

HB 324 FREQUENTLY ASKED QUESTIONS

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

In the 2018 legislative session, House Bill 324 passed. HB 324 impacts retailers that sell tobacco; it requires retailers to obtain a permit to sell tobacco from their local health department (LHD). Our goal is to have the permit available for retailers to apply and pay for on our website at www.swuhealth.org by at least October 1, 2018.

1. WHEN DO TOBACCO RETAILERS NEED TO GET A TOBACCO PERMIT FROM THEIR LHD?

- Existing tobacco retailers need a permit by January 1, 2019. New tobacco retailers will begin July 1, 2018.

2. HOW MUCH WILL IT COST TO GET A PERMIT?

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- \$30 for reinstatement of permits that has been revoked, suspended, or allowed to expire.

3. WHERE CAN I APPLY FOR THE PERMIT?

- Go to www.swuhealth.org. Click on the "Services" tab at top of page. Under "Health Promotions" click on the link "Tobacco Retailer Permit." Apply there.

4. WHEN WILL BUSINESSES NEED TO RENEW THEIR PERMITS WITH THE LHD?

- Up to 30 days before their licenses expiration date.
- A general tobacco retailer permit is valid for two years.
- A retail tobacco specialty business permit is valid for one year.

5. DO TOBACCO RETAILERS STILL NEED TO GET A LICENSE FROM THE STATE TAX COMMISSION?

- Yes, all tobacco retailers will need to obtain a valid license.

6. WHAT IS THE DIFFERENCE BETWEEN THE STATE TAX COMMISSION LICENSE AND THE LHD PERMIT?

- State Tax Commission license is used for tax purposes.
- The Retail Tobacco Permit and Tobacco Specialty Business Permit will be given by the LHD and will be similar to previous tobacco licenses given by the State Tax Commission.

7. CAN A PERMIT BE TRANSFERRED?

- The permit cannot be transferred to another business.

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

- LHD's have 30 days to issue the permit beginning on the date the LHD receives the application and payment.
- The receipt provided by the LHD serves as a temporary operating permit for 30 days.

9. WILL COMPLIANCE CHECKS BE DIFFERENT?

- Yes. Previous to HB324 passing, LHD's conducted four tobacco compliance checks each year. Starting July 1, 2018, law only allows LHD's to conduct two compliance checks in a 12-month period.

10. WHAT IS THE NEW PENALTY STRUCTURE FOR TOBACCO RETAILERS SELLING TO A MINOR?

- First violation is \$500.
- Second violation, within one year of a previous violation, is \$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/county suspend or revoke business license.

12. DOES 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>.
- All tobacco retailers are subject to e-liquid inspections to make sure they are selling e-liquid that conforms to Utah Law. Generally, we check to make sure the e-liquid has the proper labeling, is tamper proof, etc.

15. 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.
 - Provides vapor of nicotine or other substance and simulates smoking through its use or through inhalation of the device.
 - Oral device is the heating element, battery, or electronic circuit
 - 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 means any substance, including liquid containing nicotine use or intended for use in an electronic cigarette.

Source: Utah Code: 26-38-2, 59-14-802

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, repackage, store, contain, conceal ingest, inhale, or otherwise introduce a cigar cigarette, or tobacco in any form in the human body including:
 - Metal, wooden, acrylic, glass, stone plastic, or ceramic pipes with or without screens permeant screens, hashish head or punctured metal bowls
 - Water pipes
 - Carburetion tubes and devices
 - Smoke and carburetion masks
 - Roach clip
 - Chamber pipes, Carburetor pipes, Electric pipes
 - Air-driven pipes
 - Chillums
 - Bongs
 - Ice pipes or chillers

Source: Utah Code: 76-10-104.1

Information for tobacco specialty businesses

11. WHAT'S THE DIFFERENCE BETWEEN A GENERAL TOBACCO RETAILER AND RETAIL TOBACCO SPECIALTY BUSINESS?

- A retail tobacco specialty business means a commercial establishment where the sales of tobacco accounts for more than 35% of the total quarterly gross receipts for the establishment and has 20% or more of the public retail floor space and total shelf space

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

12. WHAT IS THE GRANDFATHER DATE FOR A RETAIL TOBACCO SPECIALTY BUSINESS?

- A retail tobacco specialty business that receives a business license from a municipality or from a county on or before 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 retail 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.

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:
 - Properly fill out an application with retail tobacco specialty business information
 - Provide a copy of valid tax commission license
 - 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 requirement is measured in a straight line form 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 DO TOBACCO SPECIALTY BUSINESS 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.

QUESTIONS? Contact Camille Jessop. cjessop@swuhealth.org. 435-986-2563.

Source: <https://le.utah.gov/~2018/bills/static/HB0324.html> and <https://rules.utah.gov/publicat/bulletin/2018/20180515/42870.htm>