

1 **CIGAR AND PIPE TOBACCO PURCHASING**
2 **RESTRICTIONS AMENDMENTS**

3 2022 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Mark A. Wheatley**

6 Senate Sponsor: _____

8 **LONG TITLE**

9 **General Description:**

10 This bill enacts provisions relating to the sale of cigars and pipe tobacco.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ authorizes telephone, mail, and Internet orders of cigars and pipe tobacco;
- 14 ▶ provides for the licensing and taxation of state cigar and pipe tobacco transactions
- 15 between a remote seller and a consumer in the state; and
- 16 ▶ makes technical and conforming changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 This bill provides a special effective date.

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **59-14-102**, as last amended by Laws of Utah 2020, Chapter 347

24 **76-10-105.1**, as last amended by Laws of Utah 2021, Chapter 348

25 ENACTS:

26 **59-14-901**, Utah Code Annotated 1953

27 **59-14-902**, Utah Code Annotated 1953



- 28 [59-14-903](#), Utah Code Annotated 1953
- 29 [59-14-904](#), Utah Code Annotated 1953
- 30 [59-14-905](#), Utah Code Annotated 1953
- 31 [59-14-906](#), Utah Code Annotated 1953



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

34 Section 1. Section **59-14-102** is amended to read:

35 **59-14-102. Definitions.**

36 As used in this chapter:

37 (1) "Alternative nicotine product" means the same as that term is defined in Section
38 [76-10-101](#).

39 (2) "Cigar" means the same as that term is defined in Section [76-10-101](#).

40 ~~[(2)]~~ (3) "Cigarette" means a roll for smoking made wholly or in part of tobacco:

41 (a) regardless of:

42 (i) the size of the roll;

43 (ii) the shape of the roll; or

44 (iii) whether the tobacco is flavored, adulterated, or mixed with any other ingredient;

45 and

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

48 ~~[(3)]~~ (4) "Cigarette rolling machine" means a device or machine that has the capability
49 to produce at least 150 cigarettes in less than 30 minutes.

50 ~~[(4)]~~ (5) "Cigarette rolling machine operator" means a person who:

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

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

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

56 ~~[(5)]~~ (6) "Consumer" means a person that is not required:

57 (a) under Section [59-14-201](#) to obtain a license under Section [59-14-202](#);

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

59 (c) to obtain a license under Section [59-14-803](#)~~[-]~~; or

60 (d) to obtain a license under Section [59-14-903](#).

61 ~~[(6)]~~ (7) "Counterfeit cigarette" means:

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

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

64 ~~[(7)]~~ (8) "Electronic cigarette" means the same as that term is defined in Section
65 [76-10-101](#).

66 ~~[(8)]~~ (9) "Electronic cigarette product" means the same as that term is defined in
67 Section [76-10-101](#).

68 ~~[(9)]~~ (10) "Electronic cigarette substance" means the same as that term is defined in
69 Section [76-10-101](#).

70 ~~[(10)]~~ (11) "Importer" means a person that imports into the United States, either
71 directly or indirectly, a finished cigarette for sale or distribution.

72 ~~[(11)]~~ (12) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity,
73 or any other person doing business as a distributor or retailer of cigarettes on tribal lands
74 located in the state.

75 ~~[(12)]~~ (13) "Little cigar" means a roll for smoking that:

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

77 (b) uses an integrated cellulose acetate filter or other similar filter; and

78 (c) is wrapped in a substance:

79 (i) containing tobacco; and

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

81 ~~[(13)]~~ (14) (a) Except as provided in Subsection ~~[(13)]~~ (14)(b), "manufacturer" means a
82 person that:

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

84 (ii) makes, modifies, mixes, manufactures, fabricates, assembles, processes, labels,
85 repackages, relabels, or imports an electronic cigarette product or a nicotine product.

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

87 ~~[(14)]~~ (15) "Moist snuff" means tobacco that:

88 (a) is finely cut, ground, or powdered;

89 (b) has at least 45% moisture content, as determined by the commission by rule made

90 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

91 (c) is not intended to be:

92 (i) smoked; or

93 (ii) placed in the nasal cavity; and

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

96 (i) tablets;

97 (ii) lozenges;

98 (iii) strips;

99 (iv) sticks; or

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

101 [~~15~~] (16) "Nicotine" means the same as that term is defined in Section 76-10-101.

