

1                   **ELECTRONIC CIGARETTE AND OTHER NICOTINE**  
2                   **PRODUCT AMENDMENTS**

3                   2017 GENERAL SESSION

4                   STATE OF UTAH

5                   **Chief Sponsor: Paul Ray**

6                   Senate Sponsor: \_\_\_\_\_

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8                   **LONG TITLE**

9                   **General Description:**

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

12                   **Highlighted Provisions:**

13                   This bill:

- 14                   ▶ defines terms;
- 15                   ▶ imposes civil penalties for the sale of a nontherapeutic nicotine product or an  
16 alternative nicotine product;
- 17                   ▶ requires the Department of Health to regulate a nontherapeutic nicotine product or  
18 an alternative nicotine product;
- 19                   ▶ imposes licensing requirements on a person that sells or distributes a nontherapeutic  
20 nicotine product or an alternative nicotine product;
- 21                   ▶ imposes an excise tax on the sale of an electronic cigarette substance, a  
22 nontherapeutic nicotine device substance, an alternative nicotine product, and  
23 certain prefilled devices;
- 24                   ▶ creates the Electronic Cigarette Substance and Other Nicotine Product Tax  
25 Restricted Account;
- 26                   ▶ addresses use of revenue from the taxation of an electronic cigarette substance, a  
27 nontherapeutic nicotine device substance, and an alternative nicotine product; and



28           ▶ provides criminal penalties for a sale or purchase of an electronic cigarette product,  
29 a nontherapeutic nicotine product, or an alternative nicotine product in violation of  
30 law.

31 **Money Appropriated in this Bill:**

32           None

33 **Other Special Clauses:**

34           This bill provides a special effective date.

35 **Utah Code Sections Affected:**

36 AMENDS:

- 37           26-42-102, as last amended by Laws of Utah 2015, Chapter 132
- 38           26-57-101, as enacted by Laws of Utah 2015, Chapter 132
- 39           26-57-102, as enacted by Laws of Utah 2015, Chapter 132
- 40           59-14-102, as last amended by Laws of Utah 2013, Chapter 148
- 41           59-14-201, as last amended by Laws of Utah 2013, Chapter 148
- 42           59-14-203.5, as last amended by Laws of Utah 2011, Chapter 96
- 43           59-14-801, as enacted by Laws of Utah 2015, Chapter 132
- 44           59-14-802, as enacted by Laws of Utah 2015, Chapter 132
- 45           59-14-803, as enacted by Laws of Utah 2015, Chapter 132
- 46           76-10-101, as last amended by Laws of Utah 2015, Chapters 66, 132 and last amended
- 47 by Coordination Clause, Laws of Utah 2015, Chapter 132
- 48           76-10-104, as last amended by Laws of Utah 2010, Chapter 114
- 49           76-10-104.1, as last amended by Laws of Utah 2013, Chapter 278
- 50           76-10-105, as last amended by Laws of Utah 2010, Chapter 114
- 51           76-10-105.1, as last amended by Laws of Utah 2015, Chapters 66 and 132

52 ENACTS:

- 53           26-57-104, Utah Code Annotated 1953
- 54           59-14-804, Utah Code Annotated 1953
- 55           59-14-805, Utah Code Annotated 1953

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

58           Section 1. Section 26-42-102 is amended to read:

59 **26-42-102. Definitions.**

60 As used in this chapter:

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

62 (2) "Employee" means an employee of a licensee.

63 (3) "Enforcing agency" means the state Department of Health, or any local health  
64 department, enforcing the provisions of this chapter.

65 (4) "Licensee" means a person licensed:

66 (a) under Section 59-14-201 to sell cigarettes at retail;

67 (b) under Section 59-14-301 to sell tobacco products at retail; or

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

70 (5) "License to sell tobacco" or "license" means a license issued:

71 (a) under Section 59-14-201 to sell cigarettes at retail;

72 (b) under Section 59-14-301 to sell tobacco products at retail; or

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

75 (6) "Tobacco" means:

76 (a) a cigarette or a tobacco product, as defined in Section 59-14-102; or

77 (b) an electronic cigarette product, a nontherapeutic nicotine product, or an alternative  
78 nicotine product, as defined in Section [~~59-14-802~~] 59-14-102.

