

Representative Paul Ray proposes the following substitute bill:

**ELECTRONIC CIGARETTE AND OTHER NICOTINE
PRODUCT AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Allen M. Christensen

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 certain products that contain synthetic nicotine to have a statement on the exterior package that the product contains synthetic nicotine;
- ▶ 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, and a nontherapeutic nicotine device substance in the state;
- ▶ provides for the remittance of the tax collected;
- ▶ creates the Electronic Cigarette Substance and Other Nicotine Product Tax Restricted Account;



- 26 ▶ addresses use of revenue from the taxation of an electronic cigarette substance, an
- 27 alternative nicotine product, and a nontherapeutic nicotine device substance;
- 28 ▶ provides criminal penalties for a sale or purchase of an electronic cigarette product,
- 29 an alternative nicotine product, or a nontherapeutic nicotine product, in violation of
- 30 law; and
- 31 ▶ makes technical and conforming changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 This bill provides a special effective date.

36 This bill provides a coordination clause.

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

63 [59-14-807](#), Utah Code Annotated 1953

64 **Utah Code Sections Affected by Coordination Clause:**

65 [10-8-41.6](#), as enacted by Laws of Utah 2012, Chapter 154

66 [17-50-333](#), as enacted by Laws of Utah 2012, Chapter 154

67 [26-42-106](#), as enacted by Laws of Utah 1998, Chapter 319

68 [26-62-102](#), (Renumbered from [26-42-102](#), as last amended by Laws of Utah 2015,
69 Chapter 132)

70 [26-62-306](#), (Renumbered from [26-42-106](#), as enacted by Laws of Utah 1998, Chapter
71 319)

72 [76-10-105.1](#), as last amended by Laws of Utah 2015, Chapters 66 and 132



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

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

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

78 **[26-42-101](#). Title.**

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

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

82 **[26-42-102](#). Definitions.**

83 As used in this chapter:

84 (1) "Alternative nicotine product" means the same as that term is defined in Section
85 [59-14-102](#).

86 [(+)] (2) "Commission" means the [Utah] State Tax Commission.

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

88 [59-14-102.](#)

89 ~~[(2)]~~ (4) "Employee" means an employee of a licensee.

90 ~~[(3)]~~ (5) "Enforcing agency" means the state Department of Health, or any local health
91 department, enforcing the provisions of this chapter.

92 ~~[(4)]~~ (6) "Licensee" means a person licensed:

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

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

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

97 ~~[(5)]~~ (7) "License to sell [~~tobacco~~]" or "license" means a license issued:

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

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

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

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

104 ~~[(6)]~~ (9) "Tobacco" means~~[(a)]~~ a cigarette or a tobacco product, as defined in Section
105 [59-14-102](#)~~[(b)]~~.

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

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

108 **26-42-103. Violations and penalties -- Imposition by enforcing agency and tax**
109 **commission.**

110 (1) If, following an investigation or issuance of a citation or information under Section
111 [77-39-101](#), an enforcing agency determines under Section [26-42-104](#) that a licensee or any
112 employee has sold tobacco, an electronic cigarette product, an alternative nicotine product, or a
113 nontherapeutic nicotine product to a person younger than 19 years of age, as prohibited by
114 Section [76-10-104](#), the enforcing agency may impose upon the licensee the following
115 administrative penalties:

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

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

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

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

123 (3) (a) [~~The commission, upon~~] Upon receipt of the written notification under
124 Subsection (2), the commission shall take action under Section 59-14-203.5 [~~or~~], 59-14-301.5,
125 or 59-14-803 against the license to sell [~~tobacco~~] in accordance with Subsection (3)(b).

126 [(a)] (b) (i) [~~by suspending~~] Upon receipt of written notification of a third offense
127 under Subsection (1)(c), the commission shall suspend the licensee's license to sell tobacco, an
128 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine
129 product at that location for not more than 30 days[~~, upon receipt of notification of a third~~
130 ~~violation under Subsection (1)(c); and~~].

131 [(b)] (ii) [~~by revoking~~] Upon receipt of written notification of a fourth violation under
132 Subsection (1)(c), the commission shall revoke the license to sell [~~tobacco at that location~~] held
133 by the licensee, including any license under suspension[~~, upon receipt of notification of a fourth~~
134 ~~violation under Subsection (1)(c)~~] at that location.