102 [~~16~~] (17) "Nicotine product" means the same as that term is defined in Section
103 76-10-101.

104 [~~17~~] (18) "Nontherapeutic nicotine device" means the same as that term is defined in
105 Section 76-10-101.

106 [~~18~~] (19) "Nontherapeutic nicotine device substance" means the same as that term is
107 defined in Section 76-10-101.

108 [~~19~~] (20) "Nontherapeutic nicotine product" means the same as that term is defined in
109 Section 76-10-101.

110 (21) "Pipe tobacco" means loose leaf tobacco that:

111 (a) is intended to be burned in a pipe; or

112 (b) because of the tobacco's appearance, type, packaging, or labeling, is suitable to be
113 used, and likely to be offered or purchased for use, in a pipe.

114 [~~20~~] (22) "Prefilled electronic cigarette" means the same as that term is defined in
115 Section 76-10-101.

116 [~~21~~] (23) "Prefilled nontherapeutic nicotine device" means the same as that term is
117 defined in Section 76-10-101.

118 [~~22~~] (24) "Retailer" means a person that:

119 (a) sells or distributes a cigarette, cigar, pipe tobacco, an electronic cigarette product, or
120 a nicotine product to a consumer in the state; or

121 (b) intends to sell or distribute a cigarette, cigar, pipe tobacco, an electronic cigarette
 122 product, or a nicotine product to a consumer in the state.

123 ~~[(23)]~~ (25) "Stamp" means the indicia required to be placed on a cigarette package that
 124 evidences payment of the tax on cigarettes required by Section 59-14-205.

125 ~~[(24)]~~ (26) (a) "Tobacco product" means a product made of, or containing, tobacco.

126 (b) "Tobacco product" includes:

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

128 (ii) a little cigar; or

129 (iii) moist snuff.

130 (c) "Tobacco product" does not include a cigarette, a cigar, or pipe tobacco.

131 ~~[(25)]~~ (27) "Tribal lands" means land held by the United States in trust for a federally
 132 recognized Indian tribe.

133 Section 2. Section **59-14-901** is enacted to read:

134 **Part 9. Cigar and Pipe Tobacco Licensing and Taxation Act**

135 **59-14-901. Definitions.**

136 (1) "Actual cost" means the actual price paid by a retailer for a specific item by
 137 stock-keeping unit.

138 (2) "Actual cost list" means a list, prepared, maintained, and certified annually by each
 139 retailer, of the cost of each item by stock-keeping unit.

140 (3) "Age verification system" means a service that:

141 (a) is provided by an independent third party; and

142 (b) compares information available from a commercially available database, or an
 143 aggregate of available databases, that is used regularly by government agencies and businesses
 144 to verify the age and identity of the personal information provided by a consumer during the
 145 ordering process.

146 (4) "Remote sale of a cigar or pipe tobacco" means the sale of a cigar or pipe tobacco
 147 to a consumer, if:

148 (a) (i) the consumer submits the order for the sale by:

149 (A) telephone or other method of voice transmission;

150 (B) mail; or

151 (C) the Internet or other online service; or

152 (ii) the retailer is not in the physical presence of the consumer when the request for the
153 sale is made; and

154 (b) (i) the retailer delivers the cigar or pipe tobacco to the consumer by common
155 carrier, private delivery service, or other method of remote delivery; or

156 (ii) the retailer is not in the physical presence of the consumer when the consumer
157 obtains possession of the cigar or pipe tobacco.

158 (5) "Remote seller" means a retailer that obtains a license in accordance with
159 Subsection 59-14-902(2)(b) and conducts a remote sale of a cigar or pipe tobacco.