79 Section 2. Section 26-57-101 is amended to read:

80 **CHAPTER 57. ELECTRONIC CIGARETTE AND OTHER NICOTINE PRODUCT**  
81 **REGULATION ACT**

82 **26-57-101. Title.**

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

85 Section 3. Section 26-57-102 is amended to read:

86 **26-57-102. Definitions.**

87 As used in this chapter:

88 (1) "Alternative nicotine product" means the same as that term is defined in Section  
89 59-14-102.

90           ~~[(1)]~~ (2) "Cigarette" means the same as that term is defined in Section [59-14-102](#).

91           ~~[(2)]~~ (3) "Electronic cigarette" means the same as that term is defined in Section

92 ~~[59-14-802]~~ [59-14-102](#).

93           ~~[(3)]~~ (4) "Electronic cigarette product" means an electronic cigarette or an electronic  
94 cigarette substance.

95           ~~[(4)]~~ (5) "Electronic cigarette substance" means the same as that term is defined in

96 Section ~~[59-14-802]~~ [59-14-102](#).

97           (6) "Local health department" means the same as that term is defined in Section

98 [26A-1-102](#).

99           ~~[(5)]~~ (7) "Manufacture" includes:

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

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

102           ~~[(6)]~~ (8) "Manufacturer sealed electronic cigarette substance" means an electronic

103 cigarette substance that is sold in a container that:

104           (a) is pre-filled by the electronic cigarette substance manufacturer; and

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

106           (9) "Nontherapeutic nicotine device" means the same as that term is defined in Section

107 [59-14-102](#).

108           (10) "Nontherapeutic nicotine device substance" means the same as that term is defined

109 in Section [59-14-102](#).

110           (11) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device or a  
111 nontherapeutic nicotine device substance.

112           Section 4. Section **26-57-104** is enacted to read:

113           **26-57-104. Nontherapeutic nicotine products and alternative nicotine products --**

114 **Labeling -- Manufacturing and quality control standards.**

115           (1) (a) To the extent that the United States Food and Drug Administration issues a

116 regulation regarding labeling, nicotine content, packaging, or product quality for a

117 nontherapeutic nicotine product or an alternative nicotine product, the federal regulations apply

118 and the department is not required under this section to establish a rule on the same subject for

119 which a federal regulation exists.

120           (b) The department or a local health department may not enact a rule or regulation

121 regarding labeling, nicotine content, packaging, or product quality for a nontherapeutic nicotine  
122 product or an alternative nicotine content that conflicts with a regulation by the United States  
123 Food and Drug Administration.

124 (2) No later than January 1, 2018, the department shall, in consultation with a local  
125 health department and with input from members of the public, establish by rule made in  
126 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, standards for a  
127 nontherapeutic nicotine product and an alternative nicotine product regarding:

128 (a) labeling;

129 (b) nicotine content;

130 (c) packaging; and

131 (d) product quality.

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

135 (4) Beginning on July 1, 2018, a person may not distribute or sell a nontherapeutic  
136 nicotine product or an alternative nicotine product unless the nontherapeutic nicotine product  
137 or alternative nicotine product complies with the standards established by the department under  
138 Subsection (2).

139 (5) (a) Beginning on July 1, 2018, a local health department may not enact a rule or  
140 regulation regarding the labeling, nicotine content, packaging, or product quality of a  
141 nontherapeutic nicotine product or an alternative nicotine product that is not identical to the  
142 standards established by the department under Subsection (2).

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

146 (c) A local health department may not enact a rule or regulation regarding a  
147 manufacturer sealed nontherapeutic nicotine product or a manufacturer sealed alternative  
148 nicotine product.

