

Tobacco Prevention & Enforcement



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Healthy Choices. Healthy People. Healthy Communities.

OVERVIEW



- I. Tobacco Prevention Program & Legislation, Kristen O'Flarity
- II. Enforcement Implications, Neal Geddes

Program Background

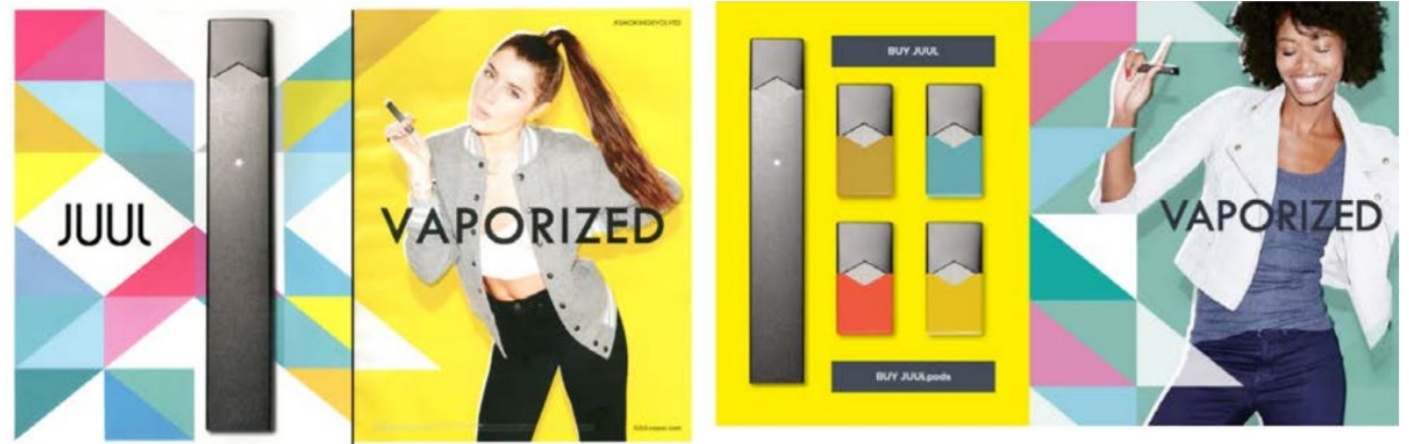
- Primary focus: Education
- Cessation resources
- Youth involvement
- Utah Indoor Clean Air Act (1990s)
- Compliance checks
- Changing landscape of tobacco
- New emerging tobacco products (i.e., e-cigs)



What is considered a tobacco product?

“Tobacco products” is an all-encompassing term (Utah Code 76-10-101), including:

- Cigarettes
- Cigars
- Snuff
- Pipe tobacco
- Chewing tobacco
- Hookah
- Paraphernalia
- Electronic cigarettes
- Electronic cigarette substance or liquid
- Nicotine dissolvable salts, orbs, pellets, sticks, or strips