135 (4) When the commission revokes a license under Subsection (3)(b)(ii), the
136 commission may not issue to the licensee, or to the business entity using the license that is
137 revoked, a license under Section 59-14-202, 59-14-301, or 59-14-803 [~~to sell tobacco~~] at the
138 location for which the license was issued for one year after:

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

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

142 (5) This section does not prevent any bona fide purchaser of the business, who is not a
143 sole proprietor, director, corporate officer, or partner or other holder of significant interest in
144 the entity selling the business, from immediately applying for and obtaining a license to sell
145 [~~tobacco~~].

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

147 **26-42-106. Recognition of licensee's training program.**

148 (1) In determining the amount of the monetary penalty to [~~be imposed~~] impose for an
149 employee's violation of Section 26-42-103, the hearing officer shall reduce the penalty by at

150 least 50% if ~~[he]~~ the hearing officer determines:

151 (a) the licensee has implemented a documented employee training program; and

152 (b) the employee has completed that training program within 30 days of commencing
153 duties of selling tobacco products, electronic cigarette products, alternative nicotine products,
154 or nontherapeutic nicotine products.

155 (2) (a) ~~[H]~~ The hearing officer may suspend all or a portion of the monetary penalty for
156 a first offense at a location if:

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

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

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

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

170 **26-42-107. Allocation of civil penalties.**

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

172 (1) if a local health department conducts an adjudicative proceeding under Section
173 **26-42-104**, the penalty shall be paid to the treasurer of the county in which the violation was
174 committed~~[-]~~ and transferred to:

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

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

179 (2) if the state Department of Health conducts a civil hearing under Section **26-42-104**,
180 the penalty shall be deposited in the state's General Fund~~[-]~~ and may be appropriated by the

181 Legislature to the state Department of Health for use in enforcement of this chapter; and

182 (3) if the civil penalty involves suspension or revocation of a license to sell [~~tobacco~~]
 183 under Section [59-14-203.5](#), [59-14-301.5](#), or [59-14-803](#), half of the penalty shall be paid to the
 184 commission[;] and the other half shall be allocated under Subsection (1) or (2)[;] as
 185 appropriate.

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

187 **CHAPTER 57. ELECTRONIC CIGARETTE AND OTHER NICOTINE PRODUCT**
 188 **REGULATION ACT**

189 **26-57-101. Title.**

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

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

193 **26-57-102. Definitions.**

194 As used in this chapter:

195 (1) "Alternative nicotine product" means the same as that term is defined in Section
 196 [59-14-102](#).

197 [(+)] (2) "Cigarette" means the same as that term is defined in Section [59-14-102](#).

198 [(2)] (3) "Electronic cigarette" means the same as that term is defined in Section
 199 [~~59-14-802~~] [59-14-102](#).

200 [(3)] (4) "Electronic cigarette product" means an electronic cigarette or an electronic
 201 cigarette substance.

202 [(4)] (5) "Electronic cigarette substance" means the same as that term is defined in
 203 Section [~~59-14-802~~] [59-14-102](#).

204 (6) "Local health department" means the same as that term is defined in Section
 205 [26A-1-102](#).

206 [(5)] (7) "Manufacture" includes:

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

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

209 [(6)] (8) "Manufacturer sealed electronic cigarette substance" means an electronic
 210 cigarette substance that is sold in a container that:

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

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

213 (9) "Nontherapeutic nicotine device" means the same as that term is defined in Section
214 59-14-102.

215 (10) "Nontherapeutic nicotine device substance" means the same as that term is defined
216 in Section 59-14-102.

217 (11) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device or a
218 nontherapeutic nicotine device substance.

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

220 **26-57-104. Labeling of products containing synthetic nicotine.**

221 Any nontherapeutic nicotine device or alternative nicotine product containing synthetic
222 nicotine that is not otherwise required to contain a nicotine warning and that is sold in this state
223 shall contain the following statement on the exterior packaging of the product:

224 "This product contains synthetic nicotine."

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

226 **59-14-102. Definitions.**

227 As used in this chapter:

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

231 (i) contains nicotine;

232 (ii) is intended for human consumption;

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

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

236 (b) "Alternative nicotine product" includes:

237 (i) pure nicotine;

238 (ii) snortable nicotine;

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

240 (iv) nicotine-laced food and beverage.