149 Section 5. Section **59-14-102** is amended to read:

150 **59-14-102. Definitions.**

151 As used in this chapter:

152 (1) (a) Except as provided in Subsection (1)(c), "alternative nicotine product" means a  
153 product, other than a cigarette, a counterfeit cigarette, an electronic cigarette product, or a  
154 tobacco product, that:

- 155 (i) contains nicotine;
- 156 (ii) is intended for human consumption;
- 157 (iii) is not purchased with a prescription from a licensed physician; and
- 158 (iv) is not approved by the United States Food and Drug Administration as nicotine  
159 replacement therapy.

160 (b) "Alternative nicotine product" includes:

- 161 (i) pure nicotine;
- 162 (ii) snortable nicotine;
- 163 (iii) dissolvable orbs, pellets, sticks, or strips; and
- 164 (iv) nicotine-laced food and drink.

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

167 ~~[(1)]~~ (2) "Cigarette" means a roll for smoking made wholly or in part of tobacco:

- 168 (a) regardless of:
- 169 (i) the size of the roll;
- 170 (ii) the shape of the roll; or
- 171 (iii) whether the tobacco is ~~[(A)]~~ flavored~~[(B)]~~, adulterated~~[(C)]~~, or ~~[(D)]~~ mixed with  
172 any other ingredient; and

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

175 ~~[(2)]~~ (3) "Cigarette rolling machine" means a device or machine that has the capability  
176 to produce at least 150 cigarettes in less than 30 minutes.

177 ~~[(3)]~~ (4) "Cigarette rolling machine operator" means a person ~~[who]~~ that:

- 178 (a) (i) controls, leases, owns, possesses, or otherwise has available for use a cigarette  
179 rolling machine; and
- 180 (ii) makes the cigarette rolling machine available for use by another person to produce  
181 a cigarette; or
- 182 (b) offers for sale, at retail, a cigarette produced from the cigarette rolling machine.

- 183           ~~[(4)]~~ (5) "Consumer" means a person that is not required:
- 184           (a) under Section [59-14-201](#) to obtain a license under Section [59-14-202](#); ~~[or]~~
- 185           (b) under Section [59-14-301](#) to obtain a license under Section [59-14-202](#)~~[-];~~ or
- 186           (c) under Section [59-14-803](#) to obtain a license.
- 187           ~~[(5)]~~ (6) "Counterfeit cigarette" means:
- 188           (a) a cigarette that has a false manufacturing label; or
- 189           (b) a package of cigarettes bearing a counterfeit tax stamp.
- 190           (7) (a) "Electronic cigarette" means:
- 191           (i) an electronic device used to deliver or capable of delivering vapor containing
- 192 nicotine to an individual's respiratory system;
- 193           (ii) a component of the device described in Subsection (7)(a)(i); or
- 194           (iii) an accessory sold in the same package as the device described in Subsection
- 195 (7)(a)(i).
- 196           (b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section
- 197 [26-38-2](#).
- 198           (8) "Electronic cigarette product" means an electronic cigarette or an electronic
- 199 cigarette substance.
- 200           (9) "Electronic cigarette substance" means any substance, including liquid containing
- 201 nicotine, used or intended for use in an electronic cigarette.
- 202           ~~[(6)]~~ (10) "Importer" means a person ~~[who]~~ that imports into the United States, either
- 203 directly or indirectly, a finished cigarette for sale or distribution.
- 204           ~~[(7)]~~ (11) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity,
- 205 or any other person doing business as a distributor or retailer of cigarettes on tribal lands
- 206 located in the state.
- 207           ~~[(8)]~~ (12) "Little cigar" means a roll for smoking that:
- 208           (a) is made wholly or in part of tobacco;
- 209           (b) ~~[that]~~ uses an integrated cellulose acetate filter or other similar filter; and
- 210           (c) ~~[that]~~ is wrapped in a substance:
- 211           (i) containing tobacco; and
- 212           (ii) that is not exclusively natural leaf tobacco.
- 213           ~~[(9)]~~ (13) (a) Except as provided in Subsection ~~[(9)]~~ (13)(b), "manufacturer" means a

214 person ~~[who]~~ that:

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

216 (ii) makes, modifies, mixes, manufactures, fabricates, assembles, processes, labels,

217 repackages, relabels, or imports a finished electronic cigarette product, nontherapeutic nicotine

218 product, or alternative nicotine product.