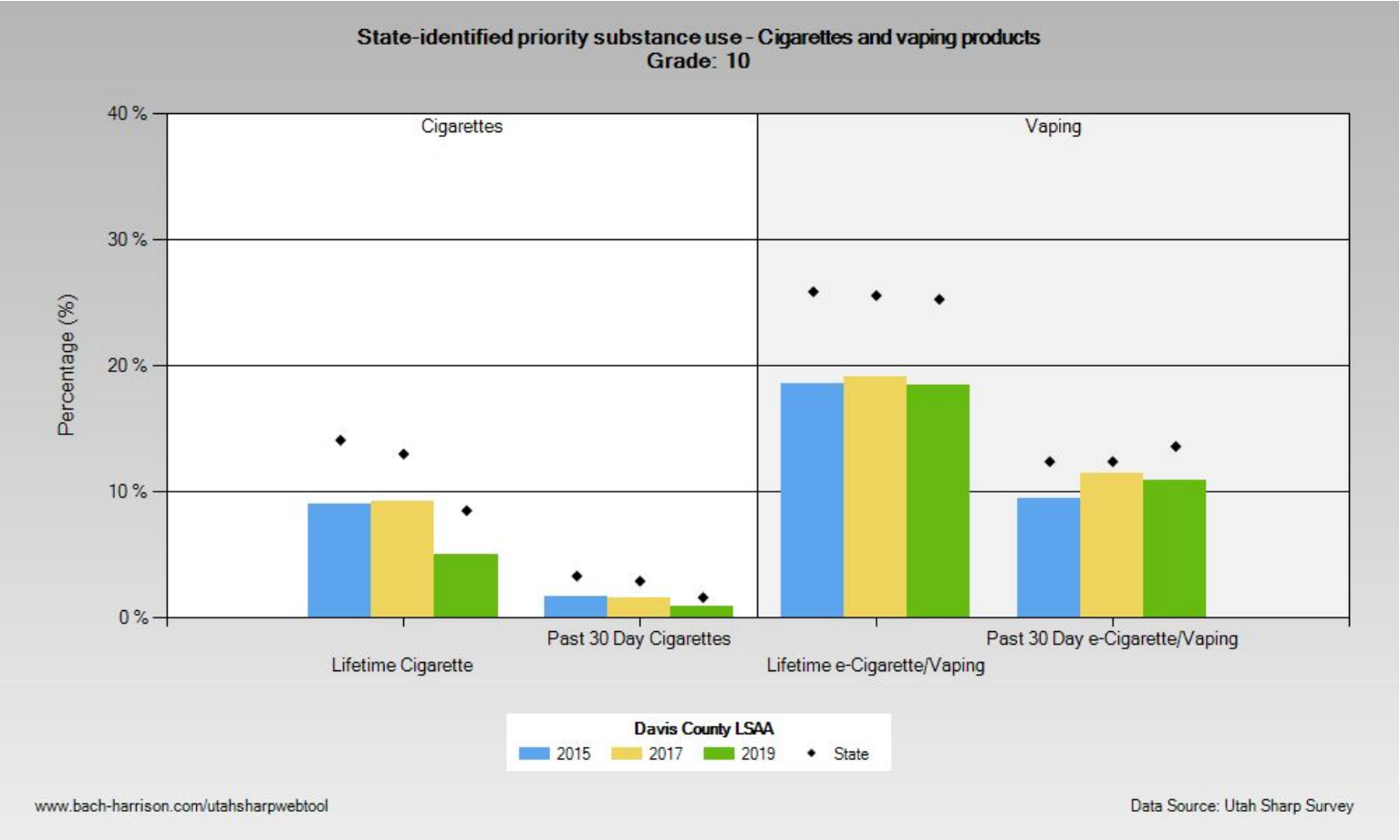


New Generation of Tobacco



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Cigarettes vs. Vaping: SHARP Data



Reference: Student Health and Risk Prevention (SHARP) Statewide Survey 2015, 2017, 2019

H.B. 324 & R384-324 (2018)

- Requires LHD to have permitting program
- Establishes process & requirements
- Application
 - General Tobacco Retailer
 - Retail Tobacco Specialty Business
- Tobacco license from State Tax Commission

A tobacco retailer without a valid permit may not:

1. place a tobacco product in public view;
2. display any advertisement related to a tobacco product that promotes the sale, distribution, or use of those products; or
3. sell, offer for sale, or offer to exchange for any form of consideration a tobacco product (Utah Code 26-62-201)



Permit Types

General Tobacco Retailers (GTR)

- Majority of retailers (102)
 - Convenience stores
 - Gas stations
 - Grocery stores
- May not have:
 - 20% or more retail floor space OR shelf space dedicated to tobacco products
 - More than 35% of quarterly gross sale of tobacco products
 - any self-service display of tobacco product (Utah Code §10-8-41.6; 17-50-333)
- Cannot sell flavored e-cigarette products, with the exception of tobacco, mint, and menthol (Utah Code § 76-10-113)

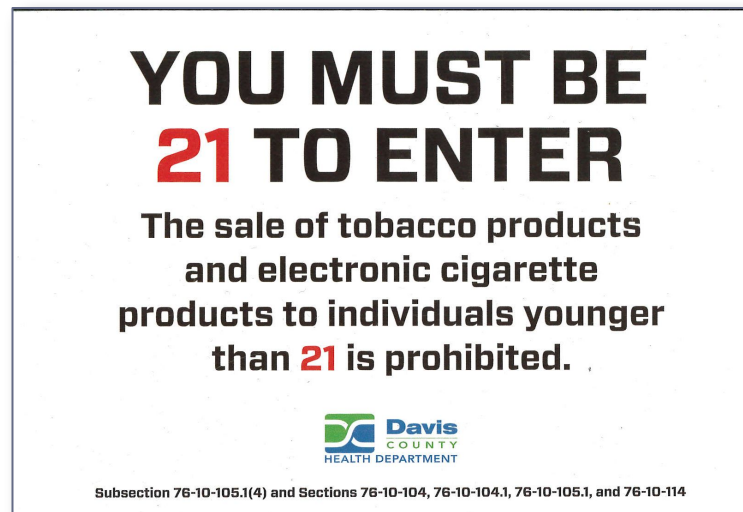
Retail Tobacco Specialty Business (RTSB)

- Vape shops, smoke shops (22)
- More restrictions
- Anyone under age 21 is prohibited from entering
- May not be within:
 - 1,000 ft of a community location*
 - 600 ft of another RTSB
 - 600 ft of property zoned for agricultural or residential use
- Most grandfathered in 2018

*Community location includes public or private K-12 school; licensed child-care or preschool; trade or technical school; church; public library; public playground; public park; youth center or other place used primarily for youth oriented activities; public recreational facility; public arcade; homeless shelter. Utah Code §10-8-41.6; 17-50-333).

