

**ELECTRONIC CIGARETTE AND OTHER NICOTINE
PRODUCT AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts and amends provisions relating to electronic cigarette products, alternative nicotine products, and nontherapeutic nicotine products.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ implements permitting requirements and processes for the sale of an alternative nicotine product or a nontherapeutic nicotine product;
- ▶ applies civil penalties to the improper sale of an alternative nicotine product or a nontherapeutic nicotine product;
- ▶ requires certain other nicotine products that contain nicotine to have a statement on the exterior package that the product contains nicotine;
- ▶ imposes licensing and bonding requirements on a person that sells or distributes an alternative nicotine product or a nontherapeutic nicotine product;
- ▶ imposes an excise tax on the sale of an electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance, and a prefilled nontherapeutic nicotine device in the state;
- ▶ provides for the remittance of the tax collected;
- ▶ creates the Electronic Cigarette Substance and Other Nicotine Product Tax



28 Restricted Account;

29 ▶ addresses use of revenue from the taxation of an electronic cigarette substance, a
30 prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic
31 nicotine device substance, and a prefilled nontherapeutic nicotine device;

32 ▶ provides criminal penalties for a sale or purchase of an electronic cigarette product,
33 an alternative nicotine product, or a nontherapeutic nicotine product, in violation of
34 law; and

35 ▶ makes technical and conforming changes.

36 **Money Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 This bill provides a special effective date.

40 **Utah Code Sections Affected:**

41 AMENDS:

42 10-8-41.6, as last amended by Laws of Utah 2018, Chapter 231

43 17-50-333, as last amended by Laws of Utah 2018, Chapter 231

44 26-57-101, as enacted by Laws of Utah 2015, Chapter 132

45 26-57-102, as enacted by Laws of Utah 2015, Chapter 132

46 26-62-101, as enacted by Laws of Utah 2018, Chapter 231

47 26-62-102, as renumbered and amended by Laws of Utah 2018, Chapter 231

48 26-62-201, as enacted by Laws of Utah 2018, Chapter 231

49 26-62-202, as enacted by Laws of Utah 2018, Chapter 231

50 26-62-301, as enacted by Laws of Utah 2018, Chapter 231

51 26-62-304, as renumbered and amended by Laws of Utah 2018, Chapter 231

52 26-62-305, as renumbered and amended by Laws of Utah 2018, Chapter 231

53 26-62-306, as renumbered and amended by Laws of Utah 2018, Chapter 231

54 26A-1-128, as enacted by Laws of Utah 2018, Chapter 231

55 59-14-102, as last amended by Laws of Utah 2013, Chapter 148

56 59-14-201, as last amended by Laws of Utah 2018, Chapter 231

57 59-14-801, as enacted by Laws of Utah 2015, Chapter 132

58 59-14-802, as enacted by Laws of Utah 2015, Chapter 132

59 [59-14-803](#), as last amended by Laws of Utah 2018, Chapter 231
60 [76-10-101](#), as last amended by Laws of Utah 2015, Chapters 66, 132 and last amended
61 by Coordination Clause, Laws of Utah 2015, Chapter 132
62 [76-10-104](#), as last amended by Laws of Utah 2010, Chapter 114
63 [76-10-104.1](#), as last amended by Laws of Utah 2013, Chapter 278
64 [76-10-105](#), as last amended by Laws of Utah 2018, Chapter 415
65 [76-10-105.1](#), as last amended by Laws of Utah 2018, Chapter 231

66 ENACTS:

67 [26-57-104](#), Utah Code Annotated 1953
68 [59-14-804](#), Utah Code Annotated 1953
69 [59-14-805](#), Utah Code Annotated 1953
70 [59-14-806](#), Utah Code Annotated 1953
71 [59-14-807](#), Utah Code Annotated 1953

72

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

74 Section 1. Section **10-8-41.6** is amended to read:

75 **10-8-41.6. Regulation of retail tobacco specialty business.**

76 (1) As used in this section:

77 (a) "Alternative nicotine product" means the same as that term is defined in Section
78 [59-14-102](#).

79 ~~[(a)]~~ (b) "Community location" means:

- 80 (i) a public or private kindergarten, elementary, middle, junior high, or high school;
- 81 (ii) a licensed child-care facility or preschool;
- 82 (iii) a trade or technical school;
- 83 (iv) a church;
- 84 (v) a public library;
- 85 (vi) a public playground;
- 86 (vii) a public park;
- 87 (viii) a youth center or other space used primarily for youth oriented activities;
- 88 (ix) a public recreational facility;
- 89 (x) a public arcade; or

90 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.

91 [~~(b)~~] (c) "Department" means the Department of Health, created in Section [26-1-4](#).

92 (d) "Electronic cigarette product" means the same as that term is defined in Section
93 [59-14-102](#).

94 [~~(e)~~] (e) "Local health department" means the same as that term is defined in Section
95 [26A-1-102](#).

96 (f) "Nontherapeutic nicotine product" means the same as that term is defined in Section
97 [59-14-102](#).

98 [~~(f)~~] (g) "Permittee" means a person licensed under this section to conduct business as
99 a retail tobacco specialty business.

100 [~~(e)~~] (h) "Retail tobacco specialty business" means a commercial establishment in
101 which:

102 (i) the sale of tobacco products, electronic cigarette products, alternative nicotine
103 products, and nontherapeutic nicotine products accounts for more than 35% of the total
104 quarterly gross receipts for the establishment;

105 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
106 storage of tobacco products, electronic cigarette products, alternative nicotine products, and
107 nontherapeutic nicotine products;

108 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
109 tobacco products, electronic cigarette products, alternative nicotine products, and
110 nontherapeutic nicotine products; or

111 (iv) the retail space features a self-service display for tobacco products, electronic
112 cigarette products, alternative nicotine products, and nontherapeutic nicotine products.

113 [~~(f)~~] (i) "Self-service display" means the same as that term is defined in Section
114 [76-10-105.1](#).

115 [~~(g)~~] (j) "Tobacco product" means:

116 (i) any cigar[;] or cigarette, [~~or electronic cigarette,~~] as those terms are defined in
117 Section [76-10-101](#);

118 (ii) a tobacco product, as that term is defined in Section [59-14-102](#), including:

119 (A) chewing tobacco; or

120 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;

121 and

122 (iii) tobacco paraphernalia, as that term is defined in Section [76-10-104.1](#).

123 (2) The regulation of a retail tobacco specialty business is an exercise of the police
124 powers of the state, and through delegation, to other governmental entities.

125 (3) (a) A person may not operate a retail tobacco specialty business in a municipality
126 unless the person obtains a license from the municipality in which the retail tobacco specialty
127 business is located.

128 (b) A municipality may only issue a retail tobacco specialty business license to a
129 person if the person complies with the provisions of Subsections (4) and (5).

130 (4) (a) Except as provided in Subsection (7), a municipality may not issue a license for
131 a person to conduct business as a retail tobacco specialty business if the retail tobacco specialty
132 business is located within:

133 (i) 1,000 feet of a community location;

134 (ii) 600 feet of another retail tobacco specialty business; or

135 (iii) 600 feet from property used or zoned for:

136 (A) agriculture use; or

137 (B) residential use.

138 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in
139 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
140 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard
141 to intervening structures or zoning districts.

142 (5) (a) Except as provided in Subsection (5)(b), beginning July 1, 2018, a municipality
143 may not issue or renew a license for a person to conduct business as a retail tobacco specialty
144 business until the person provides the municipality with proof that the retail tobacco specialty
145 business has:

146 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
147 62, Tobacco, Electronic Cigarette, and Other Nicotine Product Retail Permit, by the local
148 health department having jurisdiction over the area in which the retail tobacco specialty
149 business is located; and

150 (ii) (A) a valid license to sell ~~[tobacco products from]~~ a tobacco product issued by the
151 State Tax Commission in accordance with Section [59-14-201](#) or [59-14-301](#); or

152 (B) a valid license to sell an electronic cigarette product, an alternative nicotine
153 product, or a nontherapeutic nicotine product issued by the State Tax Commission in
154 accordance with Section [59-14-803](#).

155 (b) A person that was licensed to conduct business as a retail tobacco specialty
156 business in a municipality before July 1, 2018, shall obtain a permit from a local health
157 department under Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Other Nicotine
158 Product Retail Permit, on or before January 1, 2019.

159 (6) (a) Nothing in this section:

160 (i) requires a municipality to issue a retail tobacco specialty business license; or

161 (ii) prohibits a municipality from adopting more restrictive requirements on a person
162 seeking a license or renewal of a license to conduct business as a retail tobacco specialty
163 business.

