

ELECTRONIC CIGARETTE AND OTHER NICOTINE**PRODUCT AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE**General Description:**

This bill modifies provisions relating to the retail sale of electronic cigarettes and other nicotine products.

Highlighted Provisions:

This bill:

- ▶ requires the State Tax Commission to report suspected sales of illegal electronic cigarette products or nicotine products to the local health department, the Department of Health and Human Services, and the Department of Public Safety;
- ▶ requires the local health department to investigate whether the sale is illegal;
- ▶ requires the State Tax Commission to maintain and publish a list of all persons licensed to distribute an electronic cigarette product or a nicotine product in the state;
- ▶ requires an electronic cigarette product or a nicotine product retailer to purchase the products from a distributor that is licensed in the state;
- ▶ requires the State Tax Commission to impose a penalty upon a retailer that purchases an electronic cigarette product or nicotine product from a person other than a licensed distributor; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

This bill appropriates in fiscal year 2025:

▸ to Department of Public Safety - Programs & Operations - CITS State Bureau of Investigation as an ongoing appropriation:

- from the General Fund, \$750,000

▸ to Department of Public Safety - Programs & Operations - CITS State Bureau of Investigation as a one-time appropriation:

- from the General Fund, One-time, \$250,000

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

26A-1-114, as last amended by Laws of Utah 2023, Chapters 90, 327

ENACTS:

59-14-803.5, Utah Code Annotated 1953

59-14-810, Utah Code Annotated 1953

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

Section 1. Section **26A-1-114** is amended to read:

26A-1-114. Powers and duties of departments.

(1) Subject to Subsections (7), (8), and (11), a local health department may:

(a) subject to the provisions in Section **26A-1-108**, enforce state laws, local ordinances, department rules, and local health department standards and regulations relating to public health and sanitation, including the plumbing code administered by the Division of Professional Licensing under Title 15A, Chapter 1, Part 2, State Construction Code Administration Act, and under Title 26B, Chapter 7, Part 4, General Sanitation and Food Safety, in all incorporated and unincorporated areas served by the local health department;

(b) establish, maintain, and enforce isolation and quarantine, and exercise physical control over property and over individuals as the local health department finds necessary for the protection of the public health;

(c) establish and maintain medical, environmental, occupational, and other laboratory services considered necessary or proper for the protection of the public health;

(d) establish and operate reasonable health programs or measures not in conflict with state law which:

(i) are necessary or desirable for the promotion or protection of the public health and the control of disease; or

(ii) may be necessary to ameliorate the major risk factors associated with the major causes of injury, sickness, death, and disability in the state;

(e) close theaters, schools, and other public places and prohibit gatherings of people when necessary to protect the public health;

(f) abate nuisances or eliminate sources of filth and infectious and communicable diseases affecting the public health and bill the owner or other person in charge of the premises upon which this nuisance occurs for the cost of abatement;

(g) make necessary sanitary and health investigations and inspections on the local health department's own initiative or in cooperation with the Department of Health and Human Services or the Department of Environmental Quality, or both, as to any matters affecting the public health;

(h) pursuant to county ordinance or interlocal agreement:

(i) establish and collect appropriate fees for the performance of services and operation of authorized or required programs and duties;

(ii) accept, use, and administer all federal, state, or private donations or grants of funds, property, services, or materials for public health purposes; and

(iii) make agreements not in conflict with state law which are conditional to receiving a donation or grant;

(i) prepare, publish, and disseminate information necessary to inform and advise the public concerning:

(i) the health and wellness of the population, specific hazards, and risk factors that may adversely affect the health and wellness of the population; and

(ii) specific activities individuals and institutions can engage in to promote and protect the health and wellness of the population;

(j) investigate the causes of morbidity and mortality;

(k) issue notices and orders necessary to carry out this part;

(l) conduct studies to identify injury problems, establish injury control systems,

develop standards for the correction and prevention of future occurrences, and provide public information and instruction to special high risk groups;

