

PENALTIES FOR SALE OF TOBACCO TO YOUTH

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Robert F. Montgomery

AN ACT RELATING TO HEALTH; PROVIDING CIVIL PENALTIES AGAINST PERSONS LICENSED TO SELL TOBACCO, IF THE TOBACCO IS SOLD TO UNDERAGE YOUTH; LIMITING THE NUMBER OF RANDOM INSPECTIONS; PROVIDING PENALTIES FOR SALE OF TOBACCO WITHOUT A LICENSE; REQUIRING LICENSES TO BE RENEWABLE; AND PROVIDING FOR TAKING ACTION AGAINST THE LICENSE TO SELL TOBACCO, IF THE TOBACCO IS SOLD TO UNDERAGE PERSONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

59-14-201, as last amended by Chapter 313, Laws of Utah 1994

59-14-202, as renumbered and amended by Chapter 2, Laws of Utah 1987

59-14-203, as renumbered and amended by Chapter 2, Laws of Utah 1987

59-14-301, as renumbered and amended by Chapter 2, Laws of Utah 1987

77-39-101, as enacted by Chapter 168, Laws of Utah 1994

ENACTS:

26-40-101, Utah Code Annotated 1953

26-40-102, Utah Code Annotated 1953

26-40-103, Utah Code Annotated 1953

26-40-104, Utah Code Annotated 1953

26-40-105, Utah Code Annotated 1953

26-40-106, Utah Code Annotated 1953

26-40-107, Utah Code Annotated 1953

59-14-203.5, Utah Code Annotated 1953

59-14-301.5, Utah Code Annotated 1953

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

Section 1. Section **26-40-101** is enacted to read:

**CHAPTER 40. CIVIL PENALTIES FOR TOBACCO SALES
TO UNDERAGE PERSONS**

26-40-101. Title.

This chapter is known as "Civil Penalties for Tobacco Sales to Underage Persons."

Section 2. Section **26-40-102** is enacted to read:

26-40-102. Definitions.

As used in this chapter:

(1) "Commission" means the Utah State Tax Commission.

(2) "Employee" means an employee of a licensee.

(3) "Enforcing agency" means the state Department of Health, or any local health department enforcing the provisions of this chapter.

(4) "Licensee" means a person licensed:

(a) under Section 59-14-201 to sell cigarettes at retail; or

(b) under Section 59-14-301 to sell tobacco products at retail.

(5) "License to sell tobacco" or "license" means a license issued:

(a) under Section 59-14-201 to sell cigarettes at retail; or

(b) under Section 59-14-301 to sell tobacco products at retail.

(6) "Tobacco" means cigarettes or tobacco products as defined in Section 59-14-102.

Section 3. Section **26-40-103** is enacted to read:

26-40-103. Violations and penalties -- Imposition by enforcing agency and tax commission.

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

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

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

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

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

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

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

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

(4) When the commission revokes a license under Subsection (3)(b), the commission may not issue to the licensee, or to the business entity using the license that is revoked, a license under Section 59-14-201 or 59-14-301 to sell tobacco at the location for which the license was issued for one year after the date of the violation for which the license was revoked.

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

Section 4. Section **26-40-104** is enacted to read:

26-40-104. Enforcement by state and local health departments.

The state Department of Health and the local health departments shall enforce this chapter under the procedures of Title 63, Chapter 46b, Administrative Procedures Act, as an informal adjudicative proceeding, including:

(1) notifying licensees of alleged violations of Section 26-40-103;

(2) conducting hearings;

(3) determining violations of this chapter; and

(4) imposing civil monetary administrative penalties.

Section 5. Section **26-40-105** is enacted to read:

26-40-105. Hearing -- Evidence of criminal conviction.

(1) At a civil hearing conducted under Section 26-40-104, evidence of the final criminal conviction of a licensee or employee for violation of Section 76-10-104 at the same location and within the same time period as the location and time period alleged in the civil hearing for violation of Section 26-40-103 is prima facie evidence of a violation of Section 26-40-103.

(2) If the licensee has been convicted of violating Section 76-10-104 prior to a finding of a violation of Section 26-40-103, the licensee may not be assessed a monetary penalty under this chapter for the same offense for which the conviction was obtained.

Section 6. Section **26-40-106** is enacted to read:

26-40-106. Recognition of licensee's training program.