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

220 ~~[(10)]~~ (14) "Moist snuff" means tobacco that:

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

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

224 (c) is not intended to be:

225 (i) smoked; or

226 (ii) placed in the nasal cavity; and

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

229 (i) tablets;

230 (ii) lozenges;

231 (iii) strips;

232 (iv) sticks; or

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

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

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

237 (i) is used to deliver nicotine to the bloodstream by:

238 (A) puffing or inhaling pure nicotine into the mouth; or

239 (B) spraying nicotine into the nose;

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

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

243 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or  
244 nontherapeutic nicotine nasal spray.



245 (17) "Nontherapeutic nicotine device substance" means a cartridge that:  
246 (a) contains nicotine;  
247 (b) is used or intended to be used in a nontherapeutic nicotine device;  
248 (c) is not purchased with a prescription from a licensed physician; and  
249 (d) is not approved by the United States Food and Drug Administration as nicotine  
250 replacement therapy.

251 (18) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device or a  
252 nontherapeutic nicotine device substance.

253 ~~[(11)]~~ (19) "Retailer" means a person that:

254 (a) sells or distributes a cigarette, electronic cigarette product, nontherapeutic nicotine  
255 product, or alternative nicotine product to a consumer in the state; or

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

258 ~~[(12)]~~ (20) "Stamp" means the indicia required to be placed on a cigarette package that  
259 evidences payment of the tax on cigarettes required by Section 59-14-205.

260 ~~[(13)]~~ (21) (a) "Tobacco product" means a product made of, or containing, tobacco.

261 (b) "Tobacco product" includes:

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

263 (ii) a little cigar; or

264 (iii) moist snuff.

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

266 ~~[(14)]~~ (22) "Tribal lands" means land held by the United States in trust for a federally  
267 recognized Indian tribe.

268 Section 6. Section 59-14-201 is amended to read:

269 **59-14-201. License -- Application of part -- Fee -- Bond -- Exceptions.**

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

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

275 (3) (a) A license may not be issued for the sale of cigarettes until the applicant has paid

276 a license fee of \$30 or a license renewal fee of \$20, as appropriate.

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

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

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

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

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

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

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

290 Section 7. Section **59-14-203.5** is amended to read:

291 **59-14-203.5. Commission action to suspend or revoke license.**

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

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

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

300 (3) When the commission revokes a licensee's license under this section, the  
301 commission may not issue to the licensee, or to the business entity using the license that is  
302 revoked, a license under Section [59-14-202](#) ~~[or]~~, Section 59-14-301 to sell tobacco, or Section  
303 59-14-803 to sell an electronic cigarette product, a nontherapeutic nicotine product, or an  
304 alternative nicotine product at the location for which the license was issued for one year after:

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

306 (b) if the revocation is appealed, the day on which the decision to uphold the

307 revocation becomes final.

308 Section 8. Section **59-14-801** is amended to read:

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

310 **59-14-801. Title.**

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

313 Section 9. Section **59-14-802** is amended to read:

314 **59-14-802. Definitions.**

315 As used in this part:

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

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

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

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

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

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

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

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

328 ~~[(5)]~~ (1) "Enforcing agency" means the Department of Health, a county health  
329 department, or a local health department, when enforcing:

330 (a) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; or

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

333 ~~[(6)]~~ (2) "Licensee" means a person that holds a valid license to sell an electronic  
334 cigarette [products] product, a nontherapeutic nicotine product, or an alternative nicotine  
335 product.

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

338 (3) (a) "Manufacturer's sales price" means the amount the manufacturer of an electronic  
339 cigarette substance, prefilled electronic cigarette, nontherapeutic nicotine device substance,  
340 prefilled nontherapeutic nicotine device, or alternative nicotine product charges after  
341 subtracting a discount.