(m) cooperate with boards created under Section 19-1-106 to enforce laws and rules within the jurisdiction of the boards;

(n) cooperate with the state health department, the Department of Corrections, the Administrative Office of the Courts, the Division of Juvenile Justice and Youth Services, and the Crime Victim Reparations Board to conduct testing for HIV infection of alleged sexual offenders, convicted sexual offenders, and any victims of a sexual offense;

(o) investigate suspected bioterrorism and disease pursuant to Section 26B-7-321; and

(p) provide public health assistance in response to a national, state, or local emergency, a public health emergency as defined in Section 26B-7-301, or a declaration by the President of the United States or other federal official requesting public health-related activities.

(2) The local health department shall:

(a) establish programs or measures to promote and protect the health and general wellness of the people within the boundaries of the local health department;

(b) investigate infectious and other diseases of public health importance and implement measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health which may include involuntary testing of alleged sexual offenders for the HIV infection pursuant to Section 53-10-802 and voluntary testing of victims of sexual offenses for HIV infection pursuant to Section 53-10-803;

(c) cooperate with the department in matters pertaining to the public health and in the administration of state health laws; ~~and~~

(d) coordinate implementation of environmental programs to maximize efficient use of resources by developing with the Department of Environmental Quality a Comprehensive Environmental Service Delivery Plan which:

(i) recognizes that the Department of Environmental Quality and local health departments are the foundation for providing environmental health programs in the state;

(ii) delineates the responsibilities of the department and each local health department for the efficient delivery of environmental programs using federal, state, and local authorities, responsibilities, and resources;

(iii) provides for the delegation of authority and pass through of funding to local health

departments for environmental programs, to the extent allowed by applicable law, identified in the plan, and requested by the local health department; and

(iv) is reviewed and updated annually[:]; and

(e) investigate a report made in accordance with Section 59-14-810 to determine whether a product is sold in violation of law.

(3) The local health department has the following duties regarding public and private schools within the local health department's boundaries:

(a) enforce all ordinances, standards, and regulations pertaining to the public health of persons attending public and private schools;

(b) exclude from school attendance any person, including teachers, who is suffering from any communicable or infectious disease, whether acute or chronic, if the person is likely to convey the disease to those in attendance; and

(c) (i) make regular inspections of the health-related condition of all school buildings and premises;

(ii) report the inspections on forms furnished by the department to those responsible for the condition and provide instructions for correction of any conditions that impair or endanger the health or life of those attending the schools; and

(iii) provide a copy of the report to the department at the time the report is made.

(4) If those responsible for the health-related condition of the school buildings and premises do not carry out any instructions for corrections provided in a report in Subsection (3)(c), the local health board shall cause the conditions to be corrected at the expense of the persons responsible.

(5) The local health department may exercise incidental authority as necessary to carry out the provisions and purposes of this part.

(6) Nothing in this part may be construed to authorize a local health department to enforce an ordinance, rule, or regulation requiring the installation or maintenance of a carbon monoxide detector in a residential dwelling against anyone other than the occupant of the dwelling.

(7) (a) Except as provided in Subsection (7)(c), a local health department may not declare a public health emergency or issue an order of constraint until the local health department has provided notice of the proposed action to the chief executive officer of the

relevant county no later than 24 hours before the local health department issues the order or declaration.

(b) The local health department:

(i) shall provide the notice required by Subsection (7)(a) using the best available method under the circumstances as determined by the local health department;

(ii) may provide the notice required by Subsection (7)(a) in electronic format; and

(iii) shall provide the notice in written form, if practicable.

(c) (i) Notwithstanding Subsection (7)(a), a local health department may declare a public health emergency or issue an order of constraint without approval of the chief executive officer of the relevant county if the passage of time necessary to obtain approval of the chief executive officer of the relevant county as required in Subsection (7)(a) would substantially increase the likelihood of loss of life due to an imminent threat.

