

**ELECTRONIC CIGARETTE AND OTHER NICOTINE
PRODUCT AMENDMENTS**

2018 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;
- ▶ imposes civil penalties for the sale of an alternative nicotine product or a nontherapeutic nicotine product;
- ▶ requires the Department of Health to regulate an alternative nicotine product or a nontherapeutic nicotine product;
- ▶ imposes licensing 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, an alternative nicotine product, a nontherapeutic nicotine device substance, and certain prefilled devices;
- ▶ provides for the remittance of the tax collected;
- ▶ creates the Electronic Cigarette Substance and Other Nicotine Product Tax Restricted Account;
- ▶ addresses use of revenue from the taxation of an electronic cigarette substance, an



- 28 alternative nicotine product, and a nontherapeutic nicotine device substance;
- 29 ▶ provides criminal penalties for a sale or purchase of an electronic cigarette product,
- 30 an alternative nicotine product, or a nontherapeutic nicotine product, in violation of
- 31 law; and
- 32 ▶ makes technical and conforming changes.

33 Money Appropriated in this Bill:

34 None

35 Other Special Clauses:

36 This bill provides a special effective date.

37 Utah Code Sections Affected:

38 AMENDS:

- 39 **26-42-101**, as enacted by Laws of Utah 1998, Chapter 319
- 40 **26-42-102**, as last amended by Laws of Utah 2015, Chapter 132
- 41 **26-42-103**, as last amended by Laws of Utah 2015, Chapter 132
- 42 **26-42-106**, as enacted by Laws of Utah 1998, Chapter 319
- 43 **26-42-107**, as last amended by Laws of Utah 2015, Chapter 132
- 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 **59-14-102**, as last amended by Laws of Utah 2013, Chapter 148
- 47 **59-14-201**, as last amended by Laws of Utah 2013, Chapter 148
- 48 **59-14-203.5**, as last amended by Laws of Utah 2011, Chapter 96
- 49 **59-14-801**, as enacted by Laws of Utah 2015, Chapter 132
- 50 **59-14-802**, as enacted by Laws of Utah 2015, Chapter 132
- 51 **59-14-803**, as enacted by Laws of Utah 2015, Chapter 132
- 52 **76-10-101**, as last amended by Laws of Utah 2015, Chapters 66, 132 and last amended
- 53 by Coordination Clause, Laws of Utah 2015, Chapter 132
- 54 **76-10-104**, as last amended by Laws of Utah 2010, Chapter 114
- 55 **76-10-104.1**, as last amended by Laws of Utah 2013, Chapter 278
- 56 **76-10-105**, as last amended by Laws of Utah 2017, Chapter 330
- 57 **76-10-105.1**, as last amended by Laws of Utah 2015, Chapters 66 and 132

58 ENACTS:

59 [26-57-104](#), Utah Code Annotated 1953
 60 [59-14-804](#), Utah Code Annotated 1953
 61 [59-14-805](#), Utah Code Annotated 1953
 62 [59-14-806](#), Utah Code Annotated 1953

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

65 Section 1. Section [26-42-101](#) is amended to read:

66 **CHAPTER 42. CIVIL PENALTIES FOR TOBACCO, ELECTRONIC CIGARETTE,**
 67 **AND OTHER NICOTINE PRODUCT SALES TO UNDERAGE PERSONS**

68 **[26-42-101](#). Title.**

69 This chapter is known as "Civil Penalties for Tobacco, Electronic Cigarette, and Other
 70 Nicotine Product Sales to Underage Persons."

71 Section 2. Section [26-42-102](#) is amended to read:

72 **[26-42-102](#). Definitions.**

73 As used in this chapter:

74 (1) "Alternative nicotine product" means the same as that term is defined in Section
 75 [59-14-102](#).

76 [~~(1)~~] (2) "Commission" means the [~~Utah~~] State Tax Commission.

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

79 [~~(2)~~] (4) "Employee" means an employee of a licensee.

80 [~~(3)~~] (5) "Enforcing agency" means the state Department of Health, or any local health
 81 department, enforcing the provisions of this chapter.

82 [~~(4)~~] (6) "Licensee" means a person licensed:

83 (a) under Section [59-14-201](#) to sell cigarettes at retail;

84 (b) under Section [59-14-301](#) to sell tobacco products at retail; or

85 (c) under Section [59-14-803](#) to sell an electronic cigarette product, an alternative
 86 nicotine product, or a nontherapeutic nicotine product.

87 [~~(5)~~] (7) "License to sell tobacco" or "license" means a license issued:

88 (a) under Section [59-14-201](#) to sell cigarettes at retail;

89 (b) under Section [59-14-301](#) to sell tobacco products at retail; or

90 (c) under Section 59-14-803 to sell an electronic cigarette product, an alternative
91 nicotine product, or a nontherapeutic nicotine product.

92 (8) "Nontherapeutic nicotine product" means the same as that term is defined in
93 Section 59-14-102.

94 [~~(6)~~] (9) "Tobacco" means[~~:(a)~~] a cigarette or a tobacco product, as defined in Section
95 59-14-102[~~;~~~~or~~].

96 [~~(b)~~] an electronic cigarette product, as defined in Section 59-14-802.

