

E-Cigarettes and Minors

By: Nicole Dube, Principal Analyst
January 19, 2018 | 2018-R-0039

Issue

Describe Connecticut laws on the sale or use of electronic nicotine delivery systems and vapor products (hereafter called “e-cigarettes”) that apply to minors. Also describe any state or federal laws that restrict where stores may display e-cigarettes for sale. **This report has been updated by OLR Report [2019-R-0280](#).**

Summary

Connecticut law places restrictions on the sale and use of e-cigarettes similar to those for tobacco cigarettes. It generally prohibits (1) a minor (under age 18) from buying or possessing in public an e-cigarette and (2) anyone from selling, giving, or delivering an e-cigarette to a minor. Violators are subjected to similar penalties for violations involving tobacco cigarettes. For example, a person who sells an e-cigarette to a minor is subject to a fine of between \$200 and \$500, depending on the number of violations. And a minor who purchases an e-cigarette or uses one in public must pay a fine of up to \$50 for the first offense and \$100 for each subsequent offense ([CGS § 53-344b](#)).

What Are E-Cigarettes?

E-Cigarettes are battery operated devices designed to deliver nicotine with flavorings and other chemicals to users in vapor instead of smoke. The devices come in various styles. Some include a cigarette- or cigar-like tube that has a self-contained battery, charger, and liquid tank. Others are refillable devices with a large battery, around the size of a traditional cigarette pack.

All of the devices require a liquid solution, which may contain nicotine, as well as propylene glycol, vegetable glycerin, water, and flavorings (FDA [website](#)).

Additionally, a federal rule requires, among other things, that both in-store and online purchasers of tobacco products be at least 18 years old and that retailers verify the photo ID of any purchaser under age 27. Thus, retailers who sell e-cigarettes to minors may be subject to the TCA’s civil monetary penalties ([CMPs](#)) ranging from \$279 to \$11,182 for continued violations during a four-

year period. The [rule](#), which the federal Food and Drug Administration (FDA) finalized in 2016, extends the FDA's regulatory authority under the Family Smoking and Tobacco Control Act ("Tobacco Control Act" (TCA)) to all tobacco products, including e-cigarettes, cigars, hookah, and pipe tobacco ([81 FR 28973](#)).

With a few exceptions, federal regulations allow retailers to sell cigarettes and smokeless tobacco only in a direct, face-to-face exchange. The regulations prohibit sales through self-service displays or vending machines, except in facilities where the retailer ensures that no person under age 18 is present, or permitted to enter, at any time. These provisions effectively require most retailers to keep cigarettes and smokeless tobacco products behind the counter ([21 CFR §§ 1140.14 and 1140.16](#)).

For e-cigarettes, federal regulations only prohibit their sale through vending machines, except in adults facilities. Thus, adults may purchase e-cigarettes online or in retail facilities through face-to-face interactions. The regulations do not require retailers to keep e-cigarettes behind the counter ([21 CFR § 1140.16](#)).

Connecticut law has a generally similar restriction on the location of cigarette vending machines, but it does not apply to e-cigarettes ([CGS § 12-289a](#)).

E-Cigarettes and Minors

Under Connecticut law, it is illegal for (1) a minor (under age 18) to buy or possess an e-cigarette in public and (2) anyone to sell, give, or deliver an e-cigarette to a minor. Violators are subjected to some of the same penalties the law imposes on those who commit similar violations involving tobacco cigarettes (see below).

Purchase of E-Cigarettes by Minors

By law, a minor who (1) buys an e-cigarette, (2) misrepresents his or her age to do so, or (3) possesses one in public, faces a fine of up to \$50 for the first offense and between \$50 and \$100 for each subsequent offense ([CGS § 53-344b](#)).

Sale, Gift, or Delivery of E-Cigarettes to Minors

Connecticut law requires sellers and their agents or employers who sell e-cigarettes to ask a prospective buyer whose age is in doubt for proper proof of age, in the form of a driver's license, valid passport, or identity (ID) card. Sellers are prohibited from selling an e-cigarette to someone who does not provide this proof. (Federal law requires sellers of tobacco products, including e-

cigarettes, to check the photo ID of anyone under age 27 who attempts to purchase a product ([21 C.F.R. § 1140.16](#)).

The law subjects anyone who sells, gives, or delivers an e-cigarette to a minor to a maximum fine of:

1. \$200 for a first offense,
2. \$350 for a second offense committed within 24 months of the first offense, and
3. \$500 for each subsequent offense committed within 24 months.

But it exempts from fines anyone who sells, gives, or delivers e-cigarettes to, or receives one from, a minor who receives or delivers it (1) as an employee or (2) as part of a scientific study conducted by an organization for medical research purposes. The study must further efforts in tobacco and e-cigarette use prevention and cessation and be approved by the organization's institutional review board ([CGS § 53-344b](#) as amended by [PA 17-146](#)).

Sellers' Use of Electronic Scanners to Verify Age

Connecticut subjects e-cigarettes to the laws regarding the use of electronic scanners to verify the age of prospective cigarette purchasers. These include:

1. allowing sellers to check the validity of certain documents other than driver's licenses and ID cards,
2. barring sellers from selling to someone if the scan fails to match the information on the license or ID card,
3. limiting the information a transaction scanner can record or maintain to the license or card holder's name and birthdate and the license's or card's expiration date and identification number,
4. prohibiting sellers or their employees from selling the information from a transaction scan, and
5. allowing an affirmative defense in prosecutions for selling e-cigarettes to minors where the seller relied on an electronic scan indicating a valid license or ID card.

As under the law regarding tobacco cigarettes, violators of the electronic scanner laws are subject to a civil penalty of up to \$1,000 ([CGS § 53-344b](#)).

Federal Law

Because e-cigarettes contain nicotine derived from tobacco, they are now subject to FDA regulation as tobacco products. In 2016, the FDA finalized a [rule](#) that extended its regulatory authority under the TCA to include e-cigarettes, in addition to other tobacco products (e.g., cigarettes, roll-your-own tobacco, and cigarette tobacco)([81 FR 28973](#)). This rule gives the FDA the authority to regulate the manufacturing, distribution, and marketing of e-cigarettes. Among other things, the new rule restricts minors' access to e-cigarettes by (1) prohibiting the sale of e-cigarettes online and in-person to minors ages 18 and under and (2) requiring sellers to verify a purchaser's age using photo identification.

Because e-cigarettes are now subject to the federal Tobacco Control Act, retailers who sell e-cigarettes to minors may be subject to the TCA's civil monetary penalties as described in Table 1.

Table 1: TCA Civil Monetary Penalties

Number of Violations	CMP Amount
1	\$0 (a warning letter is sent)
2 within a 12-month period	\$279
3 within a 24-month period	\$559
4 within a 24-month period	\$2,236
5 within a 36-month period	\$5,591
6 within a 48-month period	\$11,182

Source: FDA website, <https://www.fda.gov/tobaccoproducts/guidancecomplianceregulatoryinformation/ucm232109.htm>

ND:tjo