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

243 ~~[(1)]~~ (2) "Cigarette" means a roll for smoking made wholly or in part of tobacco:

244 (a) regardless of:

245 (i) the size of the roll;

246 (ii) the shape of the roll; or

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

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

251 ~~[(2)]~~ (3) "Cigarette rolling machine" means a device or machine that has the capability
252 to produce at least 150 cigarettes in less than 30 minutes.

253 ~~[(3)]~~ (4) "Cigarette rolling machine operator" means a person ~~[who]~~ that:

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

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

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

259 ~~[(4)]~~ (5) "Consumer" means a person that is not required:

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

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

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

263 ~~[(5)]~~ (6) "Counterfeit cigarette" means:

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

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

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

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

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

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

272 (b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section
273 26-38-2.

274 (8) "Electronic cigarette product" means an electronic cigarette or an electronic
275 cigarette substance.

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

278 ~~[(6)]~~ (10) "Importer" means a person ~~[who]~~ that imports into the United States, either
279 directly or indirectly, a finished cigarette for sale or distribution.

280 ~~[(7)]~~ (11) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity,
281 or any other person doing business as a distributor or retailer of cigarettes on tribal lands
282 located in the state.

283 ~~[(8)]~~ (12) "Little cigar" means a roll for smoking that:

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

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

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

287 (i) containing tobacco; and

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

289 ~~[(9)]~~ (13) (a) Except as provided in Subsection ~~[(9)]~~ (13)(b), "manufacturer" means a
290 person ~~[who]~~ that:

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

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

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

296 ~~[(10)]~~ (14) "Moist snuff" means tobacco that:

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

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

300 (c) is not intended to be:

301 (i) smoked; or

302 (ii) placed in the nasal cavity; and

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

- 305 (i) tablets;
- 306 (ii) lozenges;
- 307 (iii) strips;
- 308 (iv) sticks; or
- 309 (v) packages containing multiple single-use units.

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

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

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

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

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

318 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or
319 nontherapeutic nicotine nasal spray.

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

321 (a) contains nicotine;

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

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

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

326 (18) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device or a
327 nontherapeutic nicotine device substance.

328 ~~[(11)]~~ (19) "Retailer" means a person that:

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

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

333 ~~[(12)]~~ (20) "Stamp" means the indicia required to be placed on a cigarette package that
334 evidences payment of the tax on cigarettes required by Section 59-14-205.

335 ~~[(13)]~~ (21) (a) "Tobacco product" means a product made of, or containing, tobacco.

- 336 (b) "Tobacco product" includes:
- 337 (i) a cigarette produced from a cigarette rolling machine;
- 338 (ii) a little cigar; or
- 339 (iii) moist snuff.
- 340 (c) "Tobacco product" does not include a cigarette.

341 ~~[(14)]~~ (22) "Tribal lands" means land held by the United States in trust for a federally
342 recognized Indian tribe.

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

344 **59-14-201. License -- Application of part -- Fee -- Bond -- Exceptions.**

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

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

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

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

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

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

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

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

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

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

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

366 **59-14-203.5. Commission action to suspend or revoke license.**

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

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

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

375 (3) When the commission revokes a licensee's license under this section, the
 376 commission may not issue to the licensee, or to the business entity using the license that is
 377 revoked, a license to sell cigarettes under Section 59-14-202 [or], a license to sell tobacco
 378 under Section 59-14-301 [to sell tobacco], or a license to sell an electronic cigarette product, an
 379 alternative nicotine product, or a nontherapeutic nicotine product under Section 59-14-803 at
 380 the location for which the license was issued for one year after:

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

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

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

385 **Part 8. Electronic Cigarette and Other Nicotine Product Licensing and Taxation Act**
 386 **59-14-801. Title.**

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

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

390 **59-14-802. Definitions.**

391 As used in this part:

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

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

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

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

397 [~~(iii) an accessory sold in the same package as the device described in Subsection~~]

398 ~~(2)(a)(i):]~~

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

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

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

404 ~~[(5)] (1) "Enforcing agency" means the Department of Health, a county health~~
405 ~~department, or a local health department, when enforcing:~~

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

408 ~~(b) Title 26, Chapter 57, Electronic Cigarette and Other Nicotine Product Regulation~~
409 ~~Act.~~

410 ~~[(6)] (2) "Licensee" means a person that holds a valid license to sell an electronic~~
411 ~~cigarette ~~[products]~~ product, an alternative nicotine product, or a nontherapeutic nicotine~~
412 ~~product.~~

