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SB 210, 1st Substitute: Nicotine Amendments

SB 210, 1st Substitute: Nicotine Amendments, addresses enforcement activities related to electronic cigarette products. The bill removes certain enforcement authorities that were previously granted to local health departments (LHDs), modifies license terms and fees, allows a certain amount of license fee revenue to go toward the disposal of confiscated products and additional enforcement, and amends penalties related to tobacco product sales and providing tobacco products to minors.

This bill

- Removes authorities granted to local health departments related to enforcement of the electronic cigarette registry.
- Increases tobacco licensing fees and allows revenue generated to go to disposal of confiscated electronic cigarette products and additional enforcement efforts.
- Increases certain criminal penalties and fines related to illegal sale of tobacco products, providing tobacco products to minors, and failure to obtain a tobacco license.

LHD Enforcement Changes

This bill proposes removing some of the authorities granted to LHDs to inspect and examine records at an electronic cigarette retailer related to enforcement of the electronic cigarette registry. It would limit LHDs to conducting 'regular inspections' as opposed to the broad authority that is currently granted, including inspecting safes, vaults, and furniture to determine compliance with the electronic cigarette registry. The bill also proposes removing the authority for LHD 'seizure, forfeiture, and destruction,' of an unregistered electronic cigarette product.

Tobacco Licensing Fee Changes

This bill increases Utah Tax Commission permit fees for tobacco and electronic cigarette retailers. As is shown in **Table 1**, the current 3-year license that applies to any person in the state to manufacture, import, distribute, barter, sell, exchange, or offer cigarettes for sale will go from \$30 for a new license and \$20 for a renewal, to \$250 for a new license, and an annual renewal of \$250. For reinstatement of a license the fee will go from \$30 to \$250.

Most tobacco-related licensees will be licensed under UCA 59-14-201. However, cigarette manufacturers and distributors who are not already licensed under UCA 59-14-201 must obtain a license pursuant to UCA 59-14-301. Similarly, if a retailer only sells electronic cigarette products and is not already licensed under UCA 59-14-201, then they would be required to obtain a license pursuant to 59-14-803. The licensing structures for

manufacturers, distributors, and electronic cigarette retailers mirror the structure described in **Table 1**.

Table 1: License Fee and Duration Changes

| License provision | Current Statute | Proposed in SB 210, S1 |
|--|-----------------|------------------------|
| New permit | \$30.00 | \$250.00 |
| Permit renewal | \$20.00 | \$250.00 |
| Reinstatement of a permit that has been revoked, suspended, or expired | \$30.00 | \$250.00 |
| License duration | 3 years | 1 year |

SB 210, 1st Substitute, requires that 88% of license fee revenue generated by the Utah Tax Commission under UCA 59-14-201, 59-14-301, and 59-14-803 be deposited into a new account – the Nicotine Disposal and Enforcement Restricted Account – which can then be used by the Department of Public Safety for two purposes:

- the disposal of confiscated electronic cigarette products; and
- additional law enforcement officers to disrupt organizations and networks that provide tobacco products, electronic cigarette products, nicotine products, and other illegal controlled substances to minors.

Tobacco-related Fine and Penalty Changes

As is shown in **Table 2**, the bill would generally increase criminal penalties related to unlawful sales of tobacco, electronic cigarettes, and nicotine products by one level. Additionally, the bill increases a fine related to unlawful sale of a tobacco product and adds a fine for the failure to obtain a Tax Commission license.

Table 2: Fine and Penalty Changes

| Fine or Penalty Provision | Current Statute (all misdemeanor) | Proposed in SB 210, S1 (all misdemeanor) |
|---|---|---|
| Permitting a minor to use a tobacco, electronic cigarette/ nicotine product | Class C | Class B |
| Providing a minor with a tobacco/ electronic cigarette/ nicotine product | 1 st – Class C 2 nd – Class B Subsequent – Class A | 1 st – Class B Subsequent – Class A |
| Providing tobacco paraphernalia to a minor | 1 st – Class C Subsequent – Class B | 1 st – Class B Subsequent – Class A |
| Illegal indirect sale of a tobacco/ electronic cigarette/ nicotine product | 1 st – Class C 2 nd – Class B Subsequent – Class A | 1 st – Class B Subsequent – Class A |
| Illegal provision of smokeless tobacco or electronic cigarette product | 1 st – Class C Subsequent – Class B | 1 st – Class B Subsequent – Class A |
| Illegal distribution of a tobacco product | 1 st – Class C Subsequent – Class B | 1 st – Class B Subsequent – Class A |
| Illegal distribution of a flavored electronic cigarette product | 1 st – Class C Subsequent – Class B | 1 st – Class B Subsequent – Class A |
| Illegal distribution of an electronic cigarette product without federal authorization | 1 st – Class C Subsequent – Class B | 1 st – Class B Subsequent – Class A |
| Unlawful sale of a tobacco, electronic cigarette, or nicotine product | 1 st – infraction; \$1,000 fine Subsequent - Class C; \$2,000 fine | Class A; \$4,000 fine |
| Failure to obtain a license under 59-14-203 and 59-14-803 | Class B | Class B; \$1,000 fine |