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

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

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

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

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

352 Section 10. Section **59-14-803** is amended to read:

353 **59-14-803. Registration and license to sell an electronic cigarette product,**  
354 **nontherapeutic nicotine product, or alternative nicotine product.**

355 (1) (a) Except as provided in Subsection ~~[(2)]~~ (1)(b), a person may not sell, offer to  
356 sell, or distribute an electronic cigarette product, nontherapeutic nicotine product, or alternative  
357 nicotine product in Utah without first:

358 (i) registering with the commission under this section; and

359 (ii) obtaining a license to sell an electronic cigarette product, nontherapeutic nicotine  
360 product, or alternative nicotine product from the commission under this section.

361 ~~[(2)]~~ (b) A person that holds a valid license to sell cigarettes under Section 59-14-201,  
362 or a person that holds a valid license to sell tobacco products under Section 59-14-301, may~~;~~  
363 ~~without obtaining a separate license to sell an electronic cigarette product under this part,]~~ sell,  
364 offer to sell, or distribute an electronic cigarette product, nontherapeutic nicotine product, or  
365 alternative nicotine product in Utah without obtaining a separate license to sell an electronic  
366 cigarette product, nontherapeutic nicotine product, or alternative nicotine product in  
367 accordance with this ~~[part]~~ section.

368 (2) (a) To register with the commission, a person shall file a bond with the

369 commission.

370 (b) (i) The bond shall be in the form and amount determined by the commission, the  
371 minimum amount of which shall be \$500.

372 (ii) The bond shall be executed by the registrant as principal, with a corporate surety,  
373 payable to the state and conditioned upon the faithful performance of all the requirements of  
374 this chapter, including the payment of all taxes, penalties, and other obligations.

375 (c) The commission may not charge a fee for registration.

376 (3) (a) Except as provided in Subsection (6), the commission shall issue a license to  
377 sell an electronic cigarette product, nontherapeutic nicotine product, or alternative nicotine  
378 product to a person that[:] meets the requirements of this Subsection (3).

379 ~~[(a)]~~ (b) ~~[submits]~~ The person requesting a license shall file an application, on a form  
380 created by the commission, that includes:

381 (i) the person's name;

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

384 (iii) any other information the commission requires to implement this chapter~~[-and]~~.

385 ~~[(b)]~~ (c) ~~[pays]~~ With the application, the person shall pay a fee:

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

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

390 (d) (i) The person shall file a bond with the commission in the form and the amount  
391 determined by the commission, the minimum amount of which shall be \$500.

392 (ii) The bond required by this Subsection (3) may be made in combination with the  
393 bond required by Subsection (2).

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

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

396 (b) valid for three years;

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

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

399 (5) The commission shall, after notifying a licensee, revoke a license described in

400 Subsection (3) if an enforcing agency determines the licensee has violated a provision of:

401 (a) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; or

402 (b) Title 26, Chapter 57, Electronic Cigarette and Other Nicotine Product Regulation

403 Act.

404 (6) If the commission revokes a person's license to sell an electronic cigarette product,

405 nontherapeutic nicotine product, or alternative nicotine product under Subsection (5), the

406 commission may not issue a license to sell an electronic cigarette product, nontherapeutic

407 nicotine product, or alternative nicotine product, a license to sell cigarettes under Section

408 59-14-201, or a license to sell tobacco under Section 59-14-301 to the person until one year

409 after:

410 (a) the day on which the time for filing an appeal of the revocation ends, as determined

411 by the enforcing agency; or

412 (b) if the person appeals the enforcing agency's decision to revoke the license to sell an

413 electronic cigarette product, nontherapeutic nicotine product, or alternative nicotine product,

414 the day on which the enforcing agency's decision to uphold the revocation is final.

415 (7) If the commission revokes a person's license under Subsection (5), the commission

416 shall also revoke the person's license to sell cigarettes under Section 59-14-201, if any, and the

417 person's license to sell tobacco under Section 59-14-301, if any.

