

## E-Cigarettes and Minors

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### Issue

Describe Connecticut laws on the sale or use of electronic nicotine delivery systems and vapor products (i.e., “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 updates OLR Report [2018-R-0039](#). For the purposes of this report, “minor” means an individual under age 21.

### 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 21) from buying e-cigarettes and (2) anyone from selling, giving, or delivering e-cigarettes to a minor. Violators are subject to similar penalties for violations involving tobacco cigarettes. For example, a person who sells e-cigarettes to a minor is subject to a fine of between \$300 and \$1,000, depending on the number of violations. And a minor who purchases e-cigarettes must pay a fine of up to \$50 for the first offense and \$100 for each subsequent offense ([CGS § 53-344b](#), as amended by [PA 19-13](#)).

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. 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](#)). Thus, retailers who sell e-cigarettes to minors under age 18 may be subject to the TCA’s [civil monetary penalties](#) ranging from \$285 to \$11,410 for continued violations during a four-year period. (Connecticut recently enacted stricter standards that require e-cigarette

purchasers to be at least 21 years old and retailers to verify the photo ID of any purchaser under age 30 (see [PA 19-13](#)).

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 adult facilities. Thus, under federal law, 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 § 1140.14](#)). However, Connecticut law requires retailers to sell e-cigarettes only through employee- or owner-assisted sales and prohibits e-cigarette sales using self-service displays. Retailers are exempt from the requirements if they prohibit anyone under age 21 from entering the place of business and post notice of the prohibition on-site ([CGS § 21a-416](#), as amended by [PA 19-13](#)).

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](#), as amended by [PA 19-13](#)).

## **E-Cigarettes and Minors**

Under Connecticut law, it is illegal for (1) a minor (under age 21) to buy an e-cigarette or vapor product 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 buys an e-cigarette or misrepresents his or her age to do so faces a fine of up to \$50 for the first offense and between \$50 and \$100 for each subsequent offense ([CGS § 53-344b](#), as amended by [PA 19-13](#)). By law, violators may pay the fines by mail, without making a court appearance ([CGS § 51-164n](#)).

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

**Consumer Notice.** A new law requires sellers (i.e., e-cigarette dealers) to place and maintain at each point of sale a notice to consumers that states:

1. the sale, giving, or delivery of e-cigarettes to anyone under age 21 is prohibited by law;
2. person under age 21 is prohibited from using false identification to purchase e-cigarettes;  
and
3. the penalties and fines for violating the e-cigarette purchasing laws ([PA 19-13](#)).

**Employee and Owner Assisted E-Cigarette Sales.** Connecticut law generally requires e-cigarette dealers to sell e-cigarettes at the place of business listed on their dealer application through employee- or owner-assisted sales where customers cannot access the e-cigarettes without the employee's or owner's assistance. It also prohibits e-cigarette sales using self-service displays.

E-cigarette dealers are exempt from the requirements if they prohibit anyone under age 21 from entering the place of business and post notice of the prohibition clearly at all of the business's entrances ([CGS § 21a-416](#), as amended by [PA 19-13](#)).

**Online E-Cigarette Sales.** A new law requires e-cigarette dealers who sell e-cigarettes and ship them directly to in-state consumers (e.g., through online sales) to (1) obtain the signature of a person aged 21 or older at the shipping address prior to delivery and (2) require the signer to provide a driver's license or identification card as proof of age ([PA 19-13](#)).

The seller must also ensure that the shipping label on such packages conspicuously states the following:

“CONTAINS AN ELECTRONIC NICOTINE DELIVERY SYSTEM OR VAPOR PRODUCT –  
SIGNATURE OF A PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY.”

**E-Cigarette Promotional Samples.** A new law allows e-cigarette dealers to give or deliver free e-cigarette samples in connection with the promotion or advertisement of a product in a similar manner as existing law allows for dealers and distributors of cigarettes and tobacco products. Specifically, an e-cigarette dealer may do so if:

1. the product is given or delivered at the location identified on the dealer's registration application or at an event or establishment in an area that can only be accessed by adults of legal age to purchase;

2. the sample contains at least two e-cigarettes, for which taxes have previously been paid; and
3. the samples are delivered or given in accordance with federal laws and regulations.

