

**REGULATION OF ELECTRONIC CIGARETTES**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill enacts and amends provisions related to electronic cigarette products.

**Highlighted Provisions:**

This bill:

- ▶ requires a person to obtain a license in order to sell or distribute an electronic cigarette product; and
- ▶ provides product quality and labeling standards for an electronic cigarette product.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**26-42-102**, as enacted by Laws of Utah 1998, Chapter 319

**26-42-103**, as last amended by Laws of Utah 2011, Chapter 96

**26-42-107**, as enacted by Laws of Utah 1998, Chapter 319

**76-10-101**, as last amended by Laws of Utah 2010, Chapter 114

ENACTS:

**26-57-101**, Utah Code Annotated 1953

**26-57-102**, Utah Code Annotated 1953



28 [26-57-103](#), Utah Code Annotated 1953  
 29 [59-14-801](#), Utah Code Annotated 1953  
 30 [59-14-802](#), Utah Code Annotated 1953  
 31 [59-14-803](#), Utah Code Annotated 1953

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33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **26-42-102** is amended to read:

35 **26-42-102. Definitions.**

36 As used in this chapter:

- 37 (1) "Commission" means the Utah State Tax Commission.  
 38 (2) "Employee" means an employee of a licensee.  
 39 (3) "Enforcing agency" means the state Department of Health, or any local health  
 40 department enforcing the provisions of this chapter.  
 41 (4) "Licensee" means a person licensed:  
 42 (a) under Section [59-14-201](#) to sell cigarettes at retail; [~~or~~]  
 43 (b) under Section [59-14-301](#) to sell tobacco products at retail[~~;~~]; or  
 44 (c) under Section [59-14-803](#) to sell an electronic cigarette product.  
 45 (5) "License to sell tobacco" or "license" means a license issued:  
 46 (a) under Section [59-14-201](#) to sell cigarettes at retail; [~~or~~]  
 47 (b) under Section [59-14-301](#) to sell tobacco products at retail[~~;~~]; or  
 48 (c) under Section [59-14-803](#) to sell an electronic cigarette product.  
 49 (6) "Tobacco" means [~~cigarettes or tobacco products~~]:  
 50 (a) a cigarette or a tobacco product, as defined in Section [59-14-102](#)[~~;~~]; or  
 51 (b) an electronic cigarette product, as defined in Section [59-14-802](#).

52 Section 2. Section **26-42-103** is amended to read:

53 **26-42-103. Violations and penalties -- Imposition by enforcing agency and tax**  
 54 **commission.**

- 55 (1) If, following an investigation or issuance of a citation or information under Section  
 56 [77-39-101](#), an enforcing agency determines under Section [26-42-104](#) that a licensee or any  
 57 employee has sold tobacco to a person younger than 19 years of age, as prohibited by Section  
 58 [76-10-104](#), the enforcing agency may impose upon the licensee the following administrative

59 penalties:

60 (a) upon the first violation, a penalty of not more than \$300;

61 (b) upon a second violation at the same retail location, and within 12 months of the  
62 first violation, a penalty of not more than \$750; and

63 (c) upon a third or subsequent violation at the same retail location and within 12  
64 months of the first violation, a penalty of not more than \$1,000.

65 (2) The enforcing agency shall notify the commission in writing of any order or order  
66 of default finding a violation of Subsection (1) which is a third or fourth violation.

67 (3) The commission, upon receipt of the written notification under Subsection (2), shall  
68 take action under Section [59-14-203.5](#) or [59-14-301.5](#) against the license to sell tobacco:

69 (a) by suspending the licensee's license to sell tobacco at that location for not more  
70 than 30 days, upon receipt of notification of a third violation under Subsection (1)(c); and

71 (b) by revoking the license to sell tobacco at that location held by the licensee,  
72 including any license under suspension, upon receipt of notification of a fourth violation under  
73 Subsection (1)(c).

74 (4) When the commission revokes a license under Subsection (3)(b), the commission  
75 may not issue to the licensee, or to the business entity using the license that is revoked, a  
76 license under Section [59-14-202](#) [~~or~~], [59-14-301](#), or [59-14-803](#) to sell tobacco at the location  
77 for which the license was issued for one year after:

78 (a) the day on which the time for filing an appeal of the revocation ends; or

79 (b) if the revocation is appealed, the day on which the decision to uphold the  
80 revocation becomes final.

81 (5) This section does not prevent any bona fide purchaser of the business, who is not a  
82 sole proprietor, director, corporate officer, or partner or other holder of significant interest in  
83 the entity selling the business, from immediately applying for and obtaining a license to sell  
84 tobacco.