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

415 ~~(3) (a) "Manufacturer's sales price" means the amount the manufacturer of an electronic~~
416 ~~cigarette substance, prefilled electronic cigarette, alternative nicotine product, nontherapeutic~~
417 ~~nicotine device substance, or prefilled nontherapeutic nicotine device charges after subtracting~~
418 ~~a discount.~~

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

421 ~~(i) whether the electronic cigarette substance, prefilled electronic cigarette, alternative~~
422 ~~nicotine product, nontherapeutic nicotine device substance, or prefilled nontherapeutic nicotine~~
423 ~~device is shipped f.o.b. origin or f.o.b. destination; or~~

424 ~~(ii) who pays the original Utah destination charge.~~

425 ~~(4) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled~~
426 ~~with an electronic cigarette substance.~~

427 ~~(5) "Prefilled nontherapeutic nicotine device" means a nontherapeutic nicotine device~~
428 ~~that is sold prefilled with a nontherapeutic nicotine device substance.~~

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

430 **59-14-803. License to sell an electronic cigarette product, an alternative nicotine**
431 **product, or a nontherapeutic nicotine product.**

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

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

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

439 ~~[(2)]~~ (b) A person that holds a valid license to sell cigarettes under Section 59-14-201,
440 or a person that holds a valid license to sell tobacco products under Section 59-14-301, may[;
441 without obtaining a separate license to sell an electronic cigarette product under this part,] sell,
442 offer to sell, or distribute an electronic cigarette product [in Utah], an alternative nicotine
443 product, or a nontherapeutic nicotine product in this state without obtaining a separate license
444 to sell an electronic cigarette product, an alternative nicotine product, or a nontherapeutic
445 nicotine product in accordance with this [part] section.

446 ~~[(3)]~~ (2) Except as provided in Subsection (6), the commission shall issue a license to
447 sell an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine
448 product to a person that:

449 (a) submits an application, on a form created by the commission, that includes:

450 (i) the person's name;

451 (ii) the address of the facility where the person will sell an electronic cigarette product,
452 an alternative nicotine product, or a nontherapeutic nicotine product; and

453 (iii) any other information the commission requires to implement this chapter; and

454 (b) pays a fee:

455 (i) in the amount of \$30 if the person is applying for a first-time license or reinstating a
456 revoked, suspended, or expired license; or

457 (ii) ~~[if renewing the person's license,]~~ in the amount of \$20 if the person is renewing a
458 license.

459 ~~[(4)]~~ (3) A license described in Subsection [(3)] (2) is:

- 460 (a) valid only at one fixed business address;
- 461 (b) valid for three years;
- 462 (c) valid only for a physical location; and
- 463 (d) renewable if a licensee meets the criteria for licensing described in Subsection ~~[(3)]~~
- 464 (2).

465 (4) (a) The commission shall require a manufacturer, jobber, distributor, wholesaler, or
466 retailer that is responsible under this part for the collection of tax on an electronic cigarette, an
467 alternative nicotine product, or a nontherapeutic nicotine product to post a bond.

468 (b) The manufacturer, jobber, distributor, wholesaler, or retailer may post the bond
469 required by Subsection (4)(a) in combination with the bond required by Section [59-14-201](#) or
470 [59-14-301](#).

471 (c) Subject to Subsection (4)(d), the commission shall determine the form and amount
472 of the bond.

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

474 (i) except as provided in Subsection (4)(d)(ii) or (iii), \$500;

475 (ii) if the manufacturer, jobber, distributor, wholesaler, or retailer posts the bond
476 required by Subsection (4)(a) in combination with the bond required by Section [59-14-201](#) or
477 [59-14-301](#), \$1,000; or

478 (iii) if the manufacturer, jobber, distributor, wholesaler, or retailer posts the bond
479 required by Subsection (4)(a) in combination with the bonds required by Sections [59-14-201](#)
480 and [59-14-301](#), \$1,500.

