Electronic Cigarette Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jen Plumb

House Sponsor:

LONG TITLE

General Description:

This bill amends provisions related to electronic cigarette product searches.

Highlighted Provisions:

This bill:

- amends provisions related to electronic cigarette product searches.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

26A-1-131 (Effective upon governor's approval), as enacted by Laws of Utah 2024, Chapter 470

59-14-810 [~~(Effective 07/01/24)~~] (Effective upon governor's approval), as enacted by Laws of Utah 2024, Chapter 470

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

Section 1. Section **26A-1-131** is amended to read:

26A-1-131 (Effective upon governor's approval). Electronic cigarette registry enforcement.

[~~(1)(a) A local health department may examine the books, papers, and records of a retailer in this state, for the purpose of determining compliance with Section 59-14-810.~~]

[~~(b) A local health department may make the inspections and examinations at any time during ordinary business hours, and may inspect the premises and all desks, safes, vaults, and other fixtures and furniture contained in or upon the premises for the purpose of ascertaining whether an electronic cigarette product is held or possessed~~

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~~in violation of Section 59-14-810.~~]

[~~(c) Unannounced follow-up examinations of all retailers are required within 30 days after any violation of Section 59-14-810.~~]

[~~(d)~~] (1)(a) A local health department **Ŝ→** [~~**shall**~~] **may** **←Ŝ** conduct regular inspections of a business that sells an electronic cigarette product as that term is defined in Section 76-10-101 **Ŝ→ , in accordance with the provisions of Section 26B-7-516 ←Ŝ** .

(b) A local health department shall publish the results of all [~~examinations~~] inspections at least annually and shall make the results available to the public on request.

[~~(e)~~] (c) Any electronic cigarette product offered for sale in violation of Section 59-14-810 is declared to be a contraband good and shall be immediately embargoed by a local health department.

[~~(f)~~] (d) An electronic cigarette product described in Subsection [~~(1)(e)~~] (1)(c) may be embargoed without a warrant by:

(i) a local health department; or

(ii) a law enforcement agency of this state if directed by a local health department with jurisdiction over where the product is found.

[~~(g)~~] (e) The cost of embargoing shall be borne by the retailer.

[~~(h)~~] (f) In an action brought under this section, a local health department may recover reasonable expenses incurred in investigating and preparing the case and attorney fees.

[~~(i)~~] (g) A retailer shall remove any embargoed electronic cigarette product from the retailer's active inventory and work with the wholesaler or distributor to return or dispose the electronic cigarette product.

(2)(a) A local health department shall disclose to the attorney general any information received under this section which is requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this section or Section 59-14-810.

(b) A local health department and the attorney general shall share with each other information received under this section and Section 59-14-810 or corresponding laws of other states.

(c) A local health department shall provide any necessary information to the State Tax Commission regarding violations of Section 59-14-810.

(3) A monetary penalty assessed to a retailer by a local health department under this section

shall be doubled if the retailer fails to provide documentation establishing a clear chain of custody back to the manufacturer.

Section 4. Section **59-14-810** is amended to read:

59-14-810 [~~(Effective 07/01/24)~~] (Effective upon governor's approval). Electronic cigarette product registry.

(1) Beginning on August 1, 2024, every manufacturer of an electronic cigarette product that is sold in this state, whether directly or through a distributor, wholesaler, retailer, or similar intermediary or intermediaries, shall certify under penalty of perjury on a form and in the manner prescribed by the commission, that:

(a) the manufacturer agrees to comply with this section; and

(b) the electronic cigarette product is a premarket authorized or pending electronic cigarette product as defined in Section 76-10-101 and will not be illegal to be sold in the state as of January 1, 2025.

(2) When submitting the certification a manufacturer shall submit a form that separately lists each electronic cigarette product that is sold in this state.

(3)(a) Each certification form shall include:

(i) the name of the electronic cigarette product, nicotine content level by percentage, and any flavors contained in the product;

(ii)(A) a copy of the order granting a premarket tobacco product application of the electronic cigarette product by the United States Food and Drug Administration under 21 U.S.C. Sec. 387j(c)(1)(A)(i); or

(B) evidence that the premarket tobacco product application for the electronic cigarette product or nicotine product was submitted to the United States Food and Drug Administration before September 9, 2020, and a final authorization or order has not yet taken effect;

(iii) a nonrefundable $1,000 fee for an electronic cigarette product that is being added to the registry in the first instance; and

(iv) information described in Subsection (10) if applicable.

(b) The commission shall make the materials submitted under Subsection (3)(a) available to the Department of Health and Human Services for review and approval.

(c) A manufacturer required to submit a certification form under this section shall notify the commission and the Department of Health and Human Services in a manner prescribed by the commission within 30 days of any material change making the certification form no longer accurate, including:

(i) the issuance or denial of a marketing authorization or other order by the United States Food and Drug Administration under 21 U.S.C. Sec. 387j; or

(ii) any other order or action by the United States Food and Drug Administration or any court that affects the ability of the electronic cigarette product to be introduced or delivered into interstate commerce for commercial distribution in the United States.

(d) On or before January 31 of each year and in a manner prescribed by the commission, a manufacturer shall:

(i) recertify that the information contained in the certification is correct and accurate;

(ii) correct or amend information if necessary; and

(iii) pay a $250 nonrefundable fee for each electronic cigarette product on the registry that is manufactured by the manufacturer.

(e) A manufacturer may amend a certification, including to add additional electronic cigarette products to the registry, if all requirements of this section are met.