164 (b) A municipality may suspend or revoke a retail tobacco specialty business license
165 issued under this section:

166 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,
167 Part 16, Pattern of Unlawful Activity Act;

168 (ii) if a licensee violates the regulations restricting the sale and distribution of
169 cigarettes and smokeless tobacco to protect children and adolescents issued by the United
170 States Food and Drug Administration, 21 C.F.R. Part 1140;

171 (iii) upon the recommendation of the department or a local health department under
172 Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Other Nicotine Product Retail Permit;
173 or

174 (iv) under any other provision of state law or local ordinance.

175 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has
176 a business license and is operating in a municipality in accordance with all applicable laws
177 except for the requirement in Subsection (4), on or before December 31, 2015, is exempt from
178 Subsection (4).

179 (b) A retail tobacco specialty business may maintain an exemption under Subsection
180 (7)(a) if:

181 (i) the retail tobacco specialty business license is renewed continuously without lapse
182 or permanent revocation;

183 (ii) the retail tobacco specialty business does not close for business or otherwise
184 suspend the sale of tobacco products, electronic cigarette products, alternative nicotine
185 products, and nontherapeutic nicotine products for more than 60 consecutive days;

186 (iii) the retail tobacco specialty business does not substantially change the business
187 premises or business operation; and

188 (iv) the retail tobacco specialty business maintains the right to operate under the terms
189 of other applicable laws, including:

190 (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;

191 (B) zoning ordinances;

192 (C) building codes; and

193 (D) the requirements of a retail tobacco specialty business license issued before
194 December 31, 2015.

195 Section 2. Section **17-50-333** is amended to read:

196 **17-50-333. Regulation of retail tobacco specialty business.**

197 (1) As used in this section:

198 (a) "Alternative nicotine product" means the same as that term is defined in Section
199 59-14-102.

200 [~~(a)~~] (b) "Community location" means:

201 (i) a public or private kindergarten, elementary, middle, junior high, or high school;

202 (ii) a licensed child-care facility or preschool;

203 (iii) a trade or technical school;

204 (iv) a church;

205 (v) a public library;

206 (vi) a public playground;

207 (vii) a public park;

208 (viii) a youth center or other space used primarily for youth oriented activities;

209 (ix) a public recreational facility;

210 (x) a public arcade; or

211 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.

212 [~~(b)~~] (c) "Department" means the Department of Health, created in Section [26-1-4](#).

213 (d) "Electronic cigarette product" means the same as that term is defined in Section

214 [59-14-102.](#)

215 ~~[(e)]~~ (e) "Licensee" means a person licensed under this section to conduct business as a
216 retail tobacco specialty business.

217 ~~[(f)]~~ (f) "Local health department" means the same as that term is defined in Section
218 [26A-1-102.](#)

219 (g) "Nontherapeutic nicotine product" means the same as that term is defined in
220 Section [59-14-102.](#)

221 ~~[(e)]~~ (h) "Retail tobacco specialty business" means a commercial establishment in
222 which:

223 (i) the sale of tobacco products, electronic cigarette products, alternative nicotine
224 products, and nontherapeutic nicotine products accounts for more than 35% of the total
225 quarterly gross receipts for the establishment;

226 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
227 storage of tobacco products, electronic cigarette products, alternative nicotine products, and
228 nontherapeutic nicotine products;

229 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
230 tobacco products, electronic cigarette products, alternative nicotine products, and
231 nontherapeutic nicotine products; or

232 (iv) the retail space features a self-service display for tobacco products, electronic
233 cigarette products, alternative nicotine products, and nontherapeutic nicotine products.

234 ~~[(f)]~~ (i) "Self-service display" means the same as that term is defined in Section
235 [76-10-105.1.](#)

236 ~~[(g)]~~ (j) "Tobacco product" means:

237 (i) any cigar~~;~~ or cigarette, ~~[or electronic cigarette]~~ as those terms are defined in
238 Section [76-10-101;](#)

239 (ii) a tobacco product, as that term is defined in Section [59-14-102](#), including:

240 (A) chewing tobacco; or

241 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;

242 and

243 (iii) tobacco paraphernalia, as that term is defined in Section [76-10-104.1.](#)

244 (2) The regulation of a retail tobacco specialty business is an exercise of the police

245 powers of the state, and through delegation, to other governmental entities.

246 (3) (a) A person may not operate a retail tobacco specialty business in a county unless
247 the person obtains a license from the county in which the retail tobacco specialty business is
248 located.

249 (b) A county may only issue a retail tobacco specialty business license to a person if
250 the person complies with the provisions of Subsections (4) and (5).

251 (4) (a) Except as provided in Subsection (7), a county may not issue a license for a
252 person to conduct business as a retail tobacco specialty business if the retail tobacco specialty
253 business is located within:

- 254 (i) 1,000 feet of a community location;
- 255 (ii) 600 feet of another retail tobacco specialty business; or
- 256 (iii) 600 feet from property used or zoned for:
 - 257 (A) agriculture use; or
 - 258 (B) residential use.

259 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in
260 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
261 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard
262 to intervening structures or zoning districts.

263 (5) (a) Except as provided in Subsection (5)(b), beginning July 1, 2018, a county may
264 not issue or renew a license for a person to conduct business as a retail tobacco specialty
265 business until the person provides the county with proof that the retail tobacco specialty
266 business has:

267 (i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter
268 62, Tobacco, Electronic Cigarette, and Other Nicotine Product Retail Permit, by the local
269 health department having jurisdiction over the area in which the retail tobacco specialty
270 business is located; and

271 (ii) (A) a valid license to sell ~~[tobacco products from]~~ a tobacco product issued by the
272 State Tax Commission in accordance with Section 59-14-201 or 59-14-301; or

273 (B) a valid license to sell an electronic cigarette product, an alternative nicotine
274 product, or a nontherapeutic nicotine product issued by the State Tax Commission in
275 accordance with Section 59-14-803.

276 (b) A person that was licensed to conduct business as a retail tobacco specialty
277 business in a county before July 1, 2018, shall obtain a permit from a local health department
278 under Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Other Nicotine Product Retail
279 Permit, on or before January 1, 2019.

280 (6) (a) Nothing in this section:

281 (i) requires a county to issue a retail tobacco specialty business license; or

282 (ii) prohibits a county from adopting more restrictive requirements on a person seeking
283 a license or renewal of a license to conduct business as a retail tobacco specialty business.

284 (b) A county may suspend or revoke a retail tobacco specialty business license issued
285 under this section:

286 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,
287 Part 16, Pattern of Unlawful Activity Act;

288 (ii) if a licensee violates the regulations restricting the sale and distribution of
289 cigarettes and smokeless tobacco to protect children and adolescents issued by the United
290 States Food and Drug Administration, 21 C.F.R. Part 1140;

291 (iii) upon the recommendation of the department or a local health department under
292 Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Other Nicotine Product Retail Permit;
293 or

294 (iv) under any other provision of state law or local ordinance.

295 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has
296 a business license and is operating in a county in accordance with all applicable laws except for
297 the requirement in Subsection (4), on or before December 31, 2015, is exempt from Subsection
298 (4).

299 (b) A retail tobacco specialty business may maintain an exemption under Subsection
300 (7)(a) if:

301 (i) the retail tobacco specialty business license is renewed continuously without lapse
302 or permanent revocation;

303 (ii) the retail tobacco specialty business does not close for business or otherwise
304 suspend the sale of tobacco products, electronic cigarette products, alternative nicotine
305 products, and nontherapeutic nicotine products for more than 60 consecutive days;

306 (iii) the retail tobacco specialty business does not substantially change the business

307 premises or business operation; and
 308 (iv) the retail tobacco specialty business maintains the right to operate under the terms
 309 of other applicable laws, including:
 310 (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;
 311 (B) zoning ordinances;
 312 (C) building codes; and
 313 (D) the requirements of a retail tobacco specialty business license issued before
 314 December 31, 2015.

315 Section 3. Section 26-57-101 is amended to read:

316 **CHAPTER 57. ELECTRONIC CIGARETTE AND OTHER NICOTINE PRODUCT**
 317 **REGULATION ACT**

318 **26-57-101. Title.**

319 This chapter is known as the "Electronic Cigarette and Other Nicotine Product
 320 Regulation Act."

321 Section 4. Section 26-57-102 is amended to read:

322 **26-57-102. Definitions.**

323 As used in this chapter:

324 (1) "Alternative nicotine product" means the same as that term is defined in Section
 325 59-14-102.

326 ~~[(1)]~~ (2) "Cigarette" means the same as that term is defined in Section 59-14-102.