97 Section 3. Section 26-42-103 is amended to read:

98 **26-42-103. Violations and penalties -- Imposition by enforcing agency and tax**
99 **commission.**

100 (1) If, following an investigation or issuance of a citation or information under Section
101 77-39-101, an enforcing agency determines under Section 26-42-104 that a licensee or any
102 employee has sold tobacco, an electronic cigarette product, an alternative nicotine product, or a
103 nontherapeutic nicotine product to a person younger than 19 years of age, as prohibited by
104 Section 76-10-104, the enforcing agency may impose upon the licensee the following
105 administrative penalties:

106 (a) upon the first violation, a penalty of not more than \$300;

107 (b) upon a second violation at the same retail location[~~;~~] and within 12 months of the
108 first violation, a penalty of not more than \$750; and

109 (c) upon a third or subsequent violation at the same retail location and within 12
110 months of the first violation, a penalty of not more than \$1,000.

111 (2) The enforcing agency shall notify the commission in writing of any order or order
112 of default finding a violation of Subsection (1) [~~which~~] that is a third or fourth violation.

113 (3) (a) [~~The commission, upon~~] Upon receipt of the written notification under
114 Subsection (2), the commission shall take action under Section 59-14-203.5 [~~or~~], 59-14-301.5,
115 or 59-14-803 against the license to sell tobacco[~~;~~], an electronic cigarette product, an
116 alternative nicotine product, or a nontherapeutic nicotine product in accordance with
117 Subsection (3)(b).

118 [~~(a)~~] (b) (i) [~~by suspending~~] Upon receipt of written notification of a third offense
119 under Subsection (1)(c), the commission shall suspend the licensee's license to sell tobacco, an
120 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine

121 product at that location for not more than 30 days~~[, upon receipt of notification of a third~~
122 ~~violation under Subsection (1)(c); and].~~

123 ~~[(b)] (ii) [by revoking] Upon receipt of written notification of a fourth violation under~~
124 Subsection (1)(c), the commission shall revoke the license held by the licensee, including any
125 license under suspension, to sell tobacco, an electronic cigarette product, an alternative nicotine
126 product, or a nontherapeutic nicotine product at that location ~~[held by the licensee, including~~
127 ~~any license under suspension, upon receipt of notification of a fourth violation under~~
128 ~~Subsection (1)(c)].~~

129 (4) When the commission revokes a license under Subsection (3)(b)(ii), the
130 commission may not issue to the licensee, or to the business entity using the license that is
131 revoked, a license under Section 59-14-202, 59-14-301, or 59-14-803 to sell tobacco, an
132 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine
133 product at the location for which the license was issued for one year after:

- 134 (a) the day on which the time for filing an appeal of the revocation ends; or
135 (b) if the revocation is appealed, the day on which the decision to uphold the
136 revocation becomes final.

137 (5) This section does not prevent any bona fide purchaser of the business, who is not a
138 sole proprietor, director, corporate officer, or partner or other holder of significant interest in
139 the entity selling the business, from immediately applying for and obtaining a license to sell
140 tobacco, an electronic cigarette product, an alternative nicotine product, or a nontherapeutic
141 nicotine product.

142 Section 4. Section 26-42-106 is amended to read:

143 **26-42-106. Recognition of licensee's training program.**

144 (1) In determining the amount of the monetary penalty to ~~[be imposed]~~ impose for an
145 employee's violation of Section 26-42-103, the hearing officer shall reduce the penalty by at
146 least 50% if ~~[he]~~ the hearing officer determines:

- 147 (a) the licensee has implemented a documented employee training program; and
148 (b) the employee has completed that training program within 30 days of commencing
149 duties of selling tobacco products, electronic cigarette products, alternative nicotine products,
150 or nontherapeutic nicotine products.

151 (2) (a) ~~[If]~~ The hearing officer may suspend all or a portion of the monetary penalty for

152 a first offense at a location if:

153 (i) the hearing officer determines under Subsection (1)~~[- regarding a first offense at a~~
154 ~~location,]~~ that the licensee has not implemented a documented training program with a written
155 curriculum for employees at that location regarding compliance with this chapter~~[- the hearing~~
156 ~~officer may suspend all or a portion of the monetary penalty, contingent upon the licensee's~~
157 initiating]; and

158 (ii) the licensee agrees to initiate a training program for employees at that location
159 within 30 days after the hearing date.

160 (b) If the hearing officer determines at a subsequent hearing that the licensee has not
161 implemented the training program within the time period required under Subsection (2)(a), the
162 hearing officer shall promptly impose the suspended monetary penalty ~~[shall be promptly~~
163 ~~imposed]~~, unless the licensee demonstrates good cause for granting an extension of time for
164 implementation of the training program.

165 Section 5. Section **26-42-107** is amended to read:

166 **26-42-107. Allocation of civil penalties.**

167 Civil monetary penalties collected under this chapter shall be allocated as follows:

168 (1) if a local health department conducts an adjudicative proceeding under Section
169 **26-42-104**, the penalty shall be paid to the treasurer of the county in which the violation was
170 committed~~[-]~~ and transferred to:

171 (a) the local health department if ~~[it]~~ the local health department conducts a civil
172 hearing under Section **26-42-104** alone; or

173 (b) in equal portions to the local health department and the other agencies that
174 participated in the hearing process;

175 (2) if the state Department of Health conducts a civil hearing under Section **26-42-104**,
176 the penalty shall be deposited in the state's General Fund~~[-]~~ and may be appropriated by the
177 Legislature to the state Department of Health for use in enforcement of this chapter; and

178 (3) if the civil penalty involves suspension or revocation of a license to sell tobacco, an
179 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine
180 product under Section **59-14-203.5**, **59-14-301.5**, or **59-14-803**, half of the penalty shall be paid
181 to the commission~~[-]~~ and the other half shall be allocated under Subsection (1) or (2)~~[-]~~ as
182 appropriate.