(1) In determining the amount of the monetary penalty to be imposed for an employee's violation of Section 26-40-103, the hearing officer shall reduce the penalty by at least 50% if he determines:

(a) the licensee has implemented a documented employee training program; and

(b) the employee has completed that training program within 30 days of commencing duties of selling tobacco products.

(2) (a) If the hearing officer determines under Subsection (1), regarding a first offense at a location, that the licensee has not implemented a documented training program with a written curriculum for employees at that location regarding compliance with this chapter, the hearing officer may suspend all or a portion of the monetary penalty, contingent upon the licensee's initiating a training program for employees at that location within 30 days after the hearing date.

(b) If the hearing officer determines at a subsequent hearing that the licensee has not implemented the training program within the time period required under Subsection (2)(a), the suspended monetary penalty shall be promptly imposed, unless the licensee demonstrates good cause for granting an extension of time for implementation of the training program.

Section 7. Section **26-40-107** is enacted to read:

26-40-107. Allocation of civil penalties.

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

(1) if a local health department conducts an adjudicative proceeding under Section

26-40-104, the penalty shall be paid to the treasurer of the county in which the violation was committed, and transferred to:

(a) the local health department if it conducts a civil hearing under Section 26-40-104 alone;

or

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

(2) if the state Department of Health conducts a civil hearing under Section 26-40-104, the penalty shall be deposited in the state's General Fund, and may be appropriated by the Legislature to the state Department of Health for use in enforcement of this chapter; and

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

Section 8. Section **59-14-201** is amended to read:

59-14-201. License -- Fee -- Bond -- Exceptions.

(1) It is unlawful for any person in this state to barter, sell, exchange, or offer cigarettes for sale without first having obtained a license issued by the commission under Section 59-14-202.

(2) (a) [~~No~~] A license may not be issued for the sale of cigarettes until the applicant has paid a license fee [~~determined by the commission under Section 63-38-3.2~~] of \$30 or a license renewal fee of \$20, as appropriate.

(b) The fee for reinstatement of a license that has been revoked, suspended, or allowed to expire is \$30.

(3) (a) [~~No~~] A license may not be issued until the applicant files a bond with the commission. The commission shall determine the form and the amount of the bond, the minimum amount of which shall be \$500. The bond shall be [~~duty~~] executed by the applicant as principal, with a corporate surety, payable to the state and conditioned upon the faithful performance of all the requirements of this chapter, including the payment of all taxes, penalties, and other obligations.

(b) Applicants are not required to post a bond who:

(i) purchase during the license year only products which have the proper state stamp affixed

as required by this chapter; and

(ii) file an affidavit with their application attesting to this fact~~[, are not required to post a bond]~~.

Section 9. Section **59-14-202** is amended to read:

59-14-202. Issuance of licenses -- Common carrier licenses -- Contents -- Valid for three years -- Revocation.

(1) Cigarette licenses ~~[shall]~~ may be issued only to a person owning or operating the place or cigarette vending machine from which the cigarette sales are made.

(2) If sales are made at two or more separate places by that person, a separate license for each place of business is required.

(3) A common carrier is not required to obtain more than one license for sales on conveyances operated by that carrier within the state. All conveyances owned by a common carrier are considered as one place of business for the purpose of this chapter.

(4) Each license shall be numbered, show the residence and place of business of the licensee, and ~~[shall be]~~ is nontransferable.

(5) (a) Each license ~~[shall be]~~ is in ~~[force and]~~ effect ~~[until such time as the holder of the license ceases to barter, sell, exchange, or offer cigarettes for sale in this state]~~ for three years from the date of issuance, unless the license is earlier revoked by the commission.

(b) The license expires on the expiration date shown on the license, unless the licensee renews it in accordance with commission rules.

(c) The commission shall by rule establish procedures for the renewal and reinstatement of licenses.

(6) (a) The commission shall, after providing notice and a hearing, revoke the license of any person found to have violated this title. ~~[No]~~

(b) A license may not be issued to that person within a period of two years after the violation.

Section 10. Section **59-14-203** is amended to read:

59-14-203. Selling without a license -- Penalty.

Any person engaging in the business of selling or offering to sell cigarettes without [having secured] holding a valid license that is currently not suspended or revoked is guilty of a class B misdemeanor for each offense.