327 ~~[(2)]~~ (3) "Electronic cigarette" means the same as that term is defined in Section
 328 ~~[59-14-802]~~ 59-14-102.

329 ~~[(3)]~~ (4) "Electronic cigarette product" means an electronic cigarette or an electronic
 330 cigarette substance.

331 ~~[(4)]~~ (5) "Electronic cigarette substance" means the same as that term is defined in
 332 Section ~~[59-14-802]~~ 59-14-102.

333 (6) "Local health department" means the same as that term is defined in Section
 334 26A-1-102.

335 ~~[(5)]~~ (7) "Manufacture" includes:

336 (a) to cast, construct, or make electronic cigarettes; or

337 (b) to blend, make, process, or prepare an electronic cigarette substance.

338 [~~(6)~~] (8) "Manufacturer sealed electronic cigarette substance" means an electronic
339 cigarette substance that is sold in a container that:

340 (a) is [~~pre-filled~~] prefilled by the electronic cigarette substance manufacturer; and

341 (b) the electronic cigarette manufacturer does not intend for a consumer to open.

342 (9) "Nicotine" means the same as that term is defined in Section [59-14-102](#).

343 (10) "Nontherapeutic nicotine device" means the same as that term is defined in
344 Section [59-14-102](#).

345 Section 5. Section **26-57-104** is enacted to read:

346 **26-57-104. Labeling of other nicotine products containing nicotine.**

347 (1) Any alternative nicotine product or nontherapeutic nicotine device shall contain the
348 statement described in Subsection (2) if the alternative nicotine product or the nontherapeutic
349 nicotine device:

350 (a) (i) is not a tobacco product as defined in 21 U.S.C. Sec. 321 and related federal
351 regulations; or

352 (ii) is not otherwise required to contain a nicotine warning; and

353 (b) contains nicotine.

354 (2) A statement shall appear on the exterior packaging of an alternative nicotine
355 product or a nontherapeutic nicotine device described in Subsection (1) as follows:

356 "This product contains nicotine."

357 Section 6. Section **26-62-101** is amended to read:

358 **CHAPTER 62. TOBACCO, ELECTRONIC CIGARETTE, AND OTHER**
359 **NICOTINE PRODUCT RETAIL PERMIT**

360 **26-62-101. Title.**

361 This chapter is known as "Tobacco, Electronic Cigarette, and Other Nicotine Product
362 Retail Permit."

363 Section 7. Section **26-62-102** is amended to read:

364 **26-62-102. Definitions.**

365 As used in this chapter:

366 (1) "Alternative nicotine product" means the same as that term is defined in Section
367 [59-14-102](#).

368 [~~(+)~~] (2) "Community location" means the same as that term is defined:

- 369 (a) as it relates to a municipality, in Section [10-8-41.6](#); and
- 370 (b) as it relates to a county, in Section [17-50-333](#).
- 371 (3) "Electronic cigarette product" means the same as that term is defined in Section
- 372 [59-14-102](#).
- 373 ~~[(2)]~~ (4) "Employee" means an employee of a tobacco retailer.
- 374 ~~[(3)]~~ (5) "Enforcing agency" means the state Department of Health~~;~~ or any local
- 375 health department enforcing the provisions of this chapter.
- 376 ~~[(4)]~~ (6) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco
- 377 specialty business.
- 378 ~~[(5)]~~ (7) "Local health department" means the same as that term is defined in Section
- 379 [26A-1-102](#).
- 380 (8) "Nontherapeutic nicotine product" means the same as that term is defined in
- 381 Section [59-14-102](#).
- 382 ~~[(6)]~~ (9) "Permit" means a tobacco retail permit issued under this chapter.
- 383 ~~[(7)]~~ (10) "Retail tobacco specialty business" means the same as that term is defined:
- 384 (a) as it relates to a municipality, in Section [10-8-41.6](#); and
- 385 (b) as it relates to a county, in Section [17-50-333](#).
- 386 ~~[(8)]~~ (11) "Tax commission license" means a license issued by the State Tax
- 387 Commission under:
- 388 (a) Section [59-14-201](#) to sell cigarettes at retail;
- 389 (b) Section [59-14-301](#) to sell ~~[tobacco products]~~ a tobacco product, as that term is
- 390 defined in Section [59-14-102](#), at retail; or
- 391 (c) Section [59-14-803](#) to sell an electronic cigarette product, an alternative nicotine
- 392 product, or a nontherapeutic nicotine product.
- 393 ~~[(9)]~~ (12) "Tobacco product" means:
- 394 (a) a cigar~~;~~ or cigarette, ~~[or electronic cigarette]~~ as those terms are defined in Section
- 395 [76-10-101](#);
- 396 (b) a tobacco product, as that term is defined in Section [59-14-102](#), including:
- 397 (i) chewing tobacco; or
- 398 (ii) any substitute for a tobacco product, including flavoring or additives to tobacco; or
- 399 (c) tobacco paraphernalia, as that term is defined in Section [76-10-104.1](#).

400 ~~[(10)]~~ (13) "Tobacco retailer" means a person that is required to obtain a tax
401 commission license.

402 Section 8. Section **26-62-201** is amended to read:

403 **26-62-201. Permitting requirement.**

404 (1) (a) Beginning July 1, 2018, a tobacco retailer shall hold a valid tobacco retail
405 permit issued in accordance with this chapter by the local health department with jurisdiction
406 over the physical location where the tobacco retailer operates.

407 (b) A tobacco retailer without a valid permit may not:

408 (i) place ~~[tobacco products]~~ a tobacco product, an electronic cigarette product, an
409 alternative nicotine product, or a nontherapeutic nicotine product in public view;

410 (ii) display any advertisement related to ~~[tobacco products]~~ a tobacco product, an
411 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine
412 product that promotes the sale, distribution, or use of those products; or

413 (iii) sell, offer for sale, or offer to exchange for any form of consideration, tobacco ~~[or]~~,
414 a tobacco ~~[products]~~ product, an electronic cigarette product, an alternative nicotine product, or
415 a nontherapeutic nicotine product.

416 (2) A local health department may issue a permit under this chapter for a tobacco
417 retailer in the classification of:

418 (a) a general tobacco retailer; or

419 (b) a retail tobacco specialty business.

420 (3) A permit under this chapter is:

421 (a) valid only for one physical location, including a vending machine;

422 (b) valid only at one fixed business address; and

423 (c) if multiple tobacco retailers are at the same address, separately required for each
424 tobacco retailer.

425 (4) Notwithstanding the requirement in Subsection (1), a person that holds a tax
426 commission license that was valid on July 1, 2018:

427 (a) may operate without a permit under this chapter until December 31, 2018; and

428 (b) shall obtain a permit from a local health department under this chapter before
429 January 1, 2019.

430 Section 9. Section **26-62-202** is amended to read:

431 **26-62-202. Permit application.**

432 (1) A local health department shall issue a permit under this chapter for a tobacco
433 retailer if the local health department determines that the applicant:

434 (a) accurately provided all information required under Subsection (3) and, if applicable,
435 Subsection (4); and

436 (b) meets all requirements for a permit under this chapter.

437 (2) An applicant for a permit shall:

438 (a) submit an application described in Subsection (3) to the local health department
439 with jurisdiction over the area where the tobacco retailer is located; and

440 (b) pay all applicable fees described in Section 26-62-203.

441 (3) The application for a permit shall include:

442 (a) the name, address, and telephone number of each proprietor;

443 (b) the name and mailing address of each proprietor authorized to receive
444 permit-related communication and notices;

445 (c) the business name, address, and telephone number of the single, fixed location for
446 which a permit is sought;

447 (d) evidence that the location for which a permit is sought has a valid tax commission
448 license;

449 (e) information regarding whether, in the past 24 months, any proprietor of the tobacco
450 retailer has been determined to have violated, or has been a proprietor at a location that has
451 been determined to have violated:

452 (i) a provision of this chapter;

453 (ii) Chapter 38, Utah Indoor Clean Air Act;

454 (iii) Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic Chemical
455 Solvents;

456 (iv) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;

457 (v) regulations restricting the sale and distribution of cigarettes and smokeless tobacco
458 issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140; or

459 (vi) any other provision of state law or local ordinance regarding the sale, marketing, or
460 distribution of a tobacco ~~[products]~~ product, an electronic cigarette product, an alternative
461 nicotine product, or a nontherapeutic nicotine product; and

462 (f) the dates of all violations disclosed under this Subsection (3).

