

Representative Paul Ray proposes the following substitute bill:

REGULATION OF ELECTRONIC CIGARETTES

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

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;
- ▶ provides criminal penalties for a person that sells an electronic cigarette without a license; and
- ▶ provides product quality and labeling standards for an electronic cigarette product.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

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



26 76-10-101, as last amended by Laws of Utah 2010, Chapter 114

27 76-10-105.1, as last amended by Laws of Utah 2010, Chapter 114

28 ENACTS:

29 26-57-101, Utah Code Annotated 1953

30 26-57-102, Utah Code Annotated 1953

31 26-57-103, Utah Code Annotated 1953

32 59-14-801, Utah Code Annotated 1953

33 59-14-802, Utah Code Annotated 1953

34 59-14-803, Utah Code Annotated 1953



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

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

38 **26-42-102. Definitions.**

39 As used in this chapter:

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

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

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

44 (4) "Licensee" means a person licensed:

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

46 (b) under Section 59-14-301 to sell tobacco products at retail[-]; or

47 (c) under Section 59-14-803 to sell an electronic cigarette product.

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

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

50 (b) under Section 59-14-301 to sell tobacco products at retail[-]; or

51 (c) under Section 59-14-803 to sell an electronic cigarette product.

52 (6) "Tobacco" means [~~cigarettes or tobacco products~~]:

53 (a) a cigarette or a tobacco product, as defined in Section 59-14-102[-]; or

54 (b) an electronic cigarette product, as defined in Section 59-14-802.

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

56 **26-42-103. Violations and penalties -- Imposition by enforcing agency and tax**

57 **commission.**

58 (1) If, following an investigation or issuance of a citation or information under Section
59 [77-39-101](#), an enforcing agency determines under Section [26-42-104](#) that a licensee or any
60 employee has sold tobacco to a person younger than 19 years of age, as prohibited by Section
61 [76-10-104](#), the enforcing agency may impose upon the licensee the following administrative
62 penalties:

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

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

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

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

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

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

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

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

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

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

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

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

89 **26-42-107. Allocation of civil penalties.**

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

91 (1) if a local health department conducts an adjudicative proceeding under Section
92 [26-42-104](#), the penalty shall be paid to the treasurer of the county in which the violation was
93 committed, and transferred to:

94 (a) the local health department if it conducts a civil hearing under Section [26-42-104](#)
95 alone; or

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

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

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

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

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

107 **26-57-101. Title.**

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

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

110 **26-57-102. Definitions.**

111 As used in this chapter:

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

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

114 (3) "Electronic cigarette product" means an electronic cigarette or an electronic
115 cigarette substance.

116 (4) "Electronic cigarette substance" means the same as that term is defined in Section
117 [59-14-802](#).

118 (5) "Manufacture" includes:

- 119 (a) to cast, construct, or make electronic cigarettes; or
- 120 (b) to blend, make, process, or prepare an electronic cigarette substance.

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

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

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

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

127 (i) manufacturer name;

128 (ii) ingredients; and

129 (iii) nicotine content; and

130 (b) is sold in a container with child-resistant packaging.

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

167 **59-14-803. Electronic cigarette licenses -- Sale.**

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

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

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

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

178 (i) the person's name;

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

180 and

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

212 **76-10-101. Definitions.**

213 As used in this part:

214 (1) "Cigar" means a product that contains nicotine, is intended to be burned under
215 ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in
216 any substance containing tobacco, other than any roll of tobacco that is a cigarette as described
217 in Subsection (2).

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

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

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

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

227 (4) "Place of business" includes:

228 (a) a shop;

229 (b) a store;

230 (c) a factory;

231 (d) a public garage;

232 (e) an office;

233 (f) a theater;

234 (g) a recreation hall;

235 (h) a dance hall;

236 (i) a poolroom;

237 (j) a café;

238 (k) a cafeteria;

239 (l) a cabaret;

240 (m) a restaurant;

241 (n) a hotel;

242 (o) a lodging house;

- 243 (p) a streetcar;
- 244 (q) a bus;
- 245 (r) an interurban or railway passenger coach;
- 246 (s) a waiting room; and
- 247 (t) any other place of business.
- 248 (5) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other
- 249 lighted smoking equipment.