160 Section 3. Section 59-14-902 is enacted to read:

161 **59-14-902. Authorization for remote sale of a cigar or pipe tobacco.**

162 (1) A remote seller may make a remote sale of a cigar or pipe tobacco in this state if the
163 remote seller:

164 (a) complies with the licensing and taxation requirements of this part;

165 (b) subject to Subsection (3), collects the sales and use taxes due under Chapter 12,
166 Sales and Use Tax Act;

167 (c) reports to the commission, on an annual basis:

168 (i) the number of remote sales of cigar or pipe tobacco; and

169 (ii) the gross sales amount;

170 (d) complies with the age and access requirements for cigars or pipe tobacco described
171 in Section 10-8-47 or Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic

172 Chemical Solvents; and

173 (e) uses an age verification system.

174 (2) A remote seller may not:

175 (a) sell any product containing nicotine or tobacco, other than a cigar or pipe tobacco;

176 or

177 (b) make a sale that would be permitted under a separate license under this chapter.

178 (3) A remote seller that is located outside of the state and meets the requirements of
179 Section 59-12-107.6 shall obtain a sales and use tax license and collect and remit the applicable
180 sales and use tax in accordance with Chapter 12, Sales and Use Tax Act.

181 (4) The commission shall establish a mechanism for a person to report a perceived
182 violation of this section.

183 Section 4. Section **59-14-903** is enacted to read:

184 **59-14-903. License to sell cigar or pipe tobacco.**

185 (1) A person may not sell, offer to sell, or distribute a cigar or pipe tobacco in this state
186 without first:

187 (a) except as provided in Subsection (2), obtaining a license from the commission
188 under this section to sell cigar or pipe tobacco; and

189 (b) complying with any bonding requirement described in Subsection (5).

190 (2) (a) Except for a retailer making a remote sale of a cigar or pipe tobacco, a person
191 that holds a valid license to sell cigarettes under Section 59-14-201, a person that holds a valid
192 license to sell tobacco products under Section 59-14-301, or a person that holds a valid license
193 to sell electronic cigarettes or nicotine products under Section 59-14-803 may, without
194 obtaining a separate license in accordance with this section, sell, offer to sell, or distribute a
195 cigar or pipe tobacco in this state.

196 (b) A retailer shall obtain a separate license in accordance with this section to make a
197 remote sale of a cigar or pipe tobacco or to offer to make a remote sale of a cigar or pipe
198 tobacco in this state.

199 (3) The commission shall issue a license to sell a cigar or pipe tobacco to a person that
200 submits an application, on a form created by the commission, that includes:

201 (a) the person's name;

202 (b) the address of the facility from which the person will sell a cigar or pipe tobacco;

203 (c) if the person is a retailer that wishes to make a remote sale of a cigar or pipe
204 tobacco:

205 (i) the federal employer identification number;

206 (ii) proof that the retailer uses an age verification system; and

207 (iii) proof of receipt of a sales tax license if applicable; and

208 (d) any other information the commission requires to implement this chapter.

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

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

211 (b) valid for three years;

212 (c)(i) except for a remote seller, valid only for a physical location; or

213 (ii) for a remote seller, valid only for a single physical or virtual location; and

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

215 (5) (a) The commission shall require a manufacturer, a distributor, a retailer, or a
216 remote seller that is responsible under this part for the collection of tax on a cigar or pipe
217 tobacco to post a bond.

218 (b) The manufacturer, the distributor, or the retailer may post the bond required by
219 Subsection (5)(a) in combination with any bond required by Section [59-14-201](#) or [59-14-803](#).

220 (c) Subject to Subsections (5)(d) and (e), the commission shall determine the form and
221 amount of the bond.

222 (d) A manufacturer, a distributor, or a retailer that posts a bond required by Section
223 [59-14-301](#) is not required to post an additional bond under this section.

224 (e) The minimum amount of the bond shall be:

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

226 (ii) if the manufacturer, the distributor, the retailer, or the remote seller posts the bond
227 required by Subsection (5)(a) in combination with a bond required by either Section [59-14-201](#)
228 or [59-14-803](#), \$1,000; or

229 (iii) if the manufacturer, the distributor, the retailer, or the remote seller posts the bond
230 required by Subsection (5)(a) in combination with the bonds required by both Sections
231 [59-14-201](#) and [59-14-803](#), \$1,500.