183 Section 6. Section 26-57-101 is amended to read:

184 **CHAPTER 57. ELECTRONIC CIGARETTE AND OTHER NICOTINE PRODUCT**
185 **REGULATION ACT**

186 **26-57-101. Title.**

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

189 Section 7. Section 26-57-102 is amended to read:

190 **26-57-102. Definitions.**

191 As used in this chapter:

192 (1) "Alternative nicotine product" means the same as that term is defined in Section
193 59-14-102.

194 ~~[(1)]~~ (2) "Cigarette" means the same as that term is defined in Section 59-14-102.

195 ~~[(2)]~~ (3) "Electronic cigarette" means the same as that term is defined in Section
196 ~~[59-14-802]~~ 59-14-102.

197 ~~[(3)]~~ (4) "Electronic cigarette product" means an electronic cigarette or an electronic
198 cigarette substance.

199 ~~[(4)]~~ (5) "Electronic cigarette substance" means the same as that term is defined in
200 Section ~~[59-14-802]~~ 59-14-102.

201 (6) "Local health department" means the same as that term is defined in Section
202 26A-1-102.

203 ~~[(5)]~~ (7) "Manufacture" includes:

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

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

206 (8) "Manufacturer sealed alternative nicotine product" means an alternative nicotine
207 product that:

208 (a) is prefilled by the alternative nicotine product manufacturer; and

209 (b) the alternative nicotine product manufacturer does not intend for a consumer to
210 open.

211 ~~[(6)]~~ (9) "Manufacturer sealed electronic cigarette substance" means an electronic
212 cigarette substance that is sold in a container that:

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

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

215 (10) "Manufacturer sealed nontherapeutic nicotine product" means a nontherapeutic
216 nicotine product that:

217 (a) is prefilled by the nontherapeutic nicotine product manufacturer; and

218 (b) the nontherapeutic nicotine product manufacturer does not intend for a consumer to
219 open.

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

222 (12) "Nontherapeutic nicotine device substance" means the same as that term is defined
223 in Section [59-14-102](#).

224 (13) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device or a
225 nontherapeutic nicotine device substance.

226 Section 8. Section **26-57-104** is enacted to read:

227 **26-57-104. Nontherapeutic nicotine products and alternative nicotine products --**
228 **Labeling -- Manufacturing and quality control standards.**

229 (1) (a) To the extent that the United States Food and Drug Administration issues a
230 regulation regarding labeling, nicotine content, packaging, or product quality for a
231 nontherapeutic nicotine product or an alternative nicotine product, the federal regulations apply
232 and the department is not required under this section to establish a rule on the same subject for
233 which a federal regulation exists.

234 (b) The department or a local health department may not enact a rule or regulation
235 regarding labeling, nicotine content, packaging, or product quality for an alternative nicotine
236 product or a nontherapeutic nicotine product that conflicts with a regulation by the United
237 States Food and Drug Administration.

238 (2) No later than January 1, 2019, the department shall, in consultation with a local
239 health department and with input from members of the public, establish by rule made in
240 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, standards for an
241 alternative nicotine product and a nontherapeutic nicotine product regarding:

242 (a) labeling;

243 (b) nicotine content;

244 (c) packaging; and

245 (d) product quality.

246 (3) The standards established by the department under Subsection (2) do not apply to a
247 manufacturer sealed alternative nicotine product or a manufacturer sealed nontherapeutic
248 nicotine product.

249 (4) Beginning on July 1, 2019, a person may not distribute or sell an alternative
250 nicotine product or a nontherapeutic nicotine product unless the alternative nicotine product or
251 nontherapeutic nicotine product complies with the standards established by the department
252 under Subsection (2).

253 (5) (a) Beginning on July 1, 2019, a local health department may not enact a rule or
254 regulation regarding the labeling, nicotine content, packaging, or product quality of an
255 alternative nicotine product or a nontherapeutic nicotine product that is not identical to the
256 standards established by the department under Subsection (2).

257 (b) Except as provided in Subsection (5)(c), a local health department may enact a rule
258 or regulation regarding alternative nicotine product manufacturing or nontherapeutic nicotine
259 product manufacturing.

260 (c) A local health department may not enact a rule or regulation regarding a
261 manufacturer sealed alternative nicotine product or a manufacturer sealed nontherapeutic
262 nicotine product.

263 Section 9. Section **59-14-102** is amended to read:

264 **59-14-102. Definitions.**

265 As used in this chapter:

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

269 (i) contains nicotine;

270 (ii) is intended for human consumption;

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

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

274 (b) "Alternative nicotine product" includes:

275 (i) pure nicotine;

- 276 (ii) snortable nicotine;
- 277 (iii) dissolvable orbs, pellets, sticks, or strips; and
- 278 (iv) nicotine-laced food and beverage.