(ii) If a local health department declares a public health emergency or issues an order of constraint as described in Subsection (7)(c)(i), the local health department shall notify the chief executive officer of the relevant county before issuing the order of constraint.

(iii) The chief executive officer of the relevant county may terminate a declaration of a public health emergency or an order of constraint issued as described in Subsection (7)(c)(i) within 72 hours of declaration of the public health emergency or issuance of the order of constraint.

(d) (i) The relevant county governing body may at any time terminate a public health emergency or an order of constraint issued by the local health department by majority vote of the county governing body in response to a declared public health emergency.

(ii) A vote by the relevant county governing body to terminate a public health emergency or an order of constraint as described in Subsection (7)(d)(i) is not subject to veto by the relevant chief executive officer.

(8) (a) Except as provided in Subsection (8)(b), a public health emergency declared by a local health department expires at the earliest of:

(i) the local health department or the chief executive officer of the relevant county finding that the threat or danger has passed or the public health emergency reduced to the extent that emergency conditions no longer exist;

(ii) 30 days after the date on which the local health department declared the public

health emergency; or

(iii) the day on which the public health emergency is terminated by majority vote of the county governing body.

(b) (i) The relevant county legislative body, by majority vote, may extend a public health emergency for a time period designated by the county legislative body.

(ii) If the county legislative body extends a public health emergency as described in Subsection (8)(b)(i), the public health emergency expires on the date designated by the county legislative body.

(c) Except as provided in Subsection (8)(d), if a public health emergency declared by a local health department expires as described in Subsection (8)(a), the local health department may not declare a public health emergency for the same illness or occurrence that precipitated the previous public health emergency declaration.

(d) (i) Notwithstanding Subsection (8)(c), subject to Subsection (8)(f), if the local health department finds that exigent circumstances exist, after providing notice to the county legislative body, the department may declare a new public health emergency for the same illness or occurrence that precipitated a previous public health emergency declaration.

(ii) A public health emergency declared as described in Subsection (8)(d)(i) expires in accordance with Subsection (8)(a) or (b).

(e) For a public health emergency declared by a local health department under this chapter or under Title 26B, Chapter 7, Part 3, Treatment, Isolation, and Quarantine Procedures for Communicable Diseases, the Legislature may terminate by joint resolution a public health emergency that was declared based on exigent circumstances or that has been in effect for more than 30 days.

(f) If the Legislature or county legislative body terminates a public health emergency declared due to exigent circumstances as described in Subsection (8)(d)(i), the local health department may not declare a new public health emergency for the same illness, occurrence, or exigent circumstances.

(9) (a) During a public health emergency declared under this chapter or under Title 26B, Chapter 7, Part 3, Treatment, Isolation, and Quarantine Procedures for Communicable Diseases:

(i) except as provided in Subsection (9)(b), a local health department may not issue an

order of constraint without approval of the chief executive officer of the relevant county;

(ii) the Legislature may at any time terminate by joint resolution an order of constraint issued by a local health department in response to a declared public health emergency that has been in effect for more than 30 days; and

(iii) a county governing body may at any time terminate by majority vote of the governing body an order of constraint issued by a local health department in response to a declared public health emergency.

(b) (i) Notwithstanding Subsection (9)(a)(i), a local health department may issue an order of constraint without approval of the chief executive officer of the relevant county if the passage of time necessary to obtain approval of the chief executive officer of the relevant county as required in Subsection (9)(a)(i) would substantially increase the likelihood of loss of life due to an imminent threat.

(ii) If a local health department issues an order of constraint as described in Subsection (9)(b), the local health department shall notify the chief executive officer of the relevant county before issuing the order of constraint.

(iii) The chief executive officer of the relevant county may terminate an order of constraint issued as described in Subsection (9)(b) within 72 hours of issuance of the order of constraint.

(c) (i) For a local health department that serves more than one county, the approval described in Subsection (9)(a)(i) is required for the chief executive officer for which the order of constraint is applicable.