250 Section 11. Section **76-10-105.1** is amended to read:

251 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products and**
252 **electronic cigarettes -- Supremacy clause -- Penalties.**

253 (1) As used in this section:

254 (a) "Cigarette tobacco" means a product that consists of loose tobacco that contains or
255 delivers nicotine and is intended for use by a consumer in a cigarette.

256 (b) "Pipe tobacco" means a product that consists of loose tobacco that contains or
257 delivers nicotine and is intended to be smoked by a consumer in a pipe.

258 (c) "Retailer" means a person who sells cigarettes, electronic cigarettes, cigars,
259 cigarette tobacco, pipe tobacco, or smokeless tobacco to individuals for personal consumption
260 or who operates a facility where a vending machine or a self-service display is permitted under
261 Subsection (3)(b).

262 (d) "Self-service display" means a display of cigarettes, electronic cigarettes, cigars,
263 cigarette tobacco, pipe tobacco, or smokeless tobacco products to which the public has access
264 without the intervention of a retail employee.

265 (e) "Smokeless tobacco" means a product that consists of cut, ground, powdered, or
266 leaf tobacco that contains nicotine and that is intended to be placed in the oral cavity.

267 (2) (a) Except as provided in Subsection (3), a retailer may sell cigarettes, [~~electronic~~
268 ~~cigarettes~~] an electronic cigarette, cigars, cigarette tobacco, pipe tobacco, and smokeless
269 tobacco only in a direct, face-to-face exchange between:

270 (i) an employee of the retailer; and

271 (ii) the purchaser.

272 (b) Examples of methods that are not permitted include vending machines and
273 self-service displays.

274 (c) Subsections (2)(a) and (b) do not prohibit the use or display of locked cabinets
275 containing cigarettes, [~~electronic cigarettes~~] an electronic cigarette, cigars, cigarette tobacco,
276 pipe tobacco, or smokeless tobacco if the locked cabinets are accessible only to the retailer or
277 the retailer's employees.

278 (3) The following sales are permitted as exceptions to Subsection (2):

279 (a) mail-order sales, if the provisions of Section 59-14-509 are met;

280 (b) sales from vending machines, including vending machines that sell packaged,
281 single cigarettes or cigars, and self-service displays that are located in a separate and defined
282 area within a facility where the retailer ensures that no person younger than 19 years of age is
283 present, or permitted to enter, at any time, unless accompanied by a parent or legal guardian;
284 and

285 (c) sales by a retailer from a retail store which derives at least 80% of its revenue from
286 tobacco and tobacco related products and where the retailer ensures that no person younger
287 than 19 years of age is present, or permitted to enter at any time, unless accompanied by a
288 parent or legal guardian.

289 (4) (a) Any ordinance, regulation, or rule adopted by the governing body of a political
290 subdivision of the state or by a state agency that affects the sale, placement, or display of
291 cigarettes, [~~electronic cigarettes,~~] cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco
292 that is not essentially identical to the provisions of this section and Section 76-10-102 is
293 superseded.

294 (b) Any ordinance, regulation, or rule adopted by the governing body of a political
295 subdivision of the state or by a state agency that affects the sale, placement, or display of an
296 electronic cigarette is not superseded under Subsection (4)(a).

297 (5) (a) A parent or legal guardian who accompanies a person younger than 19 years of
298 age into an area described in Subsection (3)(b) or into a retail store as described in Subsection
299 (3)(c) and permits the person younger than 19 years of age to purchase or otherwise take a
300 cigar, cigarette, [~~electronic cigarette~~] an electronic cigarette, or tobacco in any form is guilty of
301 providing tobacco as provided for in Section 76-10-104 and the penalties provided for in that
302 section.

303 (b) Nothing in this section may be construed as permitting a person to provide tobacco
304 to a minor in violation of Section 76-10-104.

- 305 (6) Violation of Subsection (2) or (3) is a:
- 306 (a) class C misdemeanor on the first offense;
- 307 (b) class B misdemeanor on the second offense; and
- 308 (c) class A misdemeanor on the third and all subsequent offenses.

309 Section 12. **Effective date.**

310 This bill takes effect on July 1, 2015.