Section 11. Section **59-14-203.5** is enacted to read:

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

(1) (a) The commission shall suspend or revoke licenses to sell tobacco, as required under Section 26-40-103 regarding suspension or revocation of a license due to the sale of cigarettes to a person younger than 19 years of age, upon receipt of notice of an enforcing agency's finding of a violation of Section 26-40-103.

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

(2) It is the duty of the enforcing agency to advise the commission of any finding of a violation of Section 26-40-103 for which suspension or revocation of the license is a penalty.

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

Section 12. Section **59-14-301** is amended to read:

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

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

(a) register with~~;~~ the commission; and

(b) be licensed by~~;~~ the commission under Section 59-14-202.

(2) ~~[No]~~ A fee may not be charged for registration and licensing of manufacturers, jobbers, distributors, or retailers of tobacco products in addition to the cigarette license if such a license is required.

(3) The commission shall require any manufacturer, wholesaler, retailer, or any other person

subject to this section, and who is responsible for the collection of tax on tobacco products under this chapter, to post a bond as a prerequisite to registering. The bond shall be in a form and an amount determined by the commission. If the bond is required under Section 59-14-201, the bond may be a combination, the minimum amount of which shall be \$1,000.

Section 13. Section **59-14-301.5** is enacted to read:

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

(1) (a) The commission shall suspend or revoke licenses to sell tobacco, as required under Section 26-40-103 regarding suspension or revocation of a license due to the sale of tobacco products to a person younger than 19 years of age, upon receipt of notice of an enforcing agency's order or order of default, finding a violation of Section 26-40-103.

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

(2) It is the duty of the enforcing agency to advise the commission of any order or order of default finding a violation of Section 26-40-103, for which suspension or revocation of the license is a penalty.

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

Section 14. Section **77-39-101** is amended to read:

77-39-101. Investigation of sales of alcohol and tobacco to under age persons.

(1) (a) A peace officer, as defined by Section 77-1a-1, may investigate the possible violation of Section 32A-12-203 or Section 76-10-104 by requesting a person under the legal age to attempt to purchase alcohol as provided in Section 32A-12-203, or tobacco as provided in Section 76-10-104, to enter into and attempt to purchase or make a purchase of alcohol or tobacco products from a retail establishment.

(b) A peace officer who is present at the site of a proposed purchase shall direct, supervise, and monitor the person requested to make the purchase.

(c) Immediately following the purchase or attempted purchase or as soon as practical the supervising peace officer shall inform the cashier and the proprietor or manager of the retail establishment that the attempted purchaser was under the legal age to purchase alcohol or tobacco.

(d) If a citation or information is issued, it shall be issued within seven days of the purchase.

(2) (a) If a person under the age of 18 years old is requested to attempt a purchase, a written consent of that person's parent or guardian shall be obtained prior to that person participating in any attempted purchase.

(b) A person requested by the peace officer to attempt a purchase may be a trained volunteer or receive payment but may not be paid based on the number of successful purchases of alcohol or tobacco.

(3) The person requested by the peace officer to attempt a purchase and anyone accompanying the person attempting a purchase may not during the attempted purchase misrepresent the age of the person by false or misleading identification documentation in attempting the purchase.

(4) A person requested to purchase alcohol or tobacco pursuant to this section is immune from prosecution, suit, or civil liability for the purchase of, attempted purchase of, or possession of alcohol or tobacco if a peace officer directs, supervises, and monitors the person.

(5) (a) Except as provided in Subsection (5)(b), a purchase attempted under this section shall be conducted on a random basis, but not more often than four times within a 12-month period at any one retail establishment location.

(b) Nothing in this section shall prohibit an investigation under this section if:

(i) there is reasonable suspicion to believe the retail establishment has sold alcohol or tobacco to a person under the age established by Section 32A-12-203 or 76-10-104; and

(ii) the supervising peace officer makes a written record of the grounds for the reasonable suspicion.

(6) The peace officer exercising direction, supervision, and monitoring of the attempted purchase shall make a report of the attempted purchase, whether or not a purchase was made. The report shall include:

(a) the name of the supervising peace officer;

- (b) the name of the person attempting the purchase;
- (c) a photograph of the person attempting the purchase showing how that person appeared at the time of the attempted purchase;
- (d) the name and description of the cashier or proprietor from whom the person attempted the purchase;
- (e) the name and address of the retail establishment; and
- (f) the date and time of the attempted purchase.