

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

3 2020 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Allen M. Christensen**

6 House Sponsor: _____

8 **LONG TITLE**

9 **Committee Note:**

10 The Health and Human Services Interim Committee recommended this bill.

11 Legislative Vote: 12 voting for 0 voting against 5 absent

12 **General Description:**

13 This bill enacts and amends provisions relating to electronic cigarette products and
14 nicotine products.

15 **Highlighted Provisions:**

16 This bill:

- 17 ▶ defines terms;
- 18 ▶ imposes permitting requirements and processes for the sale of a nicotine product;
- 19 ▶ requires a tobacco retailer to provide itemized receipts and to maintain an itemized
20 transaction log for sales of a tobacco product, an electronic cigarette product, or a
21 nicotine product;
- 22 ▶ applies civil penalties to the improper sale of a nicotine product;
- 23 ▶ requires certain nicotine products to have a statement on the products' exterior
24 packages that the products contain nicotine;
- 25 ▶ imposes licensing and bonding requirements on a person that sells or distributes an
26 electronic cigarette product or a nicotine product;
- 27 ▶ imposes an excise tax on the sale in the state of an electronic cigarette substance, a



28 prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic nicotine device
29 substance, and a prefilled nontherapeutic nicotine device;

- 30 ▶ provides for the remittance of the tax collected;
- 31 ▶ creates the Electronic Cigarette Substance and Nicotine