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

281 ~~[(1)]~~ (2) "Cigarette" means a roll for smoking made wholly or in part of tobacco:

282 (a) regardless of:

283 (i) the size of the roll;

284 (ii) the shape of the roll; or

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

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

289 ~~[(2)]~~ (3) "Cigarette rolling machine" means a device or machine that has the capability
 290 to produce at least 150 cigarettes in less than 30 minutes.

291 ~~[(3)]~~ (4) "Cigarette rolling machine operator" means a person ~~[who]~~ that:

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

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

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

297 ~~[(4)]~~ (5) "Consumer" means a person that is not required:

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

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

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

301 ~~[(5)]~~ (6) "Counterfeit cigarette" means:

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

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

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

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

307 (ii) a component of the device described in Subsection (7)(a)(i); or
 308 (iii) an accessory sold in the same package as the device described in Subsection
 309 (7)(a)(i).

310 (b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section
 311 26-38-2.

312 (8) "Electronic cigarette product" means an electronic cigarette or an electronic
 313 cigarette substance.

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

316 ~~[(6)]~~ (10) "Importer" means a person ~~[who]~~ that imports into the United States, either
 317 directly or indirectly, a finished cigarette for sale or distribution.

318 ~~[(7)]~~ (11) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity,
 319 or any other person doing business as a distributor or retailer of cigarettes on tribal lands
 320 located in the state.

321 ~~[(8)]~~ (12) "Little cigar" means a roll for smoking that:

- 322 (a) is made wholly or in part of tobacco;
 323 (b) ~~[that]~~ uses an integrated cellulose acetate filter or other similar filter; and
 324 (c) ~~[that]~~ is wrapped in a substance:
 325 (i) containing tobacco; and
 326 (ii) that is not exclusively natural leaf tobacco.

327 ~~[(9)]~~ (13) (a) Except as provided in Subsection ~~[(9)]~~ (13)(b), "manufacturer" means a
 328 person ~~[who]~~ that:

- 329 (i) manufactures, fabricates, assembles, processes, or labels a finished cigarette; or
 330 (ii) makes, modifies, mixes, manufactures, fabricates, assembles, processes, labels,
 331 repackages, relabels, or imports an electronic cigarette product, an alternative nicotine product,
 332 or a nontherapeutic nicotine product.

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

334 ~~[(10)]~~ (14) "Moist snuff" means tobacco that:

- 335 (a) is finely~~[-(i)]~~ cut~~[-(ii)]~~, ground~~[-(i)]~~, or ~~[(iii)]~~ powdered;
 336 (b) has at least 45% moisture content, as determined by the commission by rule made
 337 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

338 (c) is not intended to be:
339 (i) smoked; or
340 (ii) placed in the nasal cavity; and
341 (d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or
342 distributed in single-use units, including:

- 343 (i) tablets;
- 344 (ii) lozenges;
- 345 (iii) strips;
- 346 (iv) sticks; or
- 347 (v) packages containing multiple single-use units.

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

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

- 351 (i) has a pressurized canister that is used to administer nicotine to the user through
352 inhalation or intranasally;
- 353 (ii) is not purchased with a prescription from a licensed physician; and
- 354 (iii) is not approved by the United States Food and Drug Administration as nicotine
355 replacement therapy.

356 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or
357 nontherapeutic nicotine nasal spray.

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

- 359 (a) contains nicotine;
- 360 (b) is used or intended to be used in a nontherapeutic nicotine device;
- 361 (c) is not purchased with a prescription from a licensed physician; and
- 362 (d) is not approved by the United States Food and Drug Administration as nicotine
363 replacement therapy.

364 (18) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device or a
365 nontherapeutic nicotine device substance.

366 ~~[(H)]~~ (19) "Retailer" means a person that:

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

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

371 ~~[(12)]~~ (20) "Stamp" means the indicia required to be placed on a cigarette package that
 372 evidences payment of the tax on cigarettes required by Section 59-14-205.

373 ~~[(13)]~~ (21) (a) "Tobacco product" means a product made of, or containing, tobacco.

374 (b) "Tobacco product" includes:

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

376 (ii) a little cigar; or

377 (iii) moist snuff.

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

379 ~~[(14)]~~ (22) "Tribal lands" means land held by the United States in trust for a federally
 380 recognized Indian tribe.

381 Section 10. Section 59-14-201 is amended to read:

382 **59-14-201. License -- Application of part -- Fee -- Bond -- Exceptions.**

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

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

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

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

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

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

396 (iii) The bond shall be executed by the applicant as principal, with a corporate surety,
 397 payable to the state and conditioned upon the faithful performance of all the requirements of
 398 this chapter, including the payment of all taxes, penalties, and other obligations.

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

400 (i) purchases₂ during the license year₂ only products that have the proper state stamp
401 affixed as required by this chapter; and

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

403 Section 11. Section 59-14-203.5 is amended to read:

404 **59-14-203.5. Commission action to suspend or revoke license.**

405 (1) (a) The commission shall suspend or revoke licenses to sell tobacco, as required
406 under Section 26-42-103 regarding suspension or revocation of a license due to the sale of
407 cigarettes to a person younger than 19 years of age, upon receipt of notice of an enforcing
408 agency's finding of a violation of Section 26-42-103.

409 (b) The commission shall provide written notice of the suspension or revocation to the
410 licensee.

411 (2) It is the duty of the enforcing agency to advise the commission of any finding of a
412 violation of Section 26-42-103 for which suspension or revocation of the license is a penalty.

