

Tobacco Retailer Regulation



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Background

- First adopted in 2018 to align with new legislation
- Admin Rule R384-324
 - Authorized by UCA 26B-1-213, 26B-7-508(6)
 - Establishes the process by which local health departments issue, suspend, and revoke a tobacco retail permit



- Before this rule a tobacco retailer only needed:
 - Utah Tax Commission License
 - Business license from the city

Overview of Proposed Changes

To align with multiple updates in Utah Code since 2018

- Renumbering of Utah Health Code
- Definitions
- Violations
- Penalties

To increase transparency about permit expectations with tobacco retailers

Renumbered Utah Health Code

Title 26: Utah Health Code
Chapter 62: Tobacco,
Electronic Cigarette, and
Nicotine Product Retail
Permit



Title 26B: Utah Health **and**
Human Services Code
Chapter 7: Public Health and
Prevention
Part 5: Regulation of
Smoking, Tobacco Products,
and Nicotine Products

Expanded Definition of Tobacco Products

“Tobacco products”



“tobacco products, electronic cigarette products, or nicotine products”

Added* & Updated** Definitions (4.0)

***ELECTRONIC CIGARETTE:** Any electronic oral device that provides an aerosol or a vapor of nicotine or other substance and which simulates smoking through the use or inhalation of the device as defined in UCA Section 76-10-101(4).

***ELECTRONIC CIGARETTE PRODUCT:** An electronic cigarette, an electronic cigarette substance, or a prefilled electronic cigarette as defined in UCA Section 76-10-101(5).

***FLAVORED ELECTRONIC CIGARETTE PRODUCT:** An electronic cigarette product that has a taste or smell that is distinguishable by an ordinary consumer either before or during use or consumption of the electronic cigarette product as defined in UCA Section 76-10-101(7). A flavored electronic cigarette product includes an electronic cigarette product that has a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice. A flavored electronic cigarette product does not include an electronic cigarette product that has a taste or smell of only tobacco, mint, or menthol.

***NICOTINE PRODUCT:** An alternative nicotine product or a nontherapeutic nicotine product as defined in UCA Section 76-10-101(9).

***PROPRIETOR:** The owner of a retail establishment, or any other place of business that sells, markets, or distributes tobacco products, electronic cigarette products, or nicotine products As defined in Utah Administrative Rule R384-324-2.

****RETAIL TOBACCO SPECIALTY BUSINESS:** As defined in UCA 10-8-41.6(1), a tobacco retailer in which:
-the commercial establishment holds itself out as a retail tobacco specialty business and causes a reasonable person to believe the commercial establishment is a retail tobacco specialty business
-any flavored electronic cigarette product is sold

***TOBACCO RETAILER:** A general tobacco retailer or a retail tobacco specialty business as defined in UCA Section 76-10-101(20).

***TOBACCO RETAILER PERMIT:** The permit issued by the local health department to general tobacco retailers and retail tobacco specialty businesses for the sale, marketing or distribution of tobacco products, electronic cigarette products, or nicotine products as defined in Utah Administrative Rule R384-324-2.

Added Violations (5.2) & Oversight Authority (5.3.1)

5.2 Permit Violations

A tobacco retailer is in violation of the permit issued under this regulation if the tobacco retailer violates:

- 5.2.1 any provision of UCA Title 26B, Chapter 7, Part 5;
- 5.2.2 any provision of Utah Administrative Rule R384-324;
- 5.2.3 any provision of Utah Administrative Rule R384-415;
- 5.2.4 a provision of licensing laws under UCA Section 10-8-41.6 or Section 17-50-333;
- 5.2.5 a provision of UCA Title 76, Chapter 10, Part 1;
- 5.2.6 a provision of UCA Part 76, Chapter 10, Part 16; or,
- 5.2.7 any other provision of state law or local ordinance regarding the sale, marketing, or distribution of a tobacco product, an electronic cigarette product, or a nicotine product.

5.3.1 Oversight

The Department may conduct inspections as part of its oversight process to determine if a tobacco retailer is in compliance with tobacco retailer permit requirements.

5.3.2 Notice of Violation

A Notice of Violation may be issued for any violation of this regulation.

Added Civil Penalties (6.2.1.3)

A civil penalty pursuant to UCA Section 26B-7-518. The following penalties may be imposed on the tobacco retailer based on the type of tobacco retailer permit violation:

Civil Penalties for Violating the Terms of a Tobacco Retailer Permit	
1st Violation	\$1,000 fine
2nd Violation <i>occurs within one year of first violation</i>	\$1,500 fine
3rd Violation <i>occurs within two years of second violation</i>	\$2,000 fine OR suspension of tobacco retailer permit for 30 consecutive business days
4th Violation <i>occurs within two years of three previous violations</i>	\$2,000 fine AND revoke tobacco retailer permit

Civil Penalties for a General Tobacco Retailer Proprietor in a Sale to an Underage Buyer	
1st Violation	Proprietor Sale: \$2,000 fine
2nd Violation <i>occurs within one year of previous violation</i>	Proprietor Sale: \$5,000 fine AND revoke general tobacco retailer permit

Civil Penalties for a Retail Tobacco Specialty Business in a Sale to an Underage Buyer (Proprietor or Employee)	
1st Violation	\$5,000 fine AND suspend the retail tobacco specialty business permit for 30 consecutive days
2nd Violation <i>occurs within two years of first violation</i>	\$10,000 fine AND revoke the retail tobacco specialty business permit

Thank you!



Questions?

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