85 Section 3. Section **26-42-107** is amended to read:

86 **26-42-107. Allocation of civil penalties.**

87 Civil monetary penalties collected under this chapter shall be allocated as follows:

88 (1) if a local health department conducts an adjudicative proceeding under Section  
89 [26-42-104](#), the penalty shall be paid to the treasurer of the county in which the violation was

90 committed, and transferred to:

91 (a) the local health department if it conducts a civil hearing under Section 26-42-104  
92 alone; or

93 (b) in equal portions to the local health department and the other agencies that  
94 participated in the hearing process;

95 (2) if the state Department of Health conducts a civil hearing under Section 26-42-104,  
96 the penalty shall be deposited in the state's General Fund, and may be appropriated by the  
97 Legislature to the state Department of Health for use in enforcement of this chapter; and

98 (3) if the civil penalty involves suspension or revocation of a license to sell tobacco  
99 under Section 59-14-203.5 [or], 59-14-301.5, or 59-14-803, half of the penalty shall be paid to  
100 the commission, and the other half shall be allocated under Subsection (1) or (2), as  
101 appropriate.

102 Section 4. Section 26-57-101 is enacted to read:

103 **CHAPTER 57. ELECTRONIC CIGARETTE REGULATION ACT**

104 **26-57-101. Title.**

105 This chapter is known as the "Electronic Cigarette Regulation Act."

106 Section 5. Section 26-57-102 is enacted to read:

107 **26-57-102. Definitions.**

108 As used in this chapter:

109 (1) "Cigarette" means the same as that term is defined in Section 59-14-102.

110 (2) "Electronic cigarette" means the same as that term is defined in Section 59-14-802.

111 (3) "Electronic cigarette product" means an electronic cigarette or an electronic  
112 cigarette substance.

113 (4) "Electronic cigarette substance" means the same as that term is defined in Section  
114 59-14-802.

115 (5) "Manufacture" includes:

116 (a) to cast, construct, or make electronic cigarettes; or

117 (b) to blend, make, process, or prepare an electronic cigarette substance.

118 (6) "Pharmaceutical-grade nicotine" means nicotine that meets the specifications of the  
119 United States Pharmacopeia for food-grade or pharmaceutical-grade nicotine.

120 Section 6. Section 26-57-103 is enacted to read:

121 **26-57-103. Electronic cigarette products -- Labeling -- Manufacturing and quality**  
122 **control standards -- Low-grade nicotine -- Advertising.**

123 (1) A person may not sell an electronic cigarette product unless the electronic cigarette  
124 product:

125 (a) has a label that includes the electronic cigarette product's:

126 (i) manufacturer name;

127 (ii) ingredients; and

128 (iii) nicotine content;

129 (b) is sold in a container with child-resistant packaging; and

130 (c) contains, if any, nicotine that is pharmaceutical-grade nicotine.

131 (2) An individual who is less than 19 years old may not:

132 (a) sell, offer to sell, or distribute an electronic cigarette product; or

133 (b) as a person's agent, sell, offer to sell, or distribute an electronic cigarette product.

134 (3) A person may not advertise an electronic cigarette:

135 (a) as a tobacco cessation device;

136 (b) if the person is not licensed to sell an electronic cigarette product under Section

137 [59-14-803](#); or

138 (c) during a period of time when the person's license to sell an electronic cigarette

139 product under Section [59-14-803](#) has been suspended or revoked.

140 Section 7. Section **59-14-801** is enacted to read:

141 **Part 8. Electronic Cigarette Licensing Act**

142 **59-14-801. Title.**

143 This part is known as the "Electronic Cigarette Licensing Act."

144 Section 8. Section **59-14-802** is enacted to read:

145 **59-14-802. Definitions.**

146 As used in this part:

147 (1) "Cigarette" means the same as that term is defined in Section [59-14-102](#).

148 (2) (a) "Electronic cigarette" means:

149 (i) an electronic device used to deliver or capable of delivering vapor containing  
150 nicotine to an individual's respiratory system; or

151 (ii) any component of or accessory intended for use with the device described in

152 Subsection (2)(a)(i).

153 (b) "Electronic cigarette" includes an e-cigarette as defined in Section [26-38-2](#).

154 (3) "Electronic cigarette product" means an electronic cigarette or an electronic  
155 cigarette substance.

156 (4) "Electronic cigarette substance" means any substance, including liquid containing  
157 nicotine, used or intended for use in an electronic cigarette.

158 (5) "Enforcing agency" means the Department of Health, a county health department,  
159 or a local health department, when enforcing:

160 (i) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; or

161 (ii) Title 26, Chapter 57, Electronic Cigarette Regulation Act.

162 (6) "License to sell an electronic cigarette product" means a license issued by the  
163 commission under Subsection [59-14-803\(3\)](#).