463 (4) (a) In addition to the information described in Subsection (3), an applicant for a
464 retail tobacco specialty business permit shall include evidence showing whether the business is
465 located within:

466 (i) 1,000 feet of a community location;

467 (ii) 600 feet of another retail tobacco specialty business; or

468 (iii) 600 feet of property used or zoned for agricultural or residential use.

469 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in
470 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
471 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard
472 to intervening structures or zoning districts.

473 (5) The department or a local health department may not deny a permit to a retail
474 tobacco specialty business under Subsection (4) if the person obtained a license to operate the
475 retail tobacco specialty business before December 31, 2015, from:

476 (a) a municipality under Section 10-8-41.6; or

477 (b) a county under Section 17-50-333.

478 (6) (a) The department shall establish by rule made in accordance with Title 63G,
479 Chapter 3, Utah Administrative Rulemaking Act, a permit process for local health departments
480 in accordance with this chapter.

481 (b) The permit process established by the department under Subsection (6)(a) may not
482 require any information in an application that is not required by this section.

483 Section 10. Section 26-62-301 is amended to read:

484 **26-62-301. Permit violation.**

485 A person is in violation of the permit issued under this chapter if the person violates:

486 (1) a provision of this chapter;

487 (2) a provision of licensing laws under Section 10-8-41.6 or Section 17-50-333;

488 (3) a provision of Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic
489 Chemical Solvents;

490 (4) a provision of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;

491 (5) a regulation restricting the sale and distribution of cigarettes and smokeless tobacco
492 issued by the United States Food and Drug Administration under 21 C.F.R. Part 1140; or

493 (6) any other provision of state law or local ordinance regarding the sale, marketing, or
494 distribution of a tobacco [~~products~~] product, an electronic cigarette product, an alternative
495 nicotine product, or a nontherapeutic nicotine product.

496 Section 11. Section **26-62-304** is amended to read:

497 **26-62-304. Hearing -- Evidence of criminal conviction.**

498 (1) At a civil hearing conducted under Section **26-62-302**, evidence of the final
499 criminal conviction of a tobacco retailer or employee for violation of Section **76-10-104** at the
500 same location and within the same time period as the location and time period alleged in the
501 civil hearing for violation of this chapter for sale of [~~tobacco products~~] a tobacco product, an
502 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine
503 product to a person under the age of 19 is prima facie evidence of a violation of this chapter.

504 (2) If the tobacco retailer is convicted of violating Section **76-10-104**, the enforcing
505 agency:

506 (a) may not assess an additional monetary penalty under this chapter for the same
507 offense for which the conviction was obtained; and

508 (b) may revoke or suspend a permit in accordance with Section **26-62-305**.

509 Section 12. Section **26-62-305** is amended to read:

510 **26-62-305. Penalties.**

511 (1) (a) If, following an inspection by an enforcing agency, or an investigation or
512 issuance of a citation or information under Section **77-39-101**, an enforcing agency determines
513 that a person has violated the terms of a permit issued under this chapter, the enforcing agency
514 may impose the penalties described in this section.

515 (b) If multiple violations are found in a single inspection or investigation, only one
516 violation shall count toward the penalties described in this section.

517 (2) (a) The administrative penalty for a first violation at a retail location is a penalty of
518 not more than \$500.

519 (b) The administrative penalty for a second violation at the same retail location that
520 occurs within one year of a previous violation is a penalty of not more than \$750.

521 (c) The administrative penalty for a third or subsequent violation at the same retail
522 location that occurs within two years after two or more previous violations is:

523 (i) a suspension of the retail tobacco business permit for 30 consecutive business days

524 within 60 days after the day on which the third or subsequent violation occurs; or

525 (ii) a penalty of not more than \$1,000.

526 (3) The department or a local health department may:

527 (a) revoke a permit if a fourth violation occurs within two years of three previous
528 violations;

529 (b) in addition to a monetary penalty imposed under Subsection (2), suspend the permit
530 if the violation is due to a sale of ~~[tobacco products]~~ a tobacco product, an electronic cigarette
531 product, an alternative nicotine product, or a nontherapeutic nicotine product to a person under
532 19 years of age; and

533 (c) if applicable, recommend to a municipality or county that a retail tobacco specialty
534 business license issued under Section 10-8-41.6 or 17-50-333 be suspended or revoked.

535 (4) (a) Except when a transfer described in Subsection (5) occurs, a local health
536 department may not issue a permit to:

537 (i) a tobacco retailer for whom a permit is suspended or revoked under Subsection (3);

538 or

539 (ii) a tobacco retailer that has the same proprietor, director, corporate officer, partner,
540 or other holder of significant interest as another tobacco retailer for whom a permit is
541 suspended or revoked under Subsection (3).

542 (b) A person whose permit:

543 (i) is suspended under this section may not apply for a new permit for any other
544 tobacco retailer for a period of 12 months after the day on which an enforcing agency suspends
545 the permit; and

546 (ii) is revoked may not apply for a new permit for any tobacco retailer for a period of
547 24 months after the day on which an enforcing agency revokes the permit.

548 (5) Violations of this chapter, Section 10-8-41.6, or Section 17-50-333 that occur at a
549 tobacco retailer location shall stay on the record for that tobacco retailer location unless:

550 (a) the tobacco retailer is transferred to a new proprietor; and

551 (b) the new proprietor provides documentation to the local health department that the
552 new proprietor is acquiring the tobacco retailer in an arm's length transaction from the previous
553 proprietor.

554 Section 13. Section **26-62-306** is amended to read:

555 **26-62-306. Recognition of tobacco retailer training program.**

556 (1) In determining the amount of the monetary penalty to be imposed for an employee's
557 violation of this chapter, a hearing officer shall reduce the civil penalty by at least 50% if the
558 hearing officer determines that:

559 (a) the tobacco retailer has implemented a documented employee training program; and

560 (b) the employees have completed that training program within 30 days after the day on
561 which each employee commences the duties of selling [~~tobacco products~~] a tobacco product, an
562 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine
563 product.

564 (2) (a) For the first offense at a location, if the hearing officer determines under
565 Subsection (1) that the tobacco retailer licensee has not implemented a documented training
566 program with a written curriculum for employees at that location regarding compliance with
567 this chapter, the hearing officer may suspend all or a portion of the penalty if:

568 (i) the tobacco retailer agrees to initiate a training program for employees at that
569 location; and

570 (ii) the training program begins within 30 days after the hearing officer makes a
571 determination under this Subsection (2)(a).

572 (b) If the hearing officer determines at a subsequent hearing that the tobacco retailer
573 has not implemented the training program within the time period required under Subsection
574 (2)(a)(ii), the hearing officer shall promptly impose the suspended monetary penalty, unless the
575 tobacco retailer demonstrates good cause for an extension of time for implementation of the
576 training program.

577 Section 14. Section **26A-1-128** is amended to read:

578 **26A-1-128. Tobacco, electronic cigarette, and other nicotine product permits --**
579 **Enforcement.**

580 A local health department:

581 (1) shall enforce the requirements of Title 26, Chapter 62, Tobacco, Electronic
582 Cigarette, and Other Nicotine Product Retail Permit;

583 (2) may enforce licensing requirements for entities that hold a business license to sell a
584 tobacco [~~products~~] product, an electronic cigarette product, an alternative nicotine product, or a
585 nontherapeutic nicotine product under Section 10-8-41.6 or [Section] 17-50-333; and

586 (3) may recommend to a municipality or county that the business license of a retail
 587 tobacco specialty business be suspended or revoked for a violation of Section 10-8-41.6,
 588 Section 17-50-333, or Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Other Nicotine
 589 Product Retail Permit.

590 Section 15. Section **59-14-102** is amended to read:

591 **59-14-102. Definitions.**

592 As used in this chapter:

593 (1) (a) Except as provided in Subsection (1)(c), "alternative nicotine product" means a
 594 product, other than a cigarette, a counterfeit cigarette, an electronic cigarette product, a
 595 nontherapeutic nicotine product, or a tobacco product, that:

596 (i) contains nicotine;

597 (ii) is intended for human consumption;

598 (iii) is not purchased with a prescription from a licensed physician; and

599 (iv) is not approved by the United States Food and Drug Administration as nicotine
 600 replacement therapy.

601 (b) "Alternative nicotine product" includes:

602 (i) pure nicotine;

603 (ii) snortable nicotine;

604 (iii) dissolvable orbs, pellets, sticks, or strips; and

605 (iv) nicotine-laced food and beverage.

606 (c) "Alternative nicotine product" does not include a fruit, a vegetable, or a tea that
 607 contains naturally occurring nicotine.