418 (8) The commission may make rules in accordance with Title 63G, Chapter 3, Utah

419 Administrative Rulemaking Act, to establish the additional information described in

420 Subsection (3)~~(a)~~(b)(iii) that a person must provide in the application described in Subsection

421 ~~(3)(a)~~(b).

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

423 Section 11. Section **59-14-804** is enacted to read:

424 **59-14-804. Taxation of an electronic cigarette product, a nontherapeutic nicotine**  
425 **product, and an alternative nicotine product.**

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

427 (i) an electronic cigarette substance; and

428 (ii) a prefilled electronic cigarette.

429 (b) Beginning on July 1, 2018, there is levied a tax upon the following:

430 (i) an alternative nicotine product;

431 (ii) a nontherapeutic nicotine device substance; or

432 (iii) a prefilled nontherapeutic nicotine device.

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

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

439 (b) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user may not  
440 resell the electronic cigarette substance, prefilled electronic cigarette, nontherapeutic nicotine  
441 device substance, prefilled nontherapeutic nicotine device, or alternative nicotine product to  
442 another distributor, another retailer, or a consumer before paying the tax levied under  
443 Subsection (1).

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

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

447 (i) the first \$2,000,000 remitted in accordance with this section into the Electronic  
448 Cigarette Substance and Other Nicotine Product Tax Restricted Account, created in Section  
449 59-14-805; and

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

452 Section 12. Section **59-14-805** is enacted to read:

453 **59-14-805. Electronic Cigarette Substance and Other Nicotine Product Tax**  
454 **Restricted Account.**

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

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

459 (a) for each fiscal year, the first \$2,000,000 collected from the tax imposed by Section  
460 59-14-804; and

461 (b) amounts appropriated by the Legislature.

462 (3) For each fiscal year beginning with fiscal year 2017-18, and subject to  
463 appropriation by the Legislature, the Division of Finance shall distribute money from the  
464 Electronic Cigarette Substance and Other Nicotine Product Tax Restricted Account to the local  
465 health departments in accordance with Section 26A-1-116 for the purpose of:

466 (a) enforcing the regulation provisions under Section 26-57-103; and  
467 (b) providing electronic cigarette and other nicotine product use prevention education  
468 to youth.

469 Section 13. Section 76-10-101 is amended to read:

470 **Part 1. Cigarettes, Tobacco, Other Nicotine Substances, and Psychotoxic Chemical**  
471 **Substances**

472 **76-10-101. Definitions.**

473 As used in this part:

474 (1) "Alternative nicotine product" means the same as that term is defined in Section  
475 59-14-102.

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

480 [(2)] (3) "Cigarette" means a product that contains nicotine, is intended to be burned  
481 under ordinary conditions of use, and consists of:

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

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

486 [(3)] "Electronic cigarette" means an electronic cigarette product, as defined in Section  
487 59-14-802.]

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

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

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

492 (iii) an accessory sold in the same package as the device described in Subsection



493 (4)(a)(i).

494 (b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section  
495 26-38-2.

496 (5) "Electronic cigarette product" means an electronic cigarette or electronic cigarette  
497 substance.

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

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

501 (i) is used to deliver nicotine to the bloodstream by:

502 (A) puffing or inhaling pure nicotine into the mouth; or

503 (B) spraying nicotine into the nose;

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

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

507 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or  
508 nontherapeutic nicotine nasal spray.

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

510 (a) contains nicotine;

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

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

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

515 (9) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device or a  
516 nontherapeutic nicotine device substance.

517 ~~[(4)]~~ (10) "Place of business" includes:

518 (a) a shop;

519 (b) a store;

520 (c) a factory;

521 (d) a public garage;

522 (e) an office;

523 (f) a theater;

- 524 (g) a recreation hall;
- 525 (h) a dance hall;
- 526 (i) a poolroom;
- 527 (j) a café;
- 528 (k) a cafeteria;
- 529 (l) a cabaret;
- 530 (m) a restaurant;
- 531 (n) a hotel;
- 532 (o) a lodging house;
- 533 (p) a streetcar;
- 534 (q) a bus;
- 535 (r) an interurban or railway passenger coach;
- 536 (s) a waiting room; and
- 537 (t) any other place of business.