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

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

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

487 (6) If the commission revokes a person's license to sell an electronic cigarette product,
488 an alternative nicotine product, or a nontherapeutic nicotine product under Subsection (5), the
489 commission may not issue to the person a license to sell an electronic cigarette product, an
490 alternative nicotine product, or a nontherapeutic nicotine product under this section, a license

491 to sell cigarettes under Section 59-14-201, or a license to sell tobacco under Section 59-14-301
492 [to the person] until one year after:

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

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

498 (7) If the commission revokes a person's license under Subsection (5), the commission
499 shall also revoke the person's license to sell cigarettes under Section 59-14-201, if any, and the
500 person's license to sell tobacco under Section 59-14-301, if any.

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

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

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

507 **59-14-804. Taxation of an electronic cigarette product, an alternative nicotine**
508 **product, and a nontherapeutic nicotine product.**

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

510 (i) an electronic cigarette substance; and

511 (ii) a prefilled electronic cigarette.

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

513 (i) an alternative nicotine product;

514 (ii) a nontherapeutic nicotine device substance; or

515 (iii) a prefilled nontherapeutic nicotine device.

516 (2) The rate of tax levied under Subsection (1) is:

517 (a) for a prefilled electronic cigarette or a prefilled nontherapeutic nicotine device, .86
518 multiplied by the manufacturer's sales price; or

519 (b) for an electronic cigarette substance, an alternative nicotine product, or a
520 nontherapeutic nicotine device substance, .29 multiplied by the manufacturer's sales price.

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

522 pay the tax levied under Subsection (1) at the time that an electronic cigarette substance, a
523 prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic nicotine device
524 substance, or a prefilled nontherapeutic nicotine device is first received in the state.

525 (b) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user may not
526 resell an electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine
527 product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine
528 device to another distributor, another retailer, or a consumer before paying the tax levied under
529 Subsection (1).

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

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

533 (i) the first \$2,000,000 remitted in accordance with this section into the Electronic
534 Cigarette Substance and Other Nicotine Product Tax Restricted Account, created in Section
535 [59-14-807](#); and

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

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

539 **59-14-805. Remittance of tax -- Returns -- Invoice required -- Filing requirement--**
540 **Exception -- Penalty -- Overpayment.**

541 (1) (a) The manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user
542 that collects the tax imposed on an electronic cigarette substance, a prefilled electronic
543 cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance, or a
544 prefilled nontherapeutic nicotine device shall remit to the commission, in an electronic format
545 approved by the commission:

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

547 (ii) the quarterly tax return.

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

550 (2) (a) A manufacturer, jobber, distributor, wholesaler, retailer, or any other person
551 selling an electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine
552 product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine

553 device to a person other than the ultimate consumer shall furnish the purchaser with an
554 itemized invoice showing the seller's name and address, the name and address of the purchaser,
555 the date of sale, the name and price of the product, and the discount, if any.

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

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

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

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

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

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

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

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

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

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

583 (b) pay the tax on time; or

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

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

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

588 **59-14-806. Refund of taxes paid -- Exemption for exported electronic cigarettes**
589 **and other nicotine products.**

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

595 (a) is a licensed dealer;

596 (b) signs an affidavit that the electronic cigarette substance, the prefilled electronic
597 cigarette, the alternative nicotine product, the nontherapeutic nicotine device substance, or the
598 prefilled nontherapeutic nicotine device was so sold and shipped;

599 (c) furnishes from the purchaser a written acknowledgment that the purchaser has
600 received the electronic cigarette substance, the prefilled electronic cigarette, the alternative
601 nicotine product, the nontherapeutic nicotine device substance, or the prefilled nontherapeutic
602 nicotine device; and

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

604 (2) A wholesaler or distributor in this state that exports an electronic cigarette
605 substance, a prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic
606 nicotine device substance, or a prefilled nontherapeutic nicotine device to a regular dealer in
607 another state shall be exempt from the payment of any tax upon the sale of the article upon
608 furnishing such proof of the sale and exportation as the commission may require.

609 Section 18. Section **59-14-807** is enacted to read:

610 **59-14-807. Electronic Cigarette Substance and Other Nicotine Product Tax**
611 **Restricted Account.**

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

614 (2) The Electronic Cigarette Substance and Other Nicotine Product Tax Restricted

615 Account consists of:

616 (a) for each fiscal year, the first \$2,000,000 collected from the tax imposed by Section
617 59-14-804; and

618 (b) amounts appropriated by the Legislature.