The e-cigarette dealer is liable for any e-cigarette sample given or delivered to a person under age 21 on the dealer's premises by someone promoting or advertising the product. The new law does not apply to e-cigarette samples given or delivered in connection with the sale of a similar product ([PA 19-13](#)).

## **Fines and Penalties for Sales to Minors**

### ***Maximum Fines***

By law, sellers and their agents or employees who sell e-cigarettes must ask a prospective buyer who appears to be under age 30 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.

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

1. \$300 for a first offense,
2. \$750 for a second offense committed within 24 months of the first offense, and
3. \$1,000 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 19-13](#)).

### ***DCP and DRS Penalties***

A new law also allows the Department of Revenue Services (DRS) commissioner, after a hearing, to impose civil penalties on sellers and their employees for sales to minors in generally the same manner as the law allows him to do for cigarette dealers, distributors, or their employees ([PA 19-13](#)). But he may only impose these fines on sellers or their or their employees referred to him by the Department of Mental Health and Addiction Services (DMHAS) commissioner after completing unannounced compliance checks (see below). Table 1 lists the penalties the DRS commissioner

may impose on e-cigarette dealers and their employees. The penalties do not apply if the person under the legal age is delivering or accepting delivery of the product in his or her capacity as an employee.

**Table 1: Penalties for Sales to Individuals Under the Legal Age**

	<i>Penalties on E-Cigarette Dealers</i>	<i>Penalties on Employees of E-Cigarette Dealers</i>
<b>1<sup>st</sup> Violation</b>	\$300, if they fail to complete an online tobacco prevention education program within 30 days	\$200, if they fail to complete an online tobacco education program within 30 days
<b>2<sup>nd</sup> Violation</b>	\$750	\$250
<b>3<sup>rd</sup> Violation</b>	\$1,000, plus 30-day license suspension	
<b>4<sup>th</sup> Violation</b>	\$1,000, plus license revocation	

Under the new law, fines for second and subsequent violations may be imposed for violations that occur within 24 months after the first violation. For third and fourth violations, the DRS commissioner must direct the Department of Consumer Protection (DCP) commissioner to suspend or revoke the e-cigarette dealer’s registration. Before taking such action, the commissioner must notify the dealer in writing of the hearing time and location and require the dealer to show cause why the registration should not be suspended or revoked. The notice must be delivered personally, or by registered or certified mail at least 10 days before the hearing date. When the DRS commissioner directs the DCP commissioner to suspend or revoke the dealer’s registration, the DCP commissioner is not required to hold an additional hearing before doing so ([PA 19-13](#)).

***Public Notice of License Suspension or Revocation***

If the DCP commissioner suspends or revokes an e-cigarette dealer’s registration, the commissioner must order the dealer to conspicuously post a notice in a public place in the establishment stating that e-cigarettes cannot be sold during the suspension or revocation period as well as the reasons for the suspension or revocation. A dealer who sells these products during the suspension or revocation period commits an additional violation ([PA 19-13](#)).

***Reinstating an E-Cigarette Dealer Registration***

By law, the DCP commissioner cannot reinstate an e-cigarette dealer’s registration that was revoked unless she is satisfied that the dealer will comply with the state’s e-cigarette laws and regulations ([PA 19-13](#)).

## ***Unannounced Compliance Checks***

A new law requires DMHAS to conduct unannounced compliance checks on e-cigarette dealers by having individuals ages 16 to 20 enter the dealers' place of business and attempt to purchase e-cigarettes ([PA 19-13](#)).

The department must also conduct an unannounced follow-up compliance check of all non-compliant dealers and refer them to the DRS commissioner, who may then impose a penalty as described above ([PA 19-13](#)).

## **Seller's 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 and 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](#), as amended by [PA 19-13](#)).

## **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' (under age 18) 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.

Retailers who sell e-cigarettes to minors under age 18 may be subject to the TCA's civil monetary penalties as described in Table2.

**Table 2: TCA Civil Monetary Penalties**

<i>Number of Violations</i>	<i>Penalty Amount</i>
1	\$0 (a warning letter is sent)
2 within a 12-month period	\$285
3 within a 24-month period	\$570
4 within a 24-month period	\$2,282
5 within a 36-month period	\$5,705
6 within a 48-month period	\$11,410

Source: [FDA website](#)

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