S.B. 6008 (2020)

- Stores NOT grandfathered in 2018 were eligible to be a specialty business
- Disregards RTSB proximity requirements
- 7 GTRs applied to be a specialty business by December 31, 2020
- Stipulation: cannot be within 1,000 ft of a K-12 school by July 2022



Beyond Permitting

- Inspection requirements
 - labeling
 - nicotine content
 - packaging
 - product quality
 - product availability
- Increased violation fees
- Harsher penalties

S.B. 37 (2020)

The local health departments shall use the money received in accordance with Utah Code 59-14-807 for enforcing:

- (i) the regulation provisions described in Section 26-57-103;
- (ii) the labeling requirement described in Section 26-57-104; and
- (iii) the **penalty provisions** described in Section 26-62-305

Civil Penalty Provisions

Utah Code 26-62-305

Effective May 5, 2021

1st Violation	Penalty	
	General Tobacco Retailer	Retail Tobacco Specialty Business
Tobacco sale to individual under 21 years old	\$2,000 fine (owner sale) \$1,000* (employee sale)	\$5,000* fine + 30 day permit suspension
Other permit violation	\$1,000 fine	\$1,000 fine

2nd Violation	Penalty	
	General Tobacco Retailer (occurs within 1 year)	Retail Tobacco Specialty Business (occurs within 2 years)
Tobacco sale to individual under 21 years old	\$5,000 fine + revoke permit (owner sale) \$1,500 (employee sale)	\$10,000 fine + revoke permit
Other permit violation	\$ 1,500 fine	\$ 1,500 fine

*A hearing officer shall reduce the civil penalty by at least 50% if it is determined the employee has completed training program within 30 days after the violation (Utah Code 26-62-306)

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Penalties Continued

A tobacco retailer without a valid permit may not display, advertise, or sell tobacco products (Utah Code 26-62-201)

A person whose permit:

- is **suspended** may not apply for a new permit for a period of **12 months**
- is **revoked** may not apply for a new permit for a period of **24 months**
(Utah Code 26-62-305)

Underage buys in 2021:

- 11 sales total
- 4 were RTSB

Underage Sales in Davis County

FY12	1
FY13	5
FY14	24
FY15	19
FY16	17
FY17	17
FY18	22
FY19	6
FY20	11
FY21	11

4 stores in FY21 were specialty

IMPLICATIONS



UCA 26-62-302

Local health departments ***shall*** enforce this chapter under the procedures of Title 63G, Chapter 4, Administrative Procedures Act, an informal adjudicative proceeding, including:

1. notifying a tobacco retailer of alleged violations;
2. conducting hearings;
3. determining violations of this chapter; and
4. imposing civil administrative penalties.

DAVIS COUNTY ADJUDICATIVE HEARING PROCEDURES REGULATION

Our regulation provides for three types of proceedings:

1. Settlement Agreement
2. Departmental Hearing
3. Board Review

Settlement Agreement

- Recommend we modify this to “settlement conference”
- Discretionary ... “parties may confer”
- Goal is to educate and reach a binding agreement
- Parties waive all rights to further appeals if an agreement is reached
- Used this for violations of Environmental Health Regulations

DEPARTMENTAL HEARING

- Party who receives a NOV may request a hearing in writing within 10 days of receiving the NOV.
- Notice of Hearing issued within 20 days of the written request for a hearing.
- Hearing allows parties to present witnesses and evidence informally.
- Hearing Officer
 - conducts the meeting
 - places witnesses under oath
 - not bound by rules of evidence
 - records the hearing
 - discovery is prohibited (but Department may issue subpoenas)
 - issues written decision or final order
- Health Department shall ensure that the aggrieved party has access to Department files.

DEPARTMENTAL HEARING

- Each party is responsible for ensuring the appearance of witnesses *and* their own costs.
- Legal Counsel → must provide notice to other Party no later than 20 days after receiving Notice of the Hearing.
- Burden of proof is preponderance of the evidence
- Parties may stipulate to a continuance of the hearing for purposes of settlement discussions.
- Hearing Officer serves copy of the decision (final order) on the parties by mail, personal delivery, or through other reasonable notice ...

BOARD REVIEW

- Party may appeal the Hearing Officer's written decision/final order by requesting a Board review in writing within 30 days
 - names and addresses of the parties;
 - statement of relief or action sought from the Board;
 - a statement of the disputed facts and reasons forming the basis for relief; and
 - a copy of the Hearing Officer's Order
- Board reviews the record of the departmental hearing.
- Board determines if the factual conclusions are supported by substantial evidence.
- Board reviews legal conclusions de novo.
- Board reviews mixed questions of law and fact for reasonableness, and
- Board sets briefing schedule.
- Board issues written final order within reasonable time.

QUESTIONS?