisions for certain tax commission licenses for cigarettes, tobacco products, and electronic cigarette products.

## 1 DO TOBACCO RETAILERS STILL NEED TO GET A LICENSE FROM THE STATE TAX COMMISSION?

- Yes, all tobacco retailer will need to obtain a valid license to sell tobacco products from the State Tax Commission.

## 2 WHEN DO TOBACCO RETAILERS NEED TO GET A TOBACCO PERMIT FROM THE LOCAL HEALTH DEPARTMENT?

- Existing tobacco retailers may begin applying for a local health department tobacco permit on November 1, 2018. Permitting for new retailers will begin July 1, 2018.

## 3 WHAT IS THE DIFFERENCE BETWEEN THE STATE TAX COMMISSION LICENSE AND THE LOCAL HEALTH DEPARTMENT PERMIT?

- State Tax Commission requires a license that will be used for tax purposes.
- The Retail Tobacco Permit and Tobacco Specialty Business Permit will be given by the local health department and will be similar to previous tobacco licenses given by the State Tax Commission.

## 4 WHAT IS THE DIFFERENCE BETWEEN A GENERAL TOBACCO RETAILER AND RETAIL TOBACCO SPECIALTY BUSINESS?

- A retail tobacco specialty business means a commercial establishment in which the sale of tobacco products accounts for more than 35% of the total quarterly gross receipts for the establishment, has 20% or more of the public retail floor space and total shelf space is allocated for the offer, display, or storage of tobacco products. (These are typically smoke and vape shops.)
- A general tobacco retailer is a retailer that has not been classified as a tobacco specialty business.

## 5 HOW MUCH WILL IT COST TO GET A PERMIT?

- \$30 for a new permit
- \$20 for a permit renewal
- \$30 for reinstatement of permit that have been revoked, suspended, or allowed to expire

## 6 WHEN WILL BUSINESSES NEED TO RENEW THEIR PERMITS WITH THE HEALTH DEPARTMENT?

- A permit holder can apply for renewal 30 days before the expiration date.
- A general tobacco retailer permit is valid for two years.
- A retail tobacco specialty business permit is valid for one year.

## 7 CAN A PERMIT BE TRANSFERRED TO ANOTHER BUSINESS?

- The permit is non-transferrable

## 8 WHEN WILL BUSINESSES GET THEIR PERMIT FROM THE HEALTH DEPARTMENT?

- The local health departments will have 30 days to issue the permit beginning on the date of the local health department receives the application and payment.
- The receipt provided by the local health department will serve as a temporary operating permit for 30 days.

## 9 WHAT QUALIFIES A RETAILER AS A TOBACCO SPECIALTY BUSINESS?

- A retail tobacco specialty business means a commercial establishment where the sale of tobacco products accounts for more than 35% of the total quarterly gross receipts for the establishment, has 20% or more of the public retail floor space and total shelf space is allocated for the offer, display, or storage of tobacco products. (These are typically smoke and vape shops.)

## 10 HOW DO TOBACCO SPECIALTY BUSINESSES MEASURE THE 20% SHELF AND STORAGE SPACE?

- Shelf space is measured by the total cubic feet (length x depth x height) of shelf space contained within the retail space that is used for the offer, display, or storage of items that are offered for sale by the tobacco retailer. The shelf height is measured from the top of the tallest item on the top of the shelf. The shelf length is measured from the end of the longest item at the end of the shelf. Empty shelf space is not included in the total shelf space calculation.

## 11 IS THERE AN ONLINE APPLICATION TO FILL OUT?

- The Health Department is currently in the process of getting an online application process put in place in addition to a hard copy application.

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## 12 WHAT IS THE GRANDFATHER DATE FOR THE RETAIL TOBACCO SPECIALTY BUSINESSES?

