

Regulation of Electronic Cigarettes

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 certain indoor settings. Otherwise, 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 cigarette?

An “electronic delivery device” (referred to as an electronic cigarette) is defined as any product containing or delivering nicotine, lobelia, or other substance intended for human consumption that is used to simulate smoking through inhalation of vapor. This includes all of the components of the product, even if they are sold separately, but does not include products approved by the Food and Drug Administration as tobacco-cessation products, as tobacco-dependence products, or for other medical purposes, which are marketed and sold for that purpose.

The definition of “tobacco-related devices” also includes devices intended to be used to inhale the vapor of tobacco or tobacco products. (Minn. Stat. § 609.685, subd. 1, paras. (b) and (c))

Where is use of electronic cigarettes prohibited?

The MCIAA prohibits smoking of tobacco products in public places, at public meetings, in public transportation, and in places of employment. (Minn. Stat. §§ 144.411 to 144.417) Use of electronic cigarettes is prohibited only in the following locations:

- Day care centers
- Family home or licensed group family day care provider homes, during hours of operation
- Health care facilities
- Any building owned or operated by the state, home rule charter or statutory city, county, township, school district, or other political subdivision
- Buildings owned by Minnesota State Colleges and Universities and the University of Minnesota
- Facilities licensed by the Department of Human Services
- Facilities licensed by the Department of Health, but only if that facility is also subject to federal licensing requirements
- Public schools

Can local jurisdictions or businesses adopt more restrictive ordinances?

Political subdivisions and businesses are specifically authorized to adopt more restrictive prohibitions on the use of electronic cigarettes or the regulation of electronic cigarettes, than the prohibitions or regulations found in state law. (Minn. Stat. §§ 144.414, subd. 5, para. (b); 609.685, subd. 4)

Are electronic cigarettes licensed the same as tobacco products?

Under Minnesota Statutes, section 461.12, the sale of electronic cigarettes is subject to the same municipal licensing provisions as other tobacco products. The law also extends a municipality's ability to conduct compliance checks to places where electronic cigarettes are sold. Electronic cigarettes are prohibited from being accessible to the public without the intervention of a store employee, from being sold in vending machines, and from being sold in kiosks, in the same way as tobacco products. (Minn. Stat. §§ 461.18; 461.21)

What are the packaging requirements for electronic cigarettes?

Liquids sold as part of the use of an electronic cigarette, regardless of whether it 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, effective on January 1, 2015.

How are the sales and use of electronic cigarettes regulated?

A person must be 18 years old to purchase and use electronic cigarettes. The criminal and administrative penalties for selling or furnishing an electronic cigarette to a person under 18, or for the use of electronic cigarettes by a person under 18, are the same as the criminal and administrative penalties for selling or furnishing tobacco or tobacco-related devices to persons under 18, or for the use of tobacco by persons under 18. (Minn. Stat. §§ 461.12; 609.685)

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" as well as "any component, part, or accessory of a tobacco product." (Minn. Stat. § 297F.01, subd. 19)

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))

For more information: Contact legislative analyst Elisabeth Klarqvist at 651-296-5043. For questions on the taxation of electronic cigarettes, contact legislative analyst Christopher Klemen at 651-296-8959. Also see the House Research publication *Minnesota Clean Indoor Air Act*, August 2017.

The Research Department of the Minnesota House of Representatives is a nonpartisan office providing legislative, legal, and information services to the entire House.