413 (3) When the commission revokes a licensee's license under this section₂, the
414 commission may not issue to the licensee, or to the business entity using the license that is
415 revoked, a license to sell cigarettes under Section 59-14-202 [or], a license to sell tobacco
416 under Section 59-14-301 [to sell tobacco], or a license to sell an electronic cigarette product, an
417 alternative nicotine product, or a nontherapeutic nicotine product under Section 59-14-803 at
418 the location for which the license was issued for one year after:

419 (a) the day on which the time for filing an appeal of the revocation ends; or

420 (b) if the revocation is appealed, the day on which the decision to uphold the
421 revocation becomes final.

422 Section 12. Section 59-14-801 is amended to read:

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

424 **59-14-801. Title.**

425 This part is known as the "Electronic Cigarette and Other Nicotine Product Licensing
426 and Taxation Act."

427 Section 13. Section 59-14-802 is amended to read:

428 **59-14-802. Definitions.**

429 As used in this part:

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

431 ~~[(2) (a) "Electronic cigarette" means:]~~
432 ~~[(i) an electronic device used to deliver or capable of delivering vapor containing~~
433 ~~nicotine to an individual's respiratory system;]~~
434 ~~[(ii) a component of the device described in Subsection (2)(a)(i); or]~~
435 ~~[(iii) an accessory sold in the same package as the device described in Subsection~~
436 ~~(2)(a)(i).]~~
437 ~~[(b) "Electronic cigarette" includes an e-cigarette as defined in Section [26-38-2](#).]~~
438 ~~[(3) "Electronic cigarette product" means an electronic cigarette or an electronic~~
439 ~~cigarette substance.]~~
440 ~~[(4) "Electronic cigarette substance" means any substance, including liquid containing~~
441 ~~nicotine, used or intended for use in an electronic cigarette.]~~
442 ~~[(5) (1) "Enforcing agency" means the Department of Health, a county health~~
443 ~~department, or a local health department, when enforcing:~~
444 ~~(a) Title 26, Chapter 42, Civil Penalties for Tobacco, Electronic Cigarette, and Other~~
445 ~~Nicotine Product Sales to Underage Persons; or~~
446 ~~(b) Title 26, Chapter 57, Electronic Cigarette and Other Nicotine Product Regulation~~
447 ~~Act.~~
448 ~~[(6) (2) "Licensee" means a person that holds a valid license to sell an electronic~~
449 ~~cigarette ~~[products]~~ product, an alternative nicotine product, or a nontherapeutic nicotine~~
450 ~~product.~~
451 ~~[(7) "License to sell an electronic cigarette product" means a license issued by the~~
452 ~~commission under Subsection [59-14-803\(3\)](#).]~~
453 ~~(3) (a) "Manufacturer's sales price" means the amount the manufacturer of an electronic~~
454 ~~cigarette substance, prefilled electronic cigarette, alternative nicotine product, nontherapeutic~~
455 ~~nicotine device substance, or prefilled nontherapeutic nicotine device charges after subtracting~~
456 ~~a discount.~~
457 ~~(b) "Manufacturer's sales price" includes an original Utah destination freight charge,~~
458 ~~regardless of:~~
459 ~~(i) whether the electronic cigarette substance, prefilled electronic cigarette, alternative~~
460 ~~nicotine product, nontherapeutic nicotine device substance, or prefilled nontherapeutic nicotine~~
461 ~~device is shipped f.o.b. origin or f.o.b. destination; or~~

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

463 (4) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled
 464 with an electronic cigarette substance.

465 (5) "Prefilled nontherapeutic nicotine device" means a nontherapeutic nicotine device
 466 that is sold prefilled with a nontherapeutic nicotine device substance.

467 (6) "Youth electronic cigarette and other nicotine product cessation program" means a
 468 program that:

469 (a) helps individuals under the age of 19 to quit using tobacco, electronic cigarette
 470 products, alternative nicotine products, and nontherapeutic nicotine products; and

471 (b) is certified as a Model Program by the Substance Abuse and Mental Health
 472 Services Administration of the United States Department of Health and Human Services.

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

474 **59-14-803. License to sell an electronic cigarette product, an alternative nicotine**
 475 **product, or a nontherapeutic nicotine product.**

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

479 (i) except as provided in Subsection (1)(b), obtaining a license from the commission
 480 under this section to sell an electronic cigarette product [from the commission under this
 481 section.], an alternative nicotine product, or a nontherapeutic nicotine product; and

482 (ii) complying with any bonding requirement described in Subsection (4).

483 ~~[(2)]~~ (b) A person that holds a valid license to sell cigarettes under Section 59-14-201,
 484 or a person that holds a valid license to sell tobacco products under Section 59-14-301, may[;
 485 without obtaining a separate license to sell an electronic cigarette product under this part,] sell,
 486 offer to sell, or distribute an electronic cigarette product [in Utah], an alternative nicotine
 487 product, or a nontherapeutic nicotine product in this state without obtaining a separate license
 488 to sell an electronic cigarette product, an alternative nicotine product, or a nontherapeutic
 489 nicotine product in accordance with this [part] section.

