



Regulation of Electronic Cigarettes

July 2020

The sale and use of electronic cigarettes, referred to as electronic delivery devices in state law, have been regulated at the state level since 2014. The Minnesota Clean Indoor Air Act (MCIAA) prohibits the use of electronic cigarettes in indoor settings in the same manner as it prohibits smoking of tobacco products. Requirements for the sale and use of electronic cigarettes are generally the same as requirements for the sale and use of tobacco and tobacco-related devices.

What is an electronic delivery device or electronic cigarette?

An “electronic delivery device” (referred to as an electronic cigarette or e-cigarette) is defined as any product containing or delivering nicotine, lobelia, or other natural or synthetic substance intended for human consumption through inhalation of aerosol or vapor from the product. This includes all of the components of the product, even if they are sold separately, and includes electronic cigarettes, electronic cigars, electronic pipes, vape pens, mods, and tank systems. It does not include drugs, devices, or combination products that are authorized for sale by the federal Food and Drug Administration. The definition of “tobacco-related devices” also includes devices intended to be used to inhale the aerosol or vapor of tobacco or tobacco products. ([Minn. Stat. § 609.685](#), subd. 1, paras. (b) and (c))

Where is the use of electronic cigarettes prohibited?

The Minnesota Clean Indoor Air Act (MCIAA) prohibits smoking of tobacco products in public places, at public meetings, in public transportation, in places of employment, in day care centers, in family day care provider homes during their hours of operation, and in health care facilities and clinics with certain exceptions. ([Minn. Stat. §§ 144.411](#) to 144.417) In 2019, the definition of smoking was amended to include carrying or using an activated electronic delivery device. ([Minn. Stat. § 144.413](#), subd. 4) With this change, the use of electronic cigarettes is prohibited in the same manner as the smoking of tobacco and other plant products is prohibited.

Prior to 2019, the use of electronic cigarettes was prohibited in certain buildings and facilities: buildings owned or operated by the state or a local government; buildings owned by Minnesota State Colleges and Universities or the University of Minnesota; facilities such as schools, day care centers, and, during hours of operation, family home or licensed group family day care provider homes; health care facilities; facilities licensed by the Department of Human Services; and facilities licensed by the Department of Health and also subject to federal licensing requirements.

Can local jurisdictions or businesses adopt more restrictive ordinances?

Cities and counties may enact and enforce more stringent measures than those in state law to protect individuals from involuntary exposure to aerosol or vapor from electronic cigarettes, or more stringent measures regarding the use of electronic cigarettes in areas where smoking is prohibited, the sale or furnishing of electronic cigarettes to persons under 21, and the use of false identification by persons under 21 to buy electronic cigarettes. ([Minn. Stat. §§ 144.417](#), subd. 4; [609.685](#), subd. 4)

How are retailers that sell electronic cigarettes regulated?

Under [Minnesota Statutes, section 461.12](#), retailers that sell or furnish electronic cigarettes are subject to the same municipal licensing provisions as retailers that sell or furnish other tobacco products. The law also extends a licensing authority's authority to conduct compliance checks to places where electronic cigarettes are sold. Retailers selling electronic cigarettes must comply with signage and age verification requirements that also apply to retailers selling tobacco and tobacco-related devices. ([Minn. Stat. § 461.22](#)) As with tobacco and tobacco-related devices, electronic cigarettes are prohibited from being:

- accessible to the public in open displays without the intervention of a store employee except in adult-only tobacco product shops;
- sold in vending machines except in adult-only facilities; or
- sold from kiosks. ([Minn. Stat. §§ 461.18; 461.21](#))

What are the packaging requirements for electronic cigarettes?

Liquids sold for use in an electronic cigarette, regardless of whether the liquid contains nicotine, must be packaged in child-resistant packaging. Child-resistant packaging is defined under the [Code of Federal Regulations, title 16, section 1700.20](#), as in effect on January 1, 2015. ([Minn. Stat. § 461.20](#))

How are the sales of electronic cigarettes regulated?

A person must be 21 years old to purchase electronic cigarettes. The criminal and administrative penalties for selling or furnishing an electronic cigarette to a person under 21, or for a person under 21 using false identification to buy electronic cigarettes, are the same as the criminal and administrative penalties for selling or furnishing tobacco or tobacco-related devices to a person under 21, or for a person under 21 using false identification to buy tobacco or tobacco-related devices. ([Minn. Stat. §§ 461.12; 609.685](#)) There is no penalty in state law for the possession or use of electronic cigarettes by a person under 21, other than the petty misdemeanor penalty that applies to any person who smokes in an area where smoking is prohibited or restricted under the MCIIA. A provision making it a petty misdemeanor for an underage person to possess or use tobacco, tobacco-related devices, and electronic delivery devices was repealed effective August 1, 2020.

How are electronic cigarettes taxed?

Electronic cigarettes are subject to the state's other tobacco products tax. The tobacco products subject to this tax include "any product containing, made, or derived from tobacco that is intended for human consumption" including "nicotine solution products." ([Minn. Stat. § 297F.01](#), subds. 19 and 22b)

The tax is imposed at the rate of 95 percent of the wholesale price of the tobacco product. The tax is administered so that it only applies to the nicotine cartridge or solution used in an electronic cigarette, provided the device for which the nicotine cartridge or solution is used is sold separately. If a cartridge or solution is not sold separately from the electronic cigarette (disposable electronic cigarettes, for instance), the tax is imposed on the entire value of the electronic cigarette product. ([Minn. Stat. § 297F.05](#), subd. 3, para. (a))



Minnesota House Research Department provides nonpartisan legislative, legal, and information services to the Minnesota House of Representatives. This document can be made available in alternative formats.