608 ~~[(1)]~~ (2) "Cigarette" means a roll for smoking made wholly or in part of tobacco:

609 (a) regardless of:

610 (i) the size of the roll;

611 (ii) the shape of the roll; or

612 (iii) whether the tobacco is ~~[(A)]~~ flavored ~~[(B)]~~, adulterated ~~[(C)]~~, or ~~[(D)]~~ mixed with
 613 any other ingredient; and

614 (b) if the wrapper or cover of the roll is made of paper or any other substance or
 615 material except tobacco.

616 ~~[(2)]~~ (3) "Cigarette rolling machine" means a device or machine that has the capability

617 to produce at least 150 cigarettes in less than 30 minutes.

618 ~~[(3)]~~ (4) "Cigarette rolling machine operator" means a person ~~[who]~~ that:

619 (a) (i) controls, leases, owns, possesses, or otherwise has available for use a cigarette
620 rolling machine; and

621 (ii) makes the cigarette rolling machine available for use by another person to produce
622 a cigarette; or

623 (b) offers for sale, at retail, a cigarette produced from the cigarette rolling machine.

624 ~~[(4)]~~ (5) "Consumer" means a person that is not required:

625 (a) under Section 59-14-201 to obtain a license under Section 59-14-202; ~~[or]~~

626 (b) under Section 59-14-301 to obtain a license under Section 59-14-202~~[-];~~ or

627 (c) under Section 59-14-803 to obtain a license.

628 ~~[(5)]~~ (6) "Counterfeit cigarette" means:

629 (a) a cigarette that has a false manufacturing label; or

630 (b) a package of cigarettes bearing a counterfeit tax stamp.

631 (7) (a) "Electronic cigarette" means:

632 (i) an electronic device used to deliver or capable of delivering vapor containing
633 nicotine or another substance to an individual's respiratory system;

634 (ii) a component of the device described in Subsection (7)(a)(i); or

635 (iii) an accessory sold in the same package as the device described in Subsection
636 (7)(a)(i).

637 (b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section
638 26-38-2.

639 (8) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette
640 substance, or a prefilled electronic cigarette.

641 (9) "Electronic cigarette substance" means any substance, including liquid containing
642 nicotine, used or intended for use in an electronic cigarette.

643 ~~[(6)]~~ (10) "Importer" means a person ~~[who]~~ that imports into the United States, either
644 directly or indirectly, a finished cigarette for sale or distribution.

645 ~~[(7)]~~ (11) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity,
646 or any other person doing business as a distributor or retailer of cigarettes on tribal lands
647 located in the state.

648 [~~(8)~~] (12) "Little cigar" means a roll for smoking that:

649 (a) is made wholly or in part of tobacco;

650 (b) [~~that~~] uses an integrated cellulose acetate filter or other similar filter; and

651 (c) [~~that~~] is wrapped in a substance:

652 (i) containing tobacco; and

653 (ii) that is not exclusively natural leaf tobacco.

654 [~~(9)~~] (13) (a) Except as provided in Subsection [~~(9)~~] (13)(b), "manufacturer" means a
655 person [~~who~~] that:

656 (i) manufactures, fabricates, assembles, processes, or labels a finished cigarette; or

657 (ii) makes, modifies, mixes, manufactures, fabricates, assembles, processes, labels,
658 repackages, relabels, or imports an electronic cigarette product, an alternative nicotine product,
659 or a nontherapeutic nicotine product.

660 (b) "Manufacturer" does not include a cigarette rolling machine operator.

661 [~~(10)~~] (14) "Moist snuff" means tobacco that:

662 (a) is finely [~~(i)~~] cut [~~(ii)~~], ground [~~(i)~~], or [~~(iii)~~] powdered;

663 (b) has at least 45% moisture content, as determined by the commission by rule made
664 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

665 (c) is not intended to be:

666 (i) smoked; or

667 (ii) placed in the nasal cavity; and

668 (d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or
669 distributed in single-use units, including:

670 (i) tablets;

671 (ii) lozenges;

672 (iii) strips;

673 (iv) sticks; or

674 (v) packages containing multiple single-use units.

675 (15) "Nicotine" means a poisonous, nitrogen containing chemical that is made
676 synthetically or derived from tobacco or other plants.

677 (16) (a) "Nontherapeutic nicotine device" means a device that:

678 (i) has a pressurized canister that is used to administer nicotine to the user through

679 inhalation or intranasally;

680 (ii) is not purchased with a prescription from a licensed physician; and

681 (iii) is not approved by the United States Food and Drug Administration as nicotine
682 replacement therapy.

683 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or
684 nontherapeutic nicotine nasal spray.

685 (17) "Nontherapeutic nicotine device substance" means a cartridge that:

686 (a) contains nicotine;

687 (b) is used or intended to be used in a nontherapeutic nicotine device;

688 (c) is not purchased with a prescription from a licensed physician; and

689 (d) is not approved by the United States Food and Drug Administration as nicotine
690 replacement therapy.

691 (18) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device, a
692 nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device.

693 (19) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled
694 with an electronic cigarette substance.

695 (20) "Prefilled nontherapeutic nicotine device" means a nontherapeutic nicotine device
696 that is sold prefilled with a nontherapeutic nicotine device substance.

697 ~~[(11)]~~ (21) "Retailer" means a person that:

698 (a) sells or distributes a cigarette, an electronic cigarette product, an alternative nicotine
699 product, or a nontherapeutic nicotine product to a consumer in the state; or

700 (b) intends to sell or distribute a cigarette, an electronic cigarette product, an alternative
701 nicotine product, or a nontherapeutic nicotine product to a consumer in the state.

702 ~~[(12)]~~ (22) "Stamp" means the indicia required to be placed on a cigarette package that
703 evidences payment of the tax on cigarettes required by Section [59-14-205](#).

704 ~~[(13)]~~ (23) (a) "Tobacco product" means a product made of, or containing, tobacco.

705 (b) "Tobacco product" includes:

706 (i) a cigarette produced from a cigarette rolling machine;

707 (ii) a little cigar; or

708 (iii) moist snuff.

709 (c) "Tobacco product" does not include a cigarette.

710 ~~[(14)]~~ (24) "Tribal lands" means land held by the United States in trust for a federally
711 recognized Indian tribe.

712 Section 16. Section **59-14-201** is amended to read:

713 **59-14-201. License -- Application of part -- Fee -- Bond -- Exceptions.**

714 (1) It is unlawful for any person in this state to manufacture, import, distribute, barter,
715 sell, exchange, or offer cigarettes for sale without first having obtained a license issued by the
716 commission under Section **59-14-202**.

717 (2) Except for the tax rates described in Subsection **59-14-204(2)**, this part does not
718 apply to a cigarette produced from a cigarette rolling machine.

719 (3) (a) A license may not be issued for the sale of cigarettes until the applicant has paid
720 a license fee of \$30 or a license renewal fee of \$20, as appropriate.

721 (b) The fee for reinstatement of a license that has been revoked, suspended, or allowed
722 to expire is \$30.

723 (c) Notwithstanding Subsections (3)(a) and (b), the commission may not charge a fee
724 for a license under this section for a retailer, as defined in Section **59-14-102**.

725 (4) (a) (i) ~~[A license may not be issued]~~ The commission may not issue a license until
726 the applicant files a bond with the commission.

727 (ii) The commission shall determine the form and the amount of the bond, the
728 minimum amount of which shall be \$500.

729 (iii) The ~~[bond shall be executed by the applicant]~~ applicant shall execute the bond as
730 principal, with a corporate surety, payable to the state and conditioned upon the faithful
731 performance of all the requirements of this chapter, including the payment of all taxes,
732 penalties, and other obligations.

733 (b) An applicant is not required to post a bond if the applicant:

734 (i) purchases during the license year only products that have the proper state stamp
735 affixed as required by this chapter; and

736 (ii) files an affidavit with the applicant's application attesting to this fact.

737 Section 17. Section **59-14-801** is amended to read:

738 **Part 8. Electronic Cigarette and Other Nicotine Product Licensing and Taxation Act**

739 **59-14-801. Title.**

740 This part is known as the "Electronic Cigarette and Other Nicotine Product Licensing

741 and Taxation Act."