538 [~~5~~] (11) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other  
 539 lighted smoking equipment.

540 Section 14. Section 76-10-104 is amended to read:

541 **76-10-104. Providing a cigar, cigarette, electronic cigarette, nontherapeutic**  
 542 **nicotine product, alternative nicotine product, or tobacco to a minor -- Penalties.**

543 (1) Any person who knowingly, intentionally, recklessly, or with criminal negligence  
 544 provides any cigar, cigarette, electronic cigarette product, nontherapeutic nicotine product, or  
 545 alternative nicotine product, or tobacco in any form, to any person under 19 years of age, is  
 546 guilty of a class C misdemeanor on the first offense, a class B misdemeanor on the second  
 547 offense, and a class A misdemeanor on subsequent offenses.

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

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

554 Section 15. Section 76-10-104.1 is amended to read:

555 **76-10-104.1. Providing tobacco paraphernalia to minors -- Penalties.**

556 (1) For purposes of this section:

557 (a) "Provides":

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

559 (ii) does not include the acts of the United States Postal Service or other common  
560 carrier when engaged in the business of transporting and delivering packages for others or the  
561 acts of a person, whether compensated or not, who transports or delivers a package for another  
562 person without any reason to know of the package's content.563 (b) (i) "Tobacco paraphernalia"[:;(†)] means any equipment, product, or material of any  
564 kind which is used, intended for use, or designed for use to package, repackage, store, contain,  
565 conceal, ingest, inhale, or otherwise introduce a cigar, electronic cigarette substance,  
566 nontherapeutic nicotine device substance, cigarette, or tobacco in any form into the human  
567 body, including:568 (A) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without  
569 screens, permanent screens, hashish heads, or punctured metal bowls;

570 (B) water pipes;

571 (C) carburetion tubes and devices;

572 (D) smoking and carburetion masks;

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

575 (F) chamber pipes;

576 (G) carburetor pipes;

577 (H) electric pipes;

578 (I) air-driven pipes;

579 (J) chillums;

580 (K) bongs; and

581 (L) ice pipes or chillers[~~;~~and].582 (ii) "Tobacco paraphernalia" does not include matches or lighters.583 (2) (a) It is unlawful for a person to knowingly, intentionally, recklessly, or with  
584 criminal negligence provide any tobacco paraphernalia to any person under 19 years of age.

585 (b) A person who violates this section is guilty of a class C misdemeanor on the first

586 offense and a class B misdemeanor on subsequent offenses.

587 Section 16. Section **76-10-105** is amended to read:

588 **76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette,**  
589 **nontherapeutic nicotine product, or alternative nicotine product, or tobacco by a minor --**  
590 **Penalty -- Compliance officer authority -- Juvenile court jurisdiction.**

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

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

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

598 (2) Any person under the age of 18 who buys or attempts to buy, accepts, or has in the  
599 person's possession any cigar, cigarette, electronic cigarette product, nontherapeutic nicotine  
600 product, or alternative nicotine product, or tobacco in any form is subject to the jurisdiction of  
601 the Juvenile Court and:

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

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

605 (3) A compliance officer appointed by a board of education under Section [53A-3-402](#)  
606 may issue citations for violations of this section committed on school property. Cited  
607 violations shall be reported to the appropriate juvenile court.

608 Section 17. Section **76-10-105.1** is amended to read:

609 **76-10-105.1. Requirement of direct, face-to-face sale of cigarettes, tobacco,**  
610 **electronic cigarettes, nontherapeutic nicotine product, or alternative nicotine product --**  
611 **Minors not allowed in tobacco specialty shop -- Penalties.**

612 (1) As used in this section:

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

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

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

617 (A) vending machine; or

618 (B) self-service display.

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

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

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

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

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

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

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

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

637 (a) a mail-order, telephone, or Internet sale made in compliance with Section  
638 [59-14-509](#);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

670 Section 18. **Effective date.**

671 This bill takes effect on July 1, 2017.