490 ~~[(3)]~~ (2) Except as provided in Subsection (6), the commission shall issue a license to
 491 sell an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine
 492 product to a person that:

- 493 (a) submits an application, on a form created by the commission, that includes:
- 494 (i) the person's name;
- 495 (ii) the address of the facility where the person will sell an electronic cigarette product,
496 an alternative nicotine product, or a nontherapeutic nicotine product; and
- 497 (iii) any other information the commission requires to implement this chapter; and
- 498 (b) pays a fee:
- 499 (i) in the amount of \$30 if the person is applying for a first-time license or reinstating a
500 revoked, suspended, or expired license; or
- 501 (ii) [if renewing the person's license,] in the amount of \$20 if the person is renewing a
502 license.
- 503 ~~[(4)]~~ (3) A license described in Subsection ~~[(3)]~~ (2) is:
- 504 (a) valid only at one fixed business address;
- 505 (b) valid for three years;
- 506 (c) valid only for a physical location; and
- 507 (d) renewable if a licensee meets the criteria for licensing described in Subsection ~~[(3)]~~
508 (2).
- 509 (4) (a) The commission shall require a manufacturer, jobber, distributor, wholesaler, or
510 retailer that is responsible under this part for the collection of tax on an electronic cigarette, an
511 alternative nicotine product, or a nontherapeutic nicotine product to post a bond.
- 512 (b) The manufacturer, jobber, distributor, wholesaler, or retailer may post the bond
513 required by Subsection (4)(a) in combination with the bond required by Section [59-14-201](#) or
514 [59-14-301](#).
- 515 (c) Subject to Subsection (4)(d), the commission shall determine the form and amount
516 of the bond.
- 517 (d) The minimum amount of the bond shall be:
- 518 (i) except as provided in Subsection (4)(d)(ii) or (iii), \$500;
- 519 (ii) if the manufacturer, jobber, distributor, wholesaler, or retailer posts the bond
520 required by Subsection (4)(a) in combination with the bond required by Section [59-14-201](#) or
521 [59-14-301](#), \$1,000; or
- 522 (iii) if the manufacturer, jobber, distributor, wholesaler, or retailer posts the bond
523 required by Subsection (4)(a) in combination with the bonds required by Sections [59-14-201](#)

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

525 (5) The commission shall, after notifying a licensee, revoke a license described in
526 Subsection (3) if an enforcing agency determines the licensee has violated a provision of:

527 (a) Title 26, Chapter 42, Civil Penalties for Tobacco, Electronic Cigarette, and Other
528 Nicotine Product Sales to Underage Persons; or

529 (b) Title 26, Chapter 57, Electronic Cigarette and Other Nicotine Product Regulation
530 Act.

531 (6) If the commission revokes a person's license to sell an electronic cigarette product,
532 an alternative nicotine product, or a nontherapeutic nicotine product under Subsection (5), the
533 commission may not issue to the person a license to sell an electronic cigarette product, an
534 alternative nicotine product, or a nontherapeutic nicotine product under this section, a license
535 to sell cigarettes under Section [59-14-201](#), or a license to sell tobacco under Section [59-14-301](#)
536 [~~to the person~~] until one year after:

537 (a) the day on which the time for filing an appeal of the revocation ends, as determined
538 by the enforcing agency; or

539 (b) if the person appeals the enforcing agency's decision to revoke the license to sell an
540 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine
541 product, the day on which the enforcing agency's decision to uphold the revocation is final.

542 (7) If the commission revokes a person's license under Subsection (5), the commission
543 shall also revoke the person's license to sell cigarettes under Section [59-14-201](#), if any, and the
544 person's license to sell tobacco under Section [59-14-301](#), if any.

545 (8) The commission may make rules in accordance with Title 63G, Chapter 3, Utah
546 Administrative Rulemaking Act, to establish the additional information described in
547 Subsection [~~(3)~~] (2)(a)(iii) that a person must provide in the application described in
548 Subsection [~~(3)(a)~~] (2).

549 (9) It is a class B misdemeanor for a person to violate Subsection (1).

550 Section 15. Section **59-14-804** is enacted to read:

551 **59-14-804. Taxation of an electronic cigarette product, an alternative nicotine**
552 **product, and a nontherapeutic nicotine product.**

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

554 (i) an electronic cigarette substance; and

555 (ii) a prefilled electronic cigarette.

556 (b) Beginning on July 1, 2019, there is levied a tax upon the following:

557 (i) an alternative nicotine product;

558 (ii) a nontherapeutic nicotine device substance; or

559 (iii) a prefilled nontherapeutic nicotine device.

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

562 (3) (a) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user shall
563 pay the tax levied under Subsection (1) at the time that an electronic cigarette substance, a
564 prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic nicotine device
565 substance, or a prefilled nontherapeutic nicotine device is first received in the state.

566 (b) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user may not
567 resell an electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine
568 product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine
569 device to another distributor, another retailer, or a consumer before paying the tax levied under
570 Subsection (1).

571 (4) (a) The manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user
572 shall remit the taxes collected in accordance with this section to the commission.

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

574 (i) the first \$2,000,000 remitted in accordance with this section into the Electronic
575 Cigarette Substance and Other Nicotine Product Tax Restricted Account, created in Section
576 59-14-806; and

577 (ii) the balance of remittances received in accordance with this section into the General
578 Fund.