- A tobacco specialty business that received a business license from a municipality or from a county on or after December 31, 2015, may continue to operate until December 31, 2018, as long as the business maintains a current and valid business license and tobacco tax license.
- A tobacco specialty business that received a business license from a municipality or from a county on or after December 31, 2015, that desires to continue to sell tobacco products on December 31, 2018, and beyond must apply and provide a plan review to the local health department beginning November 1, 2018.

## 13 WHAT DOES A PLAN REVIEW ENTAIL FOR A RETAIL TOBACCO SPECIALTY BUSINESS?

- The local health department will need to verify accuracy of information provided by retail tobacco specialty businesses through the permit application process.
- The retail tobacco specialty business must complete the following:
  - o Properly fill out an application with retail tobacco specialty business information
  - o Provide a copy of valid tax commission license
  - o Include a map that demonstrates that the business is not located within:
    - 1,000 feet of a community location
    - 600 feet of another retail tobacco specialty business
    - 600 feet of property used or zoned for agricultural or residential use
  - Proximity requirements are measured in a straight line from the nearest entrance of the retail tobacco specialty business to the nearest property boundary of the location identified as the business address without the intervention structures or zoning districts.
  - Pay \$250 for plan review fee

## 14 HOW WILL TOBACCO COMPLIANCE CHECKS BE DIFFERENT?

- Previous to HB324 passing, local health departments conducted up to four compliance checks each year or once a quarter. Starting July 1, 2018, local health departments will be conducting two compliance checks in a 12-month period. The Health Department will be setting up conference calls and/or meetings with each cities' Police Department to update Memorandum of Agreements.

## 15 DOES THIS NEW LAW LIMIT E-LIQUID INSPECTIONS?

- HB324 does not change the e-liquid inspections, under Rule 384-415. Electronic-Cigarette Substance Standards. For more information about the rule, visit: <https://rules.utah.gov/publicat/code/r384/r384-415.htm>

## 16 WHAT CLASSIFIES AS TOBACCO PARAPHERNALIA?

- Tobacco paraphernalia means any equipment, product, or material of any kind which is used, intended for use, or designed for use to package, repack, store, contain, conceal, ingest, inhale, or otherwise introduce a cigar cigarette, or tobacco in any form in the human body including:
    - o Metal, wooden, acrylic, glass, stone plastic, or ceramic pipes with or without screens permeant screens, hashish head or punctured metal bowls
    - o Water pipes
    - o Carburetion tubes and devices
    - o Smoke and carburetion masks
    - o Roach clip
    - o Chamber pipes, Carburetor pipes, Electric pipes
    - o Air-driven pipes
    - o Chillums
    - o Bonges
    - o Ice pipes or chillers
- Utah Code: 76-10-104.1

## 17 WHAT IS AN ELECTRONIC CIGARETTE?

- Electronic cigarette is an electronic device used to deliver or capable of delivering vapor containing nicotine to an individual's respiratory system, a component of the device or accessory sold in the same package as the device.
  - Electronic cigarette product is the device or substance put in the device.
    - o Provides vapor of nicotine or other substance and simulates smoking through its use or through inhalation of the device.
    - o Oral device is the heating element, battery, or electronic circuit
    - o Marketed, manufactured distributed or sold as an e-cigarette, e-cigar, e-pipe or any other product name or descriptor if the function of the product means the definition.
  - Electronic cigarette substance may be any substance, including liquid containing nicotine use or intended for use in an electronic cigarette.
- Utah Code: 26-38-2, 59-14-802

## 18 WHAT IS THE PENALTY STRUCTURE FOR A STORE SELLING TO A MINOR?

- First violation will be \$500
- Second violation that occurs within one year of a previous violation will be \$750
- Third violation at the same retail location that occurs within two years after two or more previous violations will be a suspension of the permit for 30 consecutive business days or \$1,000
- Fourth violation occurs within two years of three previous violations, the permit will be revoked and if applicable recommend to a municipality or county that a business license be suspended or revoked.