(f) The commission shall:

(i) provide an electronic notification to a manufacturer that has not submitted a recertification under Subsection (3)(d); and

(ii) remove a manufacturer or an electronic cigarette product that is not recertified from the registry by March 15.

(4)(a) The Department of Health and Human Services shall review materials described in Subsection (3)(a) and notify the commission regarding whether an electronic cigarette product should be included in the registry.

(b) On or before October 1, 2024, the commission shall make publicly available on the commission's website a registry that lists each electronic cigarette product manufacturer and each electronic cigarette product for which certification forms have been approved by the Department of Health and Human Services.

(c) An electronic cigarette product may not be listed on the registry unless the Department of Health and Human Services determines the requirements of Subsection (3)(a) are met.

(5)(a) If the Department of Health and Human Services obtains information that an electronic cigarette product should not be listed in the registry, the Department of Health and Human Services shall provide the manufacturer notice and an opportunity to cure deficiencies before notifying the commission to remove the manufacturer or products from the registry.

(b) Except as provided in Subsection (5)(c), the Department of Health and Human Services shall comply with Title 63G, Chapter 4, Administrative Procedures Act, before notifying the commission to remove an electronic cigarette product or manufacturer from the registry.

(c) Subsection (5)(b) does not apply to a manufacturer failing:

(i) to decertify an electronic cigarette product;

(ii) to provide fees and documentation described in Subsection (3)(a) or (3)(d); or

(iii) to comply with Subsection (10).

(6)(a) If a product is removed from the registry, each retailer, distributor, and wholesaler shall have 30 days from the day on which the product is removed from the registry to remove the product from any inventory and return the product to the manufacturer for disposal.

(b) After the period described in Subsection (6)(a), any electronic cigarette product of a manufacturer identified in the notice of removal are contraband and are subject to penalties under Subsection (8)[~~ and seizure, forfeiture, and destruction under Section 26A-1-131~~].

(7)(a) Beginning on January 1, 2025, a person may not sell or offer for retail sale an electronic cigarette product in this state that is not included in the registry.

(b) A manufacturer may not sell, either directly or through a distributor, wholesaler, retailer, or similar intermediary or intermediaries, an electronic cigarette product in this state that is not included in the registry.

(8)(a) A wholesaler, distributor, or retailer who sells or offers for retail sale an electronic cigarette product in this state that is not included in the registry shall be subject to a civil penalty of:

(i) $1,000 for each product offered for sale in violation of this section; and

(ii) $100 per day until the offending product is removed from the market or until the offending product is properly listed on the registry.

(b) The commission shall suspend the person's license issued under Section 59-14-803 for a violation of Subsection (8)(a) as follows:

(i) for a second violation within a 12-month period, at least 14 days;

(ii) for a third violation within a 12-month period, at least 60 days; or

(iii) for a fourth violation within a 12-month period, at least one year.

(c) A manufacturer whose electronic cigarette products are not listed in the registry and are sold in this state, whether directly or through a distributor, wholesaler, retailer, or

similar intermediary or intermediaries, is subject to a civil penalty of:

(i) $1,000 for each product offered for retail sale in violation of this section; and

(ii) $100 per day until the offending product is removed from the market or until the offending product is properly listed on the registry.

(d) A manufacturer that falsely represents any information required by a certification form described in this section shall be guilty of a class C misdemeanor for each false representation.

(e) A repeated violation of this section shall constitute a deceptive act or practice as provided in Sections 13-11-4 and 13-11a-3 and shall be subject to any remedies or penalties available for a violation of those sections.

(9)(a) To assist in ensuring compliance and enforcement of this section and Section 26A-1-131, the commission shall disclose to the following entities, upon request, any information obtained under this section:

(i) the Department of Health and Human Services;

(ii) a local health department; or

(iii) the attorney general.

(b) The commission and attorney general shall share with each other information received under this section, or corresponding laws of other states.

(10)(a)[~~(i)~~] The commission may not list a nonresident manufacturer of an electronic cigarette product in the registry unless:

[~~(A)~~] (i) the nonresident manufacturer has registered to do business in the state as a foreign corporation or business entity; or

[~~(B)~~] (ii) the nonresident manufacturer appoints and maintains without interruption the services of an agent in this state to receive any service of process on behalf of the manufacturer.

(b) The nonresident manufacturer shall provide the name, address, and telephone number of the agent to the commission.

(c)(i) A nonresident manufacturer shall provide notice to the commission 30 days before the termination of the authority of an agent and shall further provide proof to the satisfaction of the commission of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment.

(ii) In the event an agent terminates an agency appointment, the manufacturer shall notify the commission of the termination within five calendar days and shall include proof to the satisfaction of the commission of the appointment of a new

agent.

(11) Before May 31 of each year, the commission and the Department of Health and Human Services shall provide a report to the Revenue and Taxation Interim Committee and the Health and Human Services Interim Committee regarding:

(a) the status of the registry;

(b) manufacturers and products included in the registry;

(c) revenue and expenditures related to administration of this section; and

(d) enforcement activities undertaken under this section and Section 26A-1-131.

(12) All fees and penalties collected under this section shall be used for administration and enforcement of this section and Section 26A-1-131.

(13) The commission, in consultation with the Department of Health and Human Services, may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this section.

Section 6. **Effective Date.**

This bill takes effect:

(1) except as provided in Subsection (2), May 7, 2025; or

(2) if approved by two-thirds of all members elected to each house:

(a) upon approval by the governor;

(b) without the governor's signature, the day following the constitutional time limit of Utah Constitution, Article VII, Section 8; or

(c) in the case of a veto, the date of veto override.