742 Section 18. Section **59-14-802** is amended to read:

743 **59-14-802. Definitions.**

744 As used in this part:

745 [~~(1) "Cigarette" means the same as that term is defined in Section 59-14-102.~~]

746 [~~(2) (a) "Electronic cigarette" means:~~]

747 [~~(i) an electronic device used to deliver or capable of delivering vapor containing~~
748 ~~nicotine to an individual's respiratory system;~~]

749 [~~(ii) a component of the device described in Subsection (2)(a)(i); or]~~

750 [~~(iii) an accessory sold in the same package as the device described in Subsection~~
751 ~~(2)(a)(i).~~]

752 [~~(b) "Electronic cigarette" includes an e-cigarette as defined in Section 26-38-2.~~]

753 [~~(3) "Electronic cigarette product" means an electronic cigarette or an electronic~~
754 ~~cigarette substance.~~]

755 [~~(4) "Electronic cigarette substance" means any substance, including liquid containing~~
756 ~~nicotine, used or intended for use in an electronic cigarette.~~]

757 [~~(5) (1) "Enforcing agency" means the Department of Health, a county health~~
758 ~~department, or a local health department, when enforcing:~~

759 [~~(a) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; or]~~

760 [~~(b) (a) Title 26, Chapter 57, Electronic Cigarette and Other Nicotine Product~~

761 ~~Regulation Act[.]; or~~

762 [~~(b) Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Other Nicotine Product~~
763 ~~Retail Permit.~~

764 [~~(6) (2) "Licensee" means a person that holds a valid license to sell an~~ electronic
765 cigarette [products] product, an alternative nicotine product, or a nontherapeutic nicotine
766 product.

767 [~~(7) "License to sell an electronic cigarette product" means a license issued by the~~
768 ~~commission under Subsection 59-14-803(3).~~]

769 (3) (a) "Manufacturer's sales price" means the amount the manufacturer of an electronic
770 cigarette substance, prefilled electronic cigarette, alternative nicotine product, nontherapeutic
771 nicotine device substance, or prefilled nontherapeutic nicotine device charges after subtracting

772 a discount.

773 (b) "Manufacturer's sales price" includes an original Utah destination freight charge,
774 regardless of:

775 (i) whether the electronic cigarette substance, prefilled electronic cigarette, alternative
776 nicotine product, nontherapeutic nicotine device substance, or prefilled nontherapeutic nicotine
777 device is shipped f.o.b. origin or f.o.b. destination; or

778 (ii) who pays the original Utah destination charge.

779 Section 19. Section **59-14-803** is amended to read:

780 **59-14-803. License to sell an electronic cigarette product or other nicotine**
781 **products.**

782 (1) [~~Except as provided in Subsection (2), a~~] A person may not sell, offer to sell, or
783 distribute an electronic cigarette product [~~in Utah~~], an alternative nicotine product, or a
784 nontherapeutic nicotine product in this state without first:

785 (a) except as provided in Subsection (2), obtaining a license from the commission
786 under this section to sell an electronic cigarette product [~~from the commission under this~~
787 section.], an alternative nicotine product, or a nontherapeutic nicotine product; and

788 (b) complying with any bonding requirement described in Subsection (4).

789 (2) A person that holds a valid license to sell cigarettes under Section 59-14-201[;] or a
790 person that holds a valid license to sell tobacco products under Section 59-14-301[;] may,
791 without obtaining a separate license [~~to sell an electronic cigarette product under this part~~] in
792 accordance with this section, sell, offer to sell, or distribute in the state the following:

793 (a) an electronic cigarette product [~~in Utah in accordance with this part.~~];

794 (b) an alternative nicotine product; or

795 (c) a nontherapeutic nicotine product.

796 (3) The commission shall issue a license to sell an electronic cigarette product, an
797 alternative nicotine product, or a nontherapeutic nicotine product to a person that submits an
798 application, on a form created by the commission, that includes:

799 (a) the person's name;

800 (b) the address of the facility where the person will sell an electronic cigarette product,
801 an alternative nicotine product, or a nontherapeutic nicotine product; and

802 (c) any other information the commission requires to implement this chapter.

803 (4) A license described in Subsection (3) is:

804 (a) valid only at one fixed business address;

805 (b) valid for three years;

806 (c) valid only for a physical location; and

807 (d) renewable if a licensee meets the criteria for licensing described in Subsection (3).

808 (5) (a) The commission shall require a manufacturer, jobber, distributor, wholesaler, or

809 retailer that is responsible under this part for the collection of tax on an electronic cigarette

810 substance, a prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic

811 nicotine device substance, or a prefilled nontherapeutic nicotine device to post a bond.

812 (b) The manufacturer, jobber, distributor, wholesaler, or retailer may post the bond

813 required by Subsection (5)(a) in combination with the bond required by Section [59-14-201](#) or

814 [59-14-301](#).

815 (c) Subject to Subsection (5)(d), the commission shall determine the form and amount

816 of the bond.

817 (d) The minimum amount of the bond shall be:

818 (i) except as provided in Subsection (5)(d)(ii) or (iii), \$500;

819 (ii) if the manufacturer, jobber, distributor, wholesaler, or retailer posts the bond

820 required by Subsection (5)(a) in combination with a bond required by either Section [59-14-201](#)

821 or [59-14-301](#), \$1,000; or

822 (iii) if the manufacturer, jobber, distributor, wholesaler, or retailer posts the bond

823 required by Subsection (5)(a) in combination with the bonds required by both Sections

824 [59-14-201](#) and [59-14-301](#), \$1,500.

825 [~~5~~] (6) The commission may make rules in accordance with Title 63G, Chapter 3,

826 Utah Administrative Rulemaking Act, to establish the additional information described in

827 Subsection (3)(c) that a person must provide in the application described in Subsection (3).

828 [~~6~~] (7) It is a class B misdemeanor for a person to violate Subsection (1).

829 [~~7~~] (8) The commission may not charge a fee for a license under this section.

830 Section 20. Section **59-14-804** is enacted to read:

831 **59-14-804. Taxation of an electronic cigarette substance, prefilled electronic**

832 **cigarette, an alternative nicotine product, a nontherapeutic nicotine product, a**

833 **nontherapeutic device substance, and a prefilled nontherapeutic nicotine device.**

834 (1) (a) There is levied a tax upon the following:

835 (i) an electronic cigarette substance; and

836 (ii) a prefilled electronic cigarette.

837 (b) Beginning on July 1, 2020, there is levied a tax upon the following:

838 (i) an alternative nicotine product;

839 (ii) a nontherapeutic nicotine device substance; or

840 (iii) a prefilled nontherapeutic nicotine device.

841 (2) The rate of tax levied under Subsection (1) is .86 multiplied by the manufacturer's

842 sales price.

843 (3) (a) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user shall

844 pay the tax levied under Subsection (1) at the time that an electronic cigarette substance, a

845 prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic nicotine device

846 substance, or a prefilled nontherapeutic nicotine device is first received in the state.

847 (b) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user may not

848 resell an electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine

849 product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine

850 device to another distributor, another retailer, or a consumer before paying the tax levied under

851 Subsection (1).

852 (4) (a) The manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user

853 shall remit the taxes collected in accordance with this section to the commission.

854 (b) The commission shall deposit, for each fiscal year:

855 (i) the first \$2,000,000 remitted in accordance with this section into the Electronic

856 Cigarette Substance and Other Nicotine Product Tax Restricted Account, created in Section

857 [59-14-807](#); and

858 (ii) the balance of remittances received in accordance with this section into the General

859 Fund.

860 Section 21. Section **59-14-805** is enacted to read:

861 **59-14-805. Remittance of tax -- Returns -- Invoice required -- Filing requirement--**

862 **Exception -- Penalty -- Overpayment.**

863 (1) (a) The manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user

864 that collects the tax imposed on an electronic cigarette substance, a prefilled electronic

865 cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance, or a
866 prefilled nontherapeutic nicotine device shall remit to the commission, in an electronic format
867 approved by the commission:

868 (i) the tax collected in the previous calendar quarter; and

869 (ii) the quarterly tax return.

870 (b) The tax collected and the return are due on or before the last day of April, July,
871 October, and January.

872 (2) (a) A manufacturer, jobber, distributor, wholesaler, retailer, or any other person
873 selling an electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine
874 product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine
875 device to a person other than the ultimate consumer shall furnish the purchaser with an
876 itemized invoice showing:

877 (i) the seller's name and address;

878 (ii) the name and address of the purchaser;

879 (iii) the date of sale;

880 (iv) the name and price of the product; and

881 (v) the discount, if any.

882 (b) The invoice shall show whether the price includes the tax.

883 (c) The seller and the purchaser shall retain copies of the invoice and make the invoice
884 available for inspection at the request of the commission or the commission's agent for a period
885 of three years following the sale.