579 Section 16. Section **59-14-805** is enacted to read:

580 **59-14-805. Remittance of tax -- Returns -- Invoice required -- Filing requirement--**
581 **Exception -- Penalty -- Overpayment.**

582 (1) (a) The manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user
583 that collects the tax imposed on an electronic cigarette substance, a prefilled electronic
584 cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance, or a
585 prefilled nontherapeutic nicotine device shall remit to the commission, in an electronic format

586 approved by the commission:

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

588 (ii) the quarterly tax return.

589 (b) The tax collected and the return are due on or before the last day of April, July,

590 October, and January.

591 (2) (a) A manufacturer, jobber, distributor, wholesaler, retailer, or any other person
592 selling an electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine
593 product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine
594 device to a person other than the ultimate consumer shall furnish the purchaser with an
595 itemized invoice showing the seller's name and address, the name and address of the purchaser,
596 the date of sale, the name and price of the product, and the discount, if any.

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

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

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

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

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

607 (b) The consumer shall file the statement described in Subsection (3)(a) and pay the tax
608 due on or before the last day of the month immediately following the month during which the
609 consumer purchased an electronic cigarette substance, a prefilled electronic cigarette, an
610 alternative nicotine device substance, a nontherapeutic nicotine product, or a prefilled
611 nontherapeutic nicotine device.

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

615 (4) A tourist who imports an electronic cigarette substance, a prefilled electronic
616 cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance, or a

617 prefilled nontherapeutic nicotine device into the state does not need to file the statement
618 described in Subsection (3) or pay the tax if the item is for the tourist's own use or consumption
619 while in this state.

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

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

624 (b) pay the tax on time; or

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

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

628 Section 17. Section 59-14-806 is enacted to read:

629 **59-14-806. Electronic Cigarette Substance and Other Nicotine Product Tax**
630 **Restricted Account.**

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

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

635 (a) for each fiscal year, the first \$2,000,000 collected from the tax imposed by Section
636 59-14-804; and

637 (b) amounts appropriated by the Legislature.

638 (3) For each fiscal year, beginning with fiscal year 2018-19 and subject to
639 appropriation by the Legislature, the Division of Finance shall distribute money from the
640 Electronic Cigarette and Other Nicotine Product Tax Restricted Account to the local health
641 departments as follows:

642 (a) \$250,000 for the implementation of a youth electronic cigarette and other nicotine
643 product cessation program; and

644 (b) the balance for:

645 (i) enforcing the regulation provisions under Section 26-57-103; and

646 (ii) providing electronic cigarette and other nicotine product use prevention education
647 to youth.

648 Section 18. Section 76-10-101 is amended to read:

649 **Part 1. Cigarettes, Tobacco, Other Nicotine Substances, and Psychotoxic Chemical**
650 **Substances**

651 **76-10-101. Definitions.**

652 As used in this part:

653 (1) "Alternative nicotine product" means the same as that term is defined in Section
654 59-14-102.

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

659 ~~[(2)]~~ (3) "Cigarette" means a product that contains nicotine, is intended to be burned
660 under ordinary conditions of use, and consists of:

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

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

665 ~~[(3)] "Electronic cigarette" means an electronic cigarette product, as defined in Section~~
666 ~~59-14-802.]~~

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

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

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

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

673 (b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section
674 26-38-2.

675 (5) "Electronic cigarette product" means an electronic cigarette or electronic cigarette
676 substance.

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

- 679 (7) (a) "Nontherapeutic nicotine device" means a device that:
680 (i) has a pressurized canister that is used to administer nicotine to the user through
681 inhalation or intranasally;
682 (ii) is not purchased with a prescription from a licensed physician; and
683 (iii) is not approved by the United States Food and Drug Administration as nicotine
684 replacement therapy.
- 685 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or
686 nontherapeutic nicotine nasal spray.
- 687 (8) "Nontherapeutic nicotine device substance" means a cartridge that:
688 (a) contains nicotine;
689 (b) is used or intended to be used in a nontherapeutic nicotine device;
690 (c) is not purchased with a prescription from a licensed physician; and
691 (d) is not approved by the United States Food and Drug Administration as nicotine
692 replacement therapy.
- 693 (9) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device or a
694 nontherapeutic nicotine device substance.
- 695 ~~(4)~~ (10) "Place of business" includes:
696 (a) a shop;
697 (b) a store;
698 (c) a factory;
699 (d) a public garage;
700 (e) an office;
701 (f) a theater;
702 (g) a recreation hall;
703 (h) a dance hall;
704 (i) a poolroom;
705 (j) a café;
706 (k) a cafeteria;
707 (l) a cabaret;
708 (m) a restaurant;
709 (n) a hotel;

- 710 (o) a lodging house;
- 711 (p) a streetcar;
- 712 (q) a bus;
- 713 (r) an interurban or railway passenger coach;
- 714 (s) a waiting room; and
- 715 (t) any other place of business.

716 ~~[(5)]~~ (11) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other
 717 lighted smoking equipment.

718 Section 19. Section 76-10-104 is amended to read:

719 **76-10-104. Providing any cigar, cigarette, electronic cigarette, alternative nicotine**
 720 **product, nontherapeutic nicotine product, or tobacco to a minor -- Penalties.**

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

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

- 727 (a) includes selling, giving, furnishing, sending, or causing to be sent; and
- 728 (b) does not include the acts of the United States Postal Service or other common
 729 carrier when engaged in the business of transporting and delivering packages for others or the
 730 acts of a person, whether compensated or not, who transports or delivers a package for another
 731 person without any reason to know of the package's content.