619 (3) (a) For each fiscal year, beginning with fiscal year 2019, and subject to
620 appropriation by the Legislature, the Division of Finance shall distribute money from the
621 Electronic Cigarette Substance and Other Nicotine Product Tax Restricted Account to the local
622 health departments as directed by the Department of Health, which shall determine the
623 allocation for each local health department using the formula created in accordance with
624 Section 26A-1-116.

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

627 (i) the implementation of tobacco, electronic cigarette, and other nicotine product
628 cessation interventions;

629 (ii) enforcing:

630 (A) the provisions of Section 26-42-1103;

631 (B) the regulation provisions under Section 26-57-103; and

632 (C) the labeling requirement in Section 26-57-104; and

633 (iii) providing electronic cigarette and other nicotine product use prevention education
634 and other public health associated education activities.

635 Section 19. Section **76-10-101** is amended to read:

636 **Part 1. Cigarettes, Tobacco, Other Nicotine Substances, and Psychotoxic Chemical**
637 **Substances**

638 **76-10-101. Definitions.**

639 As used in this part:

640 (1) "Alternative nicotine product" means the same as that term is defined in Section
641 59-14-102.

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

646 ~~[(2)]~~ (3) "Cigarette" means a product that contains nicotine, is intended to be burned
647 under ordinary conditions of use, and consists of:

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

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

652 ~~[(3) "Electronic cigarette" means an electronic cigarette product, as defined in Section~~
653 ~~59-14-802.]~~

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

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

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

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

660 (b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section
661 26-38-2.

662 (5) "Electronic cigarette product" means an electronic cigarette or electronic cigarette
663 substance.

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

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

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

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

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

672 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or
673 nontherapeutic nicotine nasal spray.

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

675 (a) contains nicotine;

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

677 (c) is not purchased with a prescription from a licensed physician; and
678 (d) is not approved by the United States Food and Drug Administration as nicotine
679 replacement therapy.

680 (9) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device or a
681 nontherapeutic nicotine device substance.

682 [~~4~~] (10) "Place of business" includes:

- 683 (a) a shop;
- 684 (b) a store;
- 685 (c) a factory;
- 686 (d) a public garage;
- 687 (e) an office;
- 688 (f) a theater;
- 689 (g) a recreation hall;
- 690 (h) a dance hall;
- 691 (i) a poolroom;
- 692 (j) a café;
- 693 (k) a cafeteria;
- 694 (l) a cabaret;
- 695 (m) a restaurant;
- 696 (n) a hotel;
- 697 (o) a lodging house;
- 698 (p) a streetcar;
- 699 (q) a bus;
- 700 (r) an interurban or railway passenger coach;
- 701 (s) a waiting room; and
- 702 (t) any other place of business.

703 [~~5~~] (11) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other
704 lighted smoking equipment.

705 Section 20. Section **76-10-104** is amended to read:

706 **76-10-104. Providing any cigar, cigarette, electronic cigarette, alternative nicotine**
707 **product, nontherapeutic nicotine product, or tobacco to a minor -- Penalties.**

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

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

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

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

719 Section 21. Section **76-10-104.1** is amended to read:

720 **76-10-104.1. Providing tobacco paraphernalia to minors -- Penalties.**

721 (1) For purposes of this section:

722 (a) "Provides":

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

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

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

733 (ii) "Tobacco paraphernalia" includes:

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

736 (B) water pipes;

737 (C) carburetion tubes and devices;

738 (D) smoking and carburetion masks;

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

741 (F) chamber pipes;

742 (G) carburetor pipes;

743 (H) electric pipes;

744 (I) air-driven pipes;

745 (J) chillums;

746 (K) bongs; and

747 (L) ice pipes or chillers[~~;~~and].

748 [(ii)] (iii) "Tobacco paraphernalia" does not include matches or lighters.

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

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

753 Section 22. Section **76-10-105** is amended to read:

754 **76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco**
755 **by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.**

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

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

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

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

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

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

772 (3) A compliance officer appointed by a board of education under Section 53A-3-402
773 may not issue a citation for a violation of this section committed on school property. A cited
774 violation committed on school property shall be addressed in accordance with Section
775 53A-11-911.

776 Section 23. Section 76-10-105.1 is amended to read:

777 **76-10-105.1. Requirement of direct, face-to-face sale of cigarettes, tobacco,
778 electronic cigarettes, nontherapeutic nicotine product, or alternative nicotine product --
779 Minors not allowed in tobacco specialty shop -- Penalties.**

780 (1) As used in this section:

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

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

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

785 (A) vending machine; or

786 (B) self-service display.