886 (3) (a) A consumer that purchases an untaxed electronic cigarette substance, prefilled
887 electronic cigarette, alternative nicotine product, nontherapeutic nicotine device substance, or
888 prefilled nontherapeutic nicotine device for use or other consumption shall:

889 (i) file with the commission, on forms prescribed by the commission, a statement
890 showing the quantity and description of the item subject to tax under this part; and

891 (ii) pay the tax imposed by this part on that item.

892 (b) The consumer shall file the statement described in Subsection (3)(a) and pay the tax
893 due on or before the last day of the month immediately following the month during which the
894 consumer purchased an untaxed electronic cigarette substance, prefilled electronic cigarette,
895 alternative nicotine device substance, nontherapeutic nicotine product, or prefilled

896 nontherapeutic nicotine device.

897 (c) A consumer shall maintain records necessary to determine the amount of tax the
898 consumer is liable to pay under this part for a period of three years following the date the
899 statement required by this section was filed.

900 (4) A tourist who imports an electronic cigarette substance, a prefilled electronic
901 cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance, or a
902 prefilled nontherapeutic nicotine device into the state does not need to file the statement
903 described in Subsection (3) or pay the tax if the item is for the tourist's own use or consumption
904 while in this state.

905 (5) In addition to the tax required by this part, a person shall pay a penalty as provided
906 in Section 59-1-401, plus interest at the rate and in the manner prescribed in Section 59-1-402,
907 if a person subject to this section fails to:

908 (a) pay the tax prescribed by this part;

909 (b) pay the tax on time; or

910 (c) file a return required by this part.

911 (6) An overpayment of a tax imposed by this part shall accrue interest at the rate and in
912 the manner prescribed in Section 59-1-402.

913 Section 22. Section **59-14-806** is enacted to read:

914 **59-14-806. Refund of taxes paid -- Exemption for exported electronic cigarettes**
915 **and other nicotine products.**

916 (1) When an electronic cigarette substance, a prefilled electronic cigarette, an
917 alternative nicotine product, a nontherapeutic nicotine device substance, or a prefilled
918 nontherapeutic nicotine device taxed under this chapter is sold and shipped to a regular dealer
919 in those articles in another state, the seller in this state shall be entitled to a refund of the actual
920 amount of the taxes paid, upon condition that the seller in this state:

921 (a) is a licensed dealer;

922 (b) signs an affidavit that the electronic cigarette substance, the prefilled electronic
923 cigarette, the alternative nicotine product, the nontherapeutic nicotine device substance, or the
924 prefilled nontherapeutic nicotine device was sold and shipped to a regular dealer in those
925 articles in another state;

926 (c) furnishes from the purchaser a written acknowledgment that the purchaser has

927 received the electronic cigarette substance, the prefilled electronic cigarette, the alternative
928 nicotine product, the nontherapeutic nicotine device substance, or the prefilled nontherapeutic
929 nicotine device; and

930 (d) reports the name and address of the purchaser.

931 (2) A wholesaler or distributor in this state that exports an electronic cigarette
932 substance, a prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic
933 nicotine device substance, or a prefilled nontherapeutic nicotine device to a regular dealer in
934 those articles in another state shall be exempt from the payment of any tax under this chapter
935 upon furnishing proof of the sale and exportation as the commission may require.

936 Section 23. Section **59-14-807** is enacted to read:

937 **59-14-807. Electronic Cigarette Substance and Other Nicotine Product Tax**
938 **Restricted Account.**

939 (1) There is created within the General Fund a restricted account known as the
940 "Electronic Cigarette Substance and Other Nicotine Product Tax Restricted Account."

941 (2) The Electronic Cigarette Substance and Other Nicotine Product Tax Restricted
942 Account consists of:

943 (a) for each fiscal year, the first \$2,000,000 collected from the tax imposed by Section
944 59-14-804; and

945 (b) amounts appropriated by the Legislature.

946 (3) (a) For each fiscal year, beginning with fiscal year 2020, and subject to
947 appropriation by the Legislature, the Division of Finance shall distribute money from the
948 Electronic Cigarette Substance and Other Nicotine Product Tax Restricted Account to the local
949 health departments as directed by the Department of Health, which shall determine the
950 allocation for each local health department using the formula created in accordance with
951 Section 26A-1-116.

952 (b) The local health departments shall use the money received in accordance with
953 Subsection (3)(a) for:

954 (i) the development and implementation of evidence-based tobacco, electronic
955 cigarette, and other nicotine product cessation programs for individuals under the age of 19;

956 (ii) enforcing:

957 (A) the regulation provisions described in Section 26-57-103;

958 (B) the labeling requirement described in Section 26-57-104; and
 959 (C) the penalty provisions described in Section 26-62-305; and
 960 (iii) developing and providing tobacco, electronic cigarette, and other nicotine product
 961 use prevention education to individuals under the age of 19.

962 Section 24. Section 76-10-101 is amended to read:

963 **Part 1. Cigarettes, Tobacco, Other Nicotine Substances, and Psychotoxic Chemical**
 964 **Substances**

965 **76-10-101. Definitions.**

966 As used in this part:

967 (1) "Alternative nicotine product" means the same as that term is defined in Section
 968 59-14-102.

969 (2) "Cigar" means a product that contains nicotine, is intended to be burned under
 970 ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in
 971 any substance containing tobacco, other than any roll of tobacco that is a cigarette as described
 972 in Subsection [(2)] (3).

973 [(2)] (3) "Cigarette" means a product that contains nicotine, is intended to be burned
 974 under ordinary conditions of use, and consists of:

975 (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

976 (b) any roll of tobacco wrapped in any substance containing tobacco which, because of
 977 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to
 978 be offered to, or purchased by, consumers as a cigarette described in Subsection [(2)] (3)(a).

979 [(3) "Electronic cigarette" means an electronic cigarette product, as defined in Section
 980 59-14-802.]

981 (4) (a) "Electronic cigarette" means:

982 (i) an electronic device used to deliver or capable of delivering vapor containing
 983 nicotine to an individual's respiratory system;

984 (ii) a component of the device described in Subsection (4)(a)(i); or

985 (iii) an accessory sold in the same package as the device described in Subsection
 986 (4)(a)(i).

987 (b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section
 988 26-38-2.

989 (5) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette
990 substance, or a prefilled electronic cigarette.

991 (6) "Electronic cigarette substance" means any substance, including liquid containing
992 nicotine, used or intended for use in an electronic cigarette.

993 (7) (a) "Nontherapeutic nicotine device" means a device that:

994 (i) has a pressurized canister that is used to administer nicotine to the user through
995 inhalation or intranasally;

996 (ii) is not purchased with a prescription from a licensed physician; and

997 (iii) is not approved by the United States Food and Drug Administration as nicotine
998 replacement therapy.

999 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or
1000 nontherapeutic nicotine nasal spray.

1001 (8) "Nontherapeutic nicotine device substance" means a cartridge that:

1002 (a) contains nicotine;

1003 (b) is used or intended to be used in a nontherapeutic nicotine device;

1004 (c) is not purchased with a prescription from a licensed physician; and

1005 (d) is not approved by the United States Food and Drug Administration as nicotine
1006 replacement therapy.

1007 (9) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device, a
1008 nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device.

1009 ~~(4)~~ (10) "Place of business" includes:

1010 (a) a shop;

1011 (b) a store;

1012 (c) a factory;

1013 (d) a public garage;

1014 (e) an office;

1015 (f) a theater;

1016 (g) a recreation hall;

1017 (h) a dance hall;

1018 (i) a poolroom;

1019 (j) a café;

- 1020 (k) a cafeteria;
- 1021 (l) a cabaret;
- 1022 (m) a restaurant;
- 1023 (n) a hotel;
- 1024 (o) a lodging house;
- 1025 (p) a streetcar;
- 1026 (q) a bus;
- 1027 (r) an interurban or railway passenger coach;
- 1028 (s) a waiting room; and
- 1029 (t) any other place of business.

1030 (11) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled
 1031 with an electronic cigarette substance.

1032 (12) "Prefilled nontherapeutic nicotine device" means a nontherapeutic nicotine device
 1033 that is sold prefilled with a nontherapeutic nicotine device substance.

1034 [~~5~~] (13) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other
 1035 lighted smoking equipment.

1036 Section 25. Section **76-10-104** is amended to read:

1037 **76-10-104. Providing any cigar, cigarette, electronic cigarette, alternative nicotine**
 1038 **product, nontherapeutic nicotine product, or tobacco to a minor -- Penalties.**

1039 (1) Any person who knowingly, intentionally, recklessly, or with criminal negligence
 1040 provides any cigar, cigarette, electronic cigarette product, alternative nicotine product,
 1041 nontherapeutic nicotine product, or tobacco in any form[;] to any person under 19 years of
 1042 age[;] is guilty of a class C misdemeanor on the first offense, a class B misdemeanor on the
 1043 second offense, and a class A misdemeanor on subsequent offenses.