732 Section 20. Section 76-10-104.1 is amended to read:

733 **76-10-104.1. Providing tobacco paraphernalia to minors -- Penalties.**

734 (1) For purposes of this section:

- 735 (a) "Provides":
- 736 (i) includes selling, giving, furnishing, sending, or causing to be sent; and
- 737 (ii) does not include the acts of the United States Postal Service or other common
 738 carrier when engaged in the business of transporting and delivering packages for others or the
 739 acts of a person, whether compensated or not, who transports or delivers a package for another
 740 person without any reason to know of the package's content.

741 (b) (i) "Tobacco paraphernalia"~~[(†)]~~ means any equipment, product, or material of any
 742 kind which is used, intended for use, or designed for use to package, repack, store, contain,
 743 conceal, ingest, inhale, or otherwise introduce a cigar, electronic cigarette substance,
 744 nontherapeutic nicotine device substance, cigarette, or tobacco in any form into the human
 745 body~~[-including-].~~

746 (ii) "Tobacco paraphernalia" includes:

747 (A) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
 748 screens, permanent screens, hashish heads, or punctured metal bowls;

749 (B) water pipes;

750 (C) carburetion tubes and devices;

751 (D) smoking and carburetion masks;

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

754 (F) chamber pipes;

755 (G) carburetor pipes;

756 (H) electric pipes;

757 (I) air-driven pipes;

758 (J) chillums;

759 (K) bongs; and

760 (L) ice pipes or chillers~~[-and].~~

761 ~~[(†)]~~ (iii) "Tobacco paraphernalia" does not include matches or lighters.

762 (2) (a) It is unlawful for a person to knowingly, intentionally, recklessly, or with
 763 criminal negligence provide any tobacco paraphernalia to any person under 19 years of age.

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

766 Section 21. Section **76-10-105** is amended to read:

767 **76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco**
 768 **by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.**

769 (1) Any 18-year-old person who buys or attempts to buy, accepts, or has in the person's
 770 possession any cigar, cigarette, electronic cigarette product, alternative nicotine product,
 771 nontherapeutic nicotine product, or tobacco in any form is guilty of a class C misdemeanor and

772 subject to:

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

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

776 (2) Any person under the age of 18 who buys or attempts to buy, accepts, or has in the
777 person's possession any cigar, cigarette, electronic cigarette product, alternative nicotine
778 product, nontherapeutic nicotine product, or tobacco in any form is subject to the jurisdiction of
779 the juvenile court and subject to Section 78A-6-602, unless the violation is committed on
780 school property. If a violation under this section is adjudicated under Section 78A-6-117, the
781 minor may be subject to the following:

782 (a) a fine or penalty, in accordance with Section 78A-6-117; and

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

785 (3) A compliance officer appointed by a board of education under Section 53A-3-402
786 may not issue a citation for a violation of this section committed on school property. A cited
787 violation committed on school property shall be addressed in accordance with Section
788 53A-11-911.

789 Section 22. Section 76-10-105.1 is amended to read:

790 **76-10-105.1. Requirement of direct, face-to-face sale of cigarettes, tobacco,**
791 **electronic cigarettes, nontherapeutic nicotine product, or alternative nicotine product --**
792 **Minors not allowed in tobacco specialty shop -- Penalties.**

793 (1) As used in this section:

794 (a) "Cigarette" means the same as that term is defined in Section 59-14-102.

795 (b) (i) "Face-to-face exchange" means a transaction made in person between an
796 individual and a retailer or retailer's employee.

797 (ii) "Face-to-face exchange" does not include a sale through a:

798 (A) vending machine; or

799 (B) self-service display.

800 (c) "Retailer" means a person who:

801 (i) sells a cigarette, tobacco, [or] an electronic cigarette product, an alternative nicotine
802 product, or a nontherapeutic nicotine product to an individual for personal consumption; or

803 (ii) operates a facility with a vending machine that sells a cigarette, tobacco, [or] an
804 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine
805 product.

806 (d) "Self-service display" means a display of a cigarette, tobacco, [or] an electronic
807 cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product to which
808 the public has access without the intervention of a retailer or retailer's employee.

809 (e) "Tobacco" means any product, except a cigarette, made of or containing tobacco.

810 (f) "Tobacco specialty shop" means a retailer with a physical location that derives at
811 least 80% of its total sales from the sale of cigarettes, tobacco, [or] electronic [cigarettes]
812 cigarette products, alternative nicotine products, or nontherapeutic nicotine products.

813 (2) Except as provided in Subsection (3), a retailer may sell a cigarette, tobacco, [or] an
814 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine
815 product only in a face-to-face exchange.

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

817 (a) a mail-order, telephone, or Internet sale made in compliance with Section
818 [59-14-509](#);

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

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

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

824 (c) a sale at a tobacco specialty shop.

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

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

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

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

833 (5) A parent or legal guardian who accompanies, under Subsection (4)(a), an individual

834 into an area described in Subsection (3)(b), or into a tobacco specialty shop, may not allow the
835 individual to purchase a cigarette, tobacco, [or] an electronic cigarette product, an alternative
836 nicotine product, or a nontherapeutic nicotine product.

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

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

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

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

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

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

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

850 Section 23. **Effective date.**

851 This bill takes effect on July 1, 2018.

Legislative Review Note
Office of Legislative Research and General Counsel