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

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

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

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

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

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

800 (2) Except as provided in Subsection (3), a retailer may sell a cigarette, tobacco, [or] an

801 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine
802 product only in a face-to-face exchange.

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

804 (a) a mail-order, telephone, or Internet sale made in compliance with Section

805 59-14-509;

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

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

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

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

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

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

815 (b) present at the tobacco shop for a bona fide commercial purpose other than to

816 purchase a cigarette, tobacco, [or] an electronic cigarette product, an alternative nicotine

817 product, or a nontherapeutic nicotine product; or

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

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

821 into an area described in Subsection (3)(b), or into a tobacco specialty shop, may not allow the

822 individual to purchase a cigarette, tobacco, [or] an electronic cigarette product, an alternative

823 nicotine product, or a nontherapeutic nicotine product.

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

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

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

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

828 (7) An individual who violates Subsection (5) is guilty of providing tobacco to a minor
829 under Section 76-10-104.

830 (8) (a) Any ordinance, regulation, or rule adopted by the governing body of a political

831 subdivision of the state or by a state agency that affects the sale, placement, or display of

832 cigarettes, tobacco, ~~or~~ an electronic [cigarettes] cigarette product, an alternative nicotine
833 product, or a nontherapeutic nicotine product that is not essentially identical to the provisions
834 of this section and Section 76-10-102 is superseded.

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

837 Section 24. **Effective date.**

838 This bill takes effect on July 1, 2018.

839 Section 25. **Coordinating H.B. 88 with H.B. 324 -- Substantive and technical**
840 **amendments.**

841 If this H.B. 88 and H.B. 324, Tobacco Regulations Amendments, both pass and become
842 law, it is the intent of the Legislature that on July 1, 2018, the Office of Legislative Research
843 and General Counsel shall prepare the Utah Code database for publication by making the
844 following changes:

845 (1) modifying Subsection 10-8-41.6(1)(g) to read:

846 "~~(c)~~ (g) "Tobacco product" means:

847 (i) any cigar, cigarette, or electronic cigarette product as those terms are defined in
848 Section 76-10-101;

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

850 (A) chewing tobacco; or

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

852 [and]

853 (iii) tobacco paraphernalia as that term is defined in Section 76-10-104.1[-];

854 (iv) an alternative nicotine product as that term is defined in Section 59-14-102; and

855 (v) a nontherapeutic nicotine device as that term is defined in Section 59-14-102.";

856 (2) modifying Subsection 17-50-333(1)(g) to read:

857 "~~(c)~~ (g) "Tobacco product" means:

858 (i) any cigar, cigarette, or electronic cigarette product as those terms are defined in
859 Section 76-10-101;

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

861 (A) chewing tobacco; or

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

863 [and]

864 (iii) tobacco paraphernalia as that term is defined in Section 76-10-104.1[-];

865 (iv) an alternative nicotine product as that term is defined in Section 59-14-102; and

866 (v) a nontherapeutic nicotine device as that term is defined in Section 59-14-102.";

867 (3) modifying Subsection 26-62-102(8)(b) to read:

868 "(b) [~~under~~] Section 59-14-301 to sell [~~tobacco products~~] a tobacco product as that

869 term is defined in Section 59-14-102, at retail; or";

870 (4) modifying Subsection 26-62-102(9) to read:

871 "(9) "Tobacco product" means:

872 (a) a cigar, cigarette, or electronic cigarette product as those terms are defined in

873 Section 76-10-101;

874 (b) a tobacco product as that term is defined in Section 59-14-102, including:

875 (i) chewing tobacco; or

876 (ii) any substitute for a tobacco product, including flavoring or additives to tobacco;

877 (c) tobacco paraphernalia as that term is defined in Section 76-10-104.1;

878 (d) an alternative nicotine product as that term is defined in Section 59-14-102; and

879 (e) a nontherapeutic nicotine device as that term is defined in Section 59-14-102.";

880 (5) the amendments to Section 26-62-306, which is renumbered from Section

881 26-42-106, in H.B. 324 supersede the amendments to Section 26-42-106 in this bill; and

882 (6) the amendments to Subsection 76-10-105.1(1)(f) in H.B. 324 supersede the

883 amendments to Subsection 76-10-105.1(1)(f) in this bill.