1044 (2) For purposes of this section "provides":

1045 (a) includes selling, giving, furnishing, sending, or causing to be sent; and

1046 (b) does not include the acts of the United States Postal Service or other common
 1047 carrier when engaged in the business of transporting and delivering packages for others or the
 1048 acts of a person, whether compensated or not, who transports or delivers a package for another
 1049 person without any reason to know of the package's content.

1050 Section 26. Section **76-10-104.1** is amended to read:

1051 **76-10-104.1. Providing tobacco paraphernalia to minors -- Penalties.**

1052 (1) For purposes of this section:

1053 (a) "Provides":

1054 (i) includes selling, giving, furnishing, sending, or causing to be sent; and

1055 (ii) does not include the acts of the United States Postal Service or other common
1056 carrier when engaged in the business of transporting and delivering packages for others or the
1057 acts of a person, whether compensated or not, who transports or delivers a package for another
1058 person without any reason to know of the package's content.1059 (b) (i) "Tobacco paraphernalia"~~[(i)]~~ means any equipment, product, or material of any
1060 kind which is used, intended for use, or designed for use to package, repackage, store, contain,
1061 conceal, ingest, inhale, or otherwise introduce a cigar, electronic cigarette substance,
1062 nontherapeutic nicotine device substance, cigarette, or tobacco in any form into the human
1063 body~~[, including:]~~.1064 (ii) "Tobacco paraphernalia" includes:1065 (A) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
1066 screens, permanent screens, hashish heads, or punctured metal bowls;

1067 (B) water pipes;

1068 (C) carburetion tubes and devices;

1069 (D) smoking and carburetion masks;

1070 (E) roach clips: meaning objects used to hold burning material, such as a cigarette, that
1071 has become too small or too short to be held in the hand;

1072 (F) chamber pipes;

1073 (G) carburetor pipes;

1074 (H) electric pipes;

1075 (I) air-driven pipes;

1076 (J) chillums;

1077 (K) bongs; and

1078 (L) ice pipes or chillers~~[, and]~~.1079 ~~[(ii)]~~ (iii) "Tobacco paraphernalia" does not include matches or lighters.1080 (2) (a) It is unlawful for a person to knowingly, intentionally, recklessly, or with
1081 criminal negligence provide any tobacco paraphernalia to any person under 19 years of age.

1082 (b) A person who violates this section is guilty of a class C misdemeanor on the first
1083 offense and a class B misdemeanor on subsequent offenses.

1084 Section 27. Section **76-10-105** is amended to read:

1085 **76-10-105. Buying or possessing a cigar, a cigarette, an electronic cigarette**
1086 **product, an alternative nicotine product, a nontherapeutic nicotine product, or tobacco**
1087 **by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.**

1088 (1) Any [~~18-year-old person~~] 18-year-old individual who buys or attempts to buy,
1089 accepts, or has in the [~~person's~~] individual's possession any cigar, cigarette, electronic cigarette
1090 product, alternative nicotine product, nontherapeutic nicotine product, or tobacco in any form is
1091 guilty of a class C misdemeanor and subject to:

1092 (a) a minimum fine or penalty of \$60; and

1093 (b) participation in a court-approved tobacco education program, which may include a
1094 participation fee.

1095 (2) Any [~~person~~] individual under the age of 18 who buys or attempts to buy, accepts,
1096 or has in the [~~person's~~] individual's possession any cigar, cigarette, electronic cigarette product,
1097 alternative nicotine product, nontherapeutic nicotine product, or tobacco in any form is subject
1098 to the jurisdiction of the juvenile court and subject to Section [78A-6-602](#), unless the violation
1099 is committed on school property. If a violation under this section is adjudicated under Section
1100 [78A-6-117](#), the minor may be subject to the following:

1101 (a) a fine or penalty, in accordance with Section [78A-6-117](#); and

1102 (b) participation in a court-approved tobacco education program, which may include a
1103 participation fee.

1104 (3) A compliance officer appointed by a board of education under Section [53G-4-402](#)
1105 may not issue a citation for a violation of this section committed on school property. A cited
1106 violation committed on school property shall be addressed in accordance with Section
1107 [53G-8-211](#).

1108 Section 28. Section **76-10-105.1** is amended to read:

1109 **76-10-105.1. Requirement of direct, face-to-face sale of a cigarette, tobacco, an**
1110 **electronic product, an alternative nicotine product, or a nontherapeutic nicotine product**
1111 **-- Minors not allowed in tobacco specialty shop -- Penalties.**

1112 (1) As used in this section:

- 1113 (a) "Cigarette" means the same as that term is defined in Section [59-14-102](#).
- 1114 (b) (i) "Face-to-face exchange" means a transaction made in person between an
1115 individual and a retailer or retailer's employee.
- 1116 (ii) "Face-to-face exchange" does not include a sale through a:
- 1117 (A) vending machine; or
- 1118 (B) self-service display.
- 1119 (c) "Retailer" means a person who:
- 1120 (i) sells a cigarette, tobacco, [or] an electronic cigarette product, an alternative nicotine
1121 product, or a nontherapeutic nicotine product to an individual for personal consumption; or
- 1122 (ii) operates a facility with a vending machine that sells a cigarette, tobacco, or an
1123 electronic cigarette.
- 1124 (d) "Self-service display" means a display of a cigarette, tobacco, [or] an electronic
1125 cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product to which
1126 the public has access without the intervention of a retailer or retailer's employee.
- 1127 (e) "Tobacco" means any product, except a cigarette, made of or containing tobacco.
- 1128 (f) "Tobacco specialty shop" means a "retail tobacco specialty business" as that term is
1129 defined:
- 1130 (i) as it relates to a municipality, in Section [10-8-41.6](#); and
- 1131 (ii) as it relates to a county, in Section [17-50-333](#).
- 1132 (2) Except as provided in Subsection (3), a retailer may sell a cigarette, tobacco, [or] an
1133 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine
1134 product only in a face-to-face exchange.
- 1135 (3) The face-to-face sale requirement in Subsection (2) does not apply to:
- 1136 (a) a mail-order, telephone, or Internet sale made in compliance with Section
1137 [59-14-509](#);
- 1138 (b) a sale from a vending machine or self-service display that is located in an area of a
1139 retailer's facility:
- 1140 (i) that is distinct and separate from the rest of the facility; and
- 1141 (ii) where the retailer only allows an individual who complies with Subsection (4) to be
1142 present; or
- 1143 (c) a sale at a tobacco specialty shop.

1144 (4) An individual who is less than 19 years old may not enter or be present at a tobacco
1145 specialty shop unless the individual is:

1146 (a) accompanied by a parent or legal guardian;

1147 (b) present at the tobacco shop for a bona fide commercial purpose other than to
1148 purchase a cigarette, tobacco, [~~or~~] an electronic cigarette product, an alternative nicotine
1149 product, or a nontherapeutic nicotine product; or

1150 (c) 18 years old or older and an active duty member of the United States Armed Forces,
1151 as demonstrated by a valid, government-issued military identification card.

1152 (5) A parent or legal guardian who accompanies, under Subsection (4)(a), an individual
1153 into an area described in Subsection (3)(b), or into a tobacco specialty shop, may not allow the
1154 individual to purchase a cigarette, tobacco, [~~or~~] an electronic cigarette product, an alternative
1155 nicotine product, or a nontherapeutic nicotine product.

1156 (6) A violation of Subsection (2) or (4) is a:

1157 (a) class C misdemeanor on the first offense;

1158 (b) class B misdemeanor on the second offense; and

1159 (c) class A misdemeanor on the third and all subsequent offenses.

1160 (7) An individual who violates Subsection (5) is guilty of providing tobacco to a minor
1161 under Section [76-10-104](#).

1162 (8) (a) Any ordinance, regulation, or rule adopted by the governing body of a political
1163 subdivision of the state or by a state agency that affects the sale, placement, or display of
1164 [~~cigarettes~~] a cigarette, tobacco, [~~or~~] an electronic [~~cigarettes~~] cigarette product, an alternative
1165 nicotine product, or a nontherapeutic nicotine product that is not essentially identical to the
1166 provisions of this section and Section [76-10-102](#) is superseded.

1167 (b) Subsection (8)(a) does not apply to the adoption or enforcement of a land use
1168 ordinance by a municipal or county government.

1169 **Section 29. Effective date.**

1170 This bill takes effect on July 1, 2019.