

R384. Disease Control and Prevention, Health Promotion.

R384-418. Electronic-Cigarette Mandatory Warning Signage and Sale Restrictions.

R384-418-1. Authority and Purpose.

(1) This rule is authorized by Section 26-1-30(4).

(2) The purpose of this rule is to protect health, safety and welfare of the Utah youth, by requiring mandatory warning signs that warn consumers not to use electronic-cigarette products to consume unregulated tetrahydrocannabinol(THC) substances and by restricting the sale of flavored electronic-cigarette products and electronic-cigarette substances in retail tobacco specialty businesses.

R384-418-2. Definitions.

As used in this rule:

(1) "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit or non-profit purposes.

(2) "Department" means the Utah Department of Health.

(3) "Electronic-cigarette product" means the same as the term is defined in Subsection 59-14-802(3).

(4) "Electronic-cigarette substance" means the same as the term is defined in Subsection 59-14-802(4).

(5) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco specialty business.

(6) "Flavored electronic-cigarette product" means an electronic-cigarette product that has a taste or a smell distinguishable by an ordinary consumer either before or during use or consumption of the electronic-cigarette product, including but not limited to has a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, spice, menthol or mint.

(7) "Flavored electronic-cigarette substance" means an electronic-cigarette substance that has a taste or a smell distinguishable by an ordinary consumer either before or during use or consumption of the electronic-cigarette product, including but not limited to an electronic-cigarette product that has a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, spice, menthol or mint.

(8) "Local health department" means the same as the term is defined in Subsection 26A-1-102(5).

(9) "Non-flavored electronic-cigarette substance" means an electronic-cigarette substance that has a taste or a smell of tobacco that is distinguishable by an ordinary consumer either before or during use or consumption of the electronic-cigarette product.

(10) "Public retail floor space" means the total floor square feet of the business where a customer can see, retrieve, or purchase any item that is offered for sale by the general tobacco retailer, including all areas behind the purchase counter, and including appurtenant areas used for storage.

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

(a) The sale of tobacco products accounts for more than 35% of the total quarterly gross receipts for the establishment;

(b) 20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products;

(c) 20% or more of the total shelf space is allocated to the offer, display, or storage of tobacco products; or

(d) The retail space features a self-service display for tobacco

products.

.(e) Any flavored electronic-cigarette product is sold.

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

.(13) "Shelf space" means 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.

.(14) "Tetrahydrocannabinol" (THC) means the same as that term defined in Subsection 58-37-4(2)(a)(iii)(AA).

.(15) "Tobacco product" means the same as that term defined in Section 59-14-102.

.(16) "Tobacco retail permit" means 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.

R384-418-3. Responsibility for Compliance.

.(1) Each business, must comply with this rule, is independently responsible to assure compliance and each may be held liable for noncompliance.

.(2) General tobacco retailers and retail tobacco specialty businesses shall not endorse or represent an electronic-cigarette product as safe due to complying with this rule.

.(3) General tobacco retailers and retail tobacco specialty businesses shall comply with the mandatory warning signs part of this rule within 6 calendar days, or by Monday October 7, 2019, after the effective date of this rule.

.(4) General tobacco retailers shall comply with the prohibited sale of flavored electronic-cigarette products part of this rule within 6 calendar days, or by Monday October 7, 2019.

R384-418-4. Mandatory Warning Signs.

.(1) As a condition to sell electronic-cigarette products, general tobacco retailers and retail tobacco specialty businesses shall display a mandatory warning sign, warning consumers not to use electronic-cigarette products to consume unregulated THC electronic-cigarette substances.

.(2) Mandatory warning signs shall be posted at all entrances or in a position clearly visible on entry into the retail location and at each register inside the retailer location where the electronic-cigarette product transaction or sale occurs.

.(3) Mandatory warning signs will be created by the Department. Local health departments may distribute the mandatory warning signs for general tobacco retailers and retail tobacco specialty businesses upon request. Retailers may use the Department issued mandatory warning signs or display a warning sign that complies with the signage requirements in this rule.

.(4) Mandatory warning signs required in this section must be easily readable and must not be obscured in any way. The mandatory warning sign must state "Vaping unregulated THC is dangerous to your health. A lung disease related to vaping unregulated THC has recently hospitalized dozens of Utahns and caused several deaths nationwide." The words "Vaping unregulated THC is dangerous to your health" must be no less than 0.75 inches in height and the words "A lung disease related to vaping unregulated THC has recently

hospitalized dozens of Utahns and caused several deaths nationwide" must be no less than 0.25 inches in height.

R384-418-5. Allowed and Prohibited Sale of Flavored Electronic-Cigarette Products.

(1) Only retail tobacco specialty businesses with a valid retail tobacco specialty permit issued by a local health department may sell flavored electronic-cigarette products and flavored electronic-cigarette substances.

(2) General tobacco retailers shall not sell flavored electronic-cigarette products and flavored electronic-cigarette substances.

(3) General tobacco retailers may sell non-flavored electronic-cigarette products and non-flavored electronic-cigarette substances.

(4) The sale of THC electronic-cigarette products and THC electronic-cigarette substances is illegal in the State of Utah unless the sale is made in compliance with Title 26, chapter 61a, Utah Medical Cannabis Act, or Title 4, Chapter 41A, the Cannabis Production Establishments.

R384-418-6. Local Authority to Promulgate Laws

Nothing in this rule shall be construed to limit local health departments or other local governmental entities with authority, from promulgating ordinances and laws that are in addition to or stricter than this rule as long as such laws do not conflict with or impede the provisions of this rule.

R384-418-7. Enforcement.

(1) The Department may enforce and seek penalties for the violation of the standards for electronic cigarettes set forth in this rule as prescribed in Sections 26-23-1 through 26-23-10.

(2) A local health department may enforce and seek penalties for the violation of the standards for electronic cigarettes set forth in this rule. A local health department shall have authority to enforce and seek penalties for violations of public health law including this rule as is found in Sections 26-23-1 through 26-23-10, Sections 26-62-301, 26A-1-108, 26A-1-114(1) and 26A-1-123.

(3) Administrative or civil enforcement of this rule by the Department or local health departments does not preclude criminal enforcement by a law enforcement agency and prosecution of any violation of the standards in this rule that can constitute a criminal offense under state law.

KEY: electronic-cigarette products, electronic-cigarettes substances, general tobacco retailers, retail tobacco specialty businesses

Date of Enactment or Last Substantive Amendment: New

Authorizing, and Implemented or Interpreted Law: 26-1-30