232 (6) In addition to other authorized reasons for the commission to deny or revoke a
233 license or a license renewal under this title, the commission may deny or revoke a license to a
234 retailer who makes or wishes to make remote sales if:

235 (a) the retailer violates this title;

236 (b) the retailer does not meet the requirements for licensure or the retailer submits
237 misleading or false information on the retailer's application for licensure; or

238 (c) a retailer has had a license to sell any tobacco or nicotine product revoked by
239 another state.

240 (7) The commission may make rules in accordance with Title 63G, Chapter 3, Utah
241 Administrative Rulemaking Act, to establish the additional information described in
242 Subsection (3)(d) that a person shall provide in the application described in Subsection (3).

243 (8) It is a class B misdemeanor for a person to violate Subsection (1).

244 (9) The commission may not charge a fee for a license under this section.

245 Section 5. Section **59-14-904** is enacted to read:

246 **59-14-904. Taxation of cigar and pipe tobacco.**

247 (1) A tax is imposed upon the sale of a cigar or pipe tobacco or the remote sale of a
248 cigar or pipe tobacco.

249 (2) The amount of tax under this section is .86 multiplied by the actual cost.

250 (3) (a) Except as provided in Subsection (3)(b), a manufacturer, jobber, distributor,
251 wholesaler, retailer, user, or consumer shall pay the tax levied under Subsection (1) at the time
252 the cigar or pipe tobacco is first received in the state.

253 (b) A remote seller shall collect the tax levied under Subsection (1) from a consumer at
254 the time of a remote sale of a cigar or pipe tobacco.

255 Section 6. Section **59-14-905** is enacted to read:

256 **59-14-905. Remittance of tax -- Returns -- Invoice required -- Filing requirement**
257 **-- Exception -- Penalty -- Overpayment.**

258 (1) (a) The manufacturer, jobber, distributor, wholesaler, retailer, remote seller,
259 consumer, or user that collects the tax imposed on a cigar or pipe tobacco shall remit to the
260 commission, in an electronic format approved by the commission:

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

262 (ii) the quarterly tax return.

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

265 (2) (a) A manufacturer, jobber, distributor, wholesaler, retailer, or any other person
266 selling a cigar or pipe tobacco to a person other than the ultimate consumer shall furnish the
267 purchaser with an itemized invoice showing:

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

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

270 (iii) the date of sale;

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

272 (v) the discount, if any.

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

274 (c) The seller and the purchaser shall retain a copy of each invoice and make the
275 invoice available for inspection at the request of the commission or the commission's agent for

276 a period of three years following the sale.

277 (3) (a) A remote seller shall furnish the consumer with an itemized invoice showing:

278 (i) the remote seller's name and address;

279 (ii) the name and delivery address of the consumer;

280 (iii) the date of sale;

281 (iv) actual cost and quantity for each product;

282 (v) the itemized sales and use tax; and

283 (vi) shipping charges, if stated separately.

284 (b) The remote seller shall retain a copy of each invoice and make the invoice available

285 for inspection at the request of the commission or the commission's agent for a period of three

286 years following the remote sale of a cigar or pipe tobacco.

287 (c) The remote seller shall retain purchasing records to establish the actual cost for

288 each product.

289 (4) (a) A consumer that purchases an untaxed cigar or pipe tobacco for use or other

290 consumption shall:

291 (i) file with the commission, on forms prescribed by the commission, a statement

292 showing the quantity and description of the item subject to tax under this part; and

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

294 (b) The consumer shall file the statement described in Subsection (4)(a) and pay the tax

295 due on or before the last day of the month immediately following the month during which the

296 consumer purchased an untaxed cigar or pipe tobacco.

297 (c) A consumer shall maintain records necessary to determine the amount of tax the

298 consumer is liable to pay under this part for a period of three years following the date on which

299 the statement required by this section was filed.

300 (5) A tourist who imports an untaxed cigar or pipe tobacco into the state does not need

301 to file the statement described in Subsection (5) or pay the tax if the item is for the tourist's

302 own use or consumption while in this state.

303 (6) In addition to the tax required by this part, a person shall pay a penalty as provided

304 in Section [59-1-401](#), plus interest at the rate and in the manner prescribed in Section [59-1-402](#),

305 if a person subject to this section fails to:

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

- 307 (b) pay the tax on time; or
- 308 (c) file a return required by this part.
- 309 (7) An overpayment of a tax imposed by this part shall accrue interest at the rate and in
- 310 the manner prescribed in Section [59-1-402](#).