164 (7) "Licensee" means a person that holds a valid license to sell electronic cigarette  
165 products.

166 (8) "Manufacturer's sale price" means the amount a manufacturer of an electronic  
167 cigarette product charges for the electronic cigarette product.

168 Section 9. Section **59-14-803** is enacted to read:

169 **59-14-803. Electronic cigarette licenses -- Sale.**

170 (1) Except as provided in Subsection (2), a person may not sell, offer to sell, or  
171 distribute an electronic cigarette product in Utah without first obtaining a license to sell an  
172 electronic cigarette product from the commission under this section.

173 (2) A person that holds a valid license to sell cigarettes under Section [59-14-202](#), or a  
174 person that holds a valid license to sell tobacco products under Section [59-14-301](#), may,  
175 without obtaining a separate license to sell an electronic cigarette product under this part, sell,  
176 offer to sell, or distribute an electronic cigarette product in Utah in accordance with this part.

177 (3) Except as provided in Subsection (6), the commission shall issue a license to sell an  
178 electronic cigarette product to a person that:

179 (a) submits an application, on a form created by the commission, that includes:

180 (i) the person's name;

181 (ii) the address of the facility where the person will sell an electronic cigarette product;

182 and

- 183 (iii) any other information the commission requires to implement this chapter; and  
184 (b) pays a fee:  
185 (i) in the amount of \$30; or  
186 (ii) if renewing the person's license, in the amount of \$20.  
187 (4) A license described in Subsection (3) is:  
188 (a) valid only at one fixed business address;  
189 (b) valid for three years;  
190 (c) valid only for a physical location; and  
191 (d) renewable if a licensee meets the criteria for licensing described in Subsection (3).  
192 (5) The commission shall, after notifying a licensee, revoke a license described in  
193 Subsection (3) if an enforcing agency determines the licensee has violated a provision of:  
194 (a) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; or  
195 (b) Title 26, Chapter 57, Electronic Cigarette Regulation Act.  
196 (6) If the commission revokes a person's license to sell an electronic cigarette product  
197 under Subsection (5), the commission may not issue a license to sell an electronic cigarette  
198 product, a license to sell cigarettes under Section [59-14-102](#), or a license to sell tobacco under  
199 Section [59-14-301](#) to the person until one year after:  
200 (a) the day on which the time for filing an appeal of the revocation ends, as determined  
201 by the enforcing agency; or  
202 (b) if the person appeals the enforcing agency's decision to revoke the license to sell an  
203 electronic cigarette product, the day on which the enforcing agency's decision to uphold the  
204 revocation is final.  
205 (7) The commission may make rules in accordance with Title 63G, Chapter 3, Utah  
206 Administrative Rulemaking Act, to establish the additional information described in  
207 Subsection (3)(a)(iii) that a person must provide in the application described in Subsection  
208 (3)(a).  
209 (8) The commission shall maintain a list of all licensees.  
210 Section 10. Section **76-10-101** is amended to read:  
211 **76-10-101. Definitions.**  
212 As used in this part:  
213 (1) "Cigar" means a product that contains nicotine, is intended to be burned under

214 ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in  
215 any substance containing tobacco, other than any roll of tobacco that is a cigarette as described  
216 in Subsection (2).

217 (2) "Cigarette" means a product that contains nicotine, is intended to be burned under  
218 ordinary conditions of use, and consists of:

219 (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

220 (b) any roll of tobacco wrapped in any substance containing tobacco which, because of  
221 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to  
222 be offered to, or purchased by, consumers as a cigarette described in Subsection (2)(a).

223 (3) "Electronic cigarette" means ~~[any device, other than a cigarette or cigar, intended to~~  
224 ~~deliver vapor containing nicotine into a person's respiratory system]~~ an electronic cigarette  
225 product, as defined in Section [59-14-802](#).

226 (4) "Place of business" includes:

227 (a) a shop;

228 (b) a store;

229 (c) a factory;

230 (d) a public garage;

231 (e) an office;

232 (f) a theater;

233 (g) a recreation hall;

234 (h) a dance hall;

235 (i) a poolroom;

236 (j) a café;

237 (k) a cafeteria;

238 (l) a cabaret;

239 (m) a restaurant;

240 (n) a hotel;

241 (o) a lodging house;

242 (p) a streetcar;

243 (q) a bus;

244 (r) an interurban or railway passenger coach;



- 245 (s) a waiting room; and  
246 (t) any other place of business.  
247 (5) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other  
248 lighted smoking equipment.
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**Legislative Review Note**  
**as of 2-17-15 6:32 PM**

**Office of Legislative Research and General Counsel**