(ii) For a local health department that serves more than one county, a county governing body may only terminate an order of constraint as described in Subsection (9)(a)(iii) for the county served by the county governing body.

(10) (a) During a public health emergency declared as described in this title:

(i) the department or a local health department may not impose an order of constraint on a religious gathering that is more restrictive than an order of constraint that applies to any other relevantly similar gathering; and

(ii) an individual, while acting or purporting to act within the course and scope of the individual's official department or local health department capacity, may not:

(A) prevent a religious gathering that is held in a manner consistent with any order of

constraint issued pursuant to this title; or

(B) impose a penalty for a previous religious gathering that was held in a manner consistent with any order of constraint issued pursuant to this title.

(b) Upon proper grounds, a court of competent jurisdiction may grant an injunction to prevent the violation of this Subsection (10).

(c) During a public health emergency declared as described in this title, the department or a local health department shall not issue a public health order or impose or implement a regulation that substantially burdens an individual's exercise of religion unless the department or local health department demonstrates that the application of the burden to the individual:

(i) is in furtherance of a compelling government interest; and

(ii) is the least restrictive means of furthering that compelling government interest.

(d) Notwithstanding Subsections (8)(a) and (c), the department or a local health department shall allow reasonable accommodations for an individual to perform or participate in a religious practice or rite.

(11) An order of constraint issued by a local health department pursuant to a declared public health emergency does not apply to a facility, property, or area owned or leased by the state, including the capitol hill complex, as that term is defined in Section 63C-9-102.

(12) A local health department may not:

(a) require a person to obtain an inspection, license, or permit from the local health department to engage in a practice described in Subsection 58-11a-304(5); or

(b) prevent or limit a person's ability to engage in a practice described in Subsection 58-11a-304(5) by:

(i) requiring the person to engage in the practice at a specific location or at a particular type of facility or location; or

(ii) enforcing a regulation applicable to a facility or location where the person chooses to engage in the practice.

Section 2. Section 59-14-803.5 is enacted to read:

59-14-803.5. Publication of licensed distributors -- Retailer transaction only with licensed distributor -- Penalty.

(1) (a) The commission shall maintain a list that includes the identity of each person licensed under this part to distribute an electronic cigarette product or a nicotine product.

(b) The list shall be:

(i) published on the commission website; and

(ii) updated by the commission at least once per quarter.

(2) A retailer may obtain an electronic cigarette product or a nicotine product only from a licensed distributor identified on the list described in Subsection (1).

(3) (a) The commission may impose a penalty against a retailer that purchases an electronic cigarette product or a nicotine product from a person other than a licensed distributor.

(b) The penalty is in an amount equal to the tax that is due under Section 59-14-805 on the electronic cigarette product or the nicotine product.

Section 3. Section 59-14-810 is enacted to read:

59-14-810. Reports of illegal product.

If the commission suspects that an electronic cigarette product or a nicotine product is being sold in the state in violation of a law other than a law described in this part, the commission shall report the name of the seller, the type of product, and the county where the product was sold:

(1) to the local health department for the county where the sale occurs;

(2) the Department of Health and Human Services; and

(3) the Department of Public Safety.

Section 4. FY 2025 Appropriation.

The following sums of money are appropriated for the fiscal year beginning July 1, 2024, and ending June 30, 2025. These are additions to amounts previously appropriated for fiscal year 2025.

Subsection 4(a). Operating and Capital Budgets.

Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1 To Department of Public Safety - Programs & Operations

From General Fund, One-time	\$250,000
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From General Fund	\$750,000
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Schedule of Programs:

307 CITS State Bureau of Investigation \$1,000,000

308 The Legislature intends that appropriations provided under this section be used by the
309 Department of Public Safety to investigate suspected crimes involving an electronic cigarette
310 product or a nicotine product.

311 Section 5. **Effective date.**

312 This bill takes effect on July 1, 2024.