311 Section 7. Section **59-14-906** is enacted to read:

312 **59-14-906. Refund of taxes paid -- Exemption for exported cigars and pipe**
313 **tobacco.**

314 (1) When a cigar or pipe tobacco under this chapter is sold and shipped to a regular
315 dealer in those articles in another state, the seller in this state shall be entitled to a refund of the
316 actual amount of the taxes paid, upon condition that the seller in this state:

- 317 (a) is a licensed dealer;
- 318 (b) signs an affidavit that the cigar or pipe tobacco was sold and shipped to a regular
319 dealer in those articles in another state;
- 320 (c) furnishes, from the purchaser, a written acknowledgment that the purchaser has
321 received the cigar or pipe tobacco; and
- 322 (d) reports the name and address of the purchaser.

323 (2) A wholesaler or distributor in this state that exports a cigar or pipe tobacco to a
324 regular dealer in those articles in another state shall be exempt from the payment of any tax
325 under this chapter upon furnishing proof of the sale and exportation as the commission may
326 require.

327 Section 8. Section **76-10-105.1** is amended to read:

328 **76-10-105.1. Requirement of direct, face-to-face sale of a tobacco product, an**
329 **electronic cigarette product, or a nicotine product -- Minors not allowed in tobacco**
330 **specialty shop -- Penalties.**

- 331 (1) As used in this section:
- 332 (a) (i) "Face-to-face exchange" means a transaction made in person between an
333 individual and a retailer or retailer's employee.
- 334 (ii) "Face-to-face exchange" does not include a sale through a:
- 335 (A) vending machine; or
- 336 (B) self-service display.
- 337 (b) "Retailer" means a person who:

338 (i) sells a tobacco product, an electronic cigarette product, or a nicotine product to an
339 individual for personal consumption; or

340 (ii) operates a facility with a vending machine that sells a tobacco product, an
341 electronic cigarette product, or a nicotine product.

342 (c) "Self-service display" means a display of a tobacco product, an electronic cigarette
343 product, or a nicotine product to which the public has access without the intervention of a
344 retailer or retailer's employee.

345 (2) Except as provided in Subsection (3), a retailer may sell a tobacco product, an
346 electronic cigarette product, or a nicotine product only in a face-to-face exchange.

347 (3) The face-to-face sale requirement in Subsection (2) does not apply to:

348 (a) a mail-order, telephone, or Internet sale made in compliance with Section
349 [59-14-509](#) or [59-14-904](#);

350 (b) a sale from a vending machine or self-service display that is located in an area of a
351 retailer's facility:

352 (i) that is distinct and separate from the rest of the facility; and

353 (ii) where the retailer only allows an individual who complies with Subsection (4) to be
354 present; or

355 (c) a sale at a retail tobacco specialty business.

356 (4) An individual who is under 21 years old may not enter or be present at a retail
357 tobacco specialty business unless the individual is:

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

359 (b) (i) present at the retail tobacco specialty business solely for the purpose of
360 providing a service to the retail tobacco specialty business, including making a delivery;

361 (ii) monitored by the proprietor of the retail tobacco specialty business or an employee
362 of the retail tobacco specialty business; and

363 (iii) not permitted to make any purchase or conduct any commercial transaction other
364 than the service described in Subsection (4)(b)(i).

365 (5) A parent or legal guardian who accompanies, under Subsection (4)(a), an individual
366 into an area described in Subsection (3)(b) or into a retail tobacco specialty business may not
367 allow the individual to purchase a tobacco product, an electronic cigarette product, or a
368 nicotine product.

- 369 (6) A violation of Subsection (2) or (4) is a:
- 370 (a) class C misdemeanor on the first offense;
- 371 (b) class B misdemeanor on the second offense; and
- 372 (c) class A misdemeanor on any subsequent offenses.
- 373 (7) An individual who violates Subsection (5) is guilty of an offense under Section
- 374 [76-10-104](#).
- 375 Section 9. **Effective date.**
- 376 This bill takes effect on July 1, 2023.