

TOBACCO LICENSING AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill amends provisions of the Utah Health Code and the Cigarette and Tobacco Tax and Licensing Act relating to tobacco licensing.

Highlighted Provisions:

This bill:

▶ amends license revocation provisions to provide that the revocation of a license to sell tobacco is in effect for one year after:

- the day on which the time for filing an appeal of the revocation ends; or
- if the revocation is appealed, the day on which the decision to uphold the revocation becomes final;

▶ provides that manufacturers and distributors of tobacco products who are responsible for the collection of tax on tobacco products, and all retailers of tobacco products, are subject to the licensing requirements, procedures, and penalties described in Title 59, Chapter 14, Part 2, Cigarette and Tobacco Tax and Licensing Act; and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **26-42-103**, as enacted by Laws of Utah 1998, Chapter 319

31 **59-14-203.5**, as enacted by Laws of Utah 1998, Chapter 319

32 **59-14-301**, as last amended by Laws of Utah 1998, Chapter 319

33 **59-14-301.5**, as enacted by Laws of Utah 1998, Chapter 319



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

36 Section 1. Section **26-42-103** is amended to read:

37 **26-42-103. Violations and penalties -- Imposition by enforcing agency and tax**
38 **commission.**

39 (1) If, following an investigation or issuance of a citation or information under Section
40 77-39-101, an enforcing agency determines under Section 26-42-104 that a licensee or any
41 employee has sold tobacco to a person younger than 19 years of age, as prohibited by Section
42 76-10-104, the enforcing agency may impose upon the licensee the following administrative
43 penalties:

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

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

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

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

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

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

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

58 (4) When the commission revokes a license under Subsection (3)(b), the commission

59 may not issue to the licensee, or to the business entity using the license that is revoked, a
 60 license under Section ~~[59-14-201]~~ 59-14-202 or 59-14-301 to sell tobacco at the location for
 61 which the license was issued for one year after ~~[the date of the violation for which the license~~
 62 ~~was revoked.];~~

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

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

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

70 Section 2. Section **59-14-203.5** is amended to read:

71 **59-14-203.5. Commission action to suspend or revoke license.**

72 (1) (a) The commission shall suspend or revoke licenses to sell tobacco, as required
 73 under Section 26-42-103 regarding suspension or revocation of a license due to the sale of
 74 cigarettes to a person younger than 19 years of age, upon receipt of notice of an enforcing
 75 agency's finding of a violation of Section 26-42-103.

76 (b) The commission shall provide written notice of the suspension or revocation to the
 77 licensee.

78 (2) It is the duty of the enforcing agency to advise the commission of any finding of a
 79 violation of Section 26-42-103 for which suspension or revocation of the license is a penalty.

80 (3) When the commission revokes a licensee's license under this section the
 81 commission may not issue to the licensee, or to the business entity using the license that is
 82 revoked, a license under Section 59-14-202 or 59-14-301 to sell tobacco at the location for
 83 which the license was issued for one year after ~~[the date of the violation for which the license~~
 84 ~~was revoked.];~~

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

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

88 Section 3. Section **59-14-301** is amended to read:

89 **59-14-301. Registration and licensing -- Fee -- Bond exceptions.**

90 (1) All manufacturers and distributors of all tobacco products, as defined in Section
91 59-14-102, who are responsible for the collection of tax on tobacco products under this chapter,
92 and all retailers of all tobacco products [~~shall~~]:

93 (a) shall register with the commission; [~~and~~]

94 (b) shall be licensed by the commission under [~~Section 59-14-202.~~] Part 2, Cigarettes;
95 and

96 (c) are subject to the requirements, procedures, and penalties described in Part 2,
97 Cigarettes.

98 (2) A fee may not be charged for registration and licensing of manufacturers, jobbers,
99 distributors, or retailers of tobacco products in addition to the cigarette license if such a license
100 is required.

101 (3) The commission shall require any manufacturer, wholesaler, retailer, or any other
102 person subject to this section, and who is responsible for the collection of tax on tobacco
103 products under this chapter, to post a bond as a prerequisite to registering. The bond shall be in
104 a form and an amount determined by the commission. If the bond is required under Section
105 59-14-201, the bond may be a combination, the minimum amount of which shall be \$1,000.

106 Section 4. Section **59-14-301.5** is amended to read:

107 **59-14-301.5. Commission action to suspend or revoke license.**

108 (1) (a) The commission shall suspend or revoke licenses to sell tobacco, as required
109 under Section 26-42-103 regarding suspension or revocation of a license due to the sale of
110 tobacco products to a person younger than 19 years of age, upon receipt of notice of an
111 enforcing agency's order or order of default, finding a violation of Section 26-42-103.

112 (b) The commission shall provide written notice of the suspension or revocation to the
113 licensee.

114 (2) It is the duty of the enforcing agency to advise the commission of any order or order
115 of default finding a violation of Section 26-42-103, for which suspension or revocation of the
116 license is a penalty.

117 (3) When the commission revokes a licensee's license under this section the
118 commission may not issue to the licensee, or to the business entity using the license that is
119 revoked, a license under Section 59-14-202 or 59-14-301 to sell tobacco at the location for
120 which the license was issued for one year after [~~the date of the violation for which the license~~

121 ~~was revoked.];~~

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

123 (b) if the revocation is appealed, the day on which the decision to uphold the

124 revocation becomes final.

Legislative Review Note
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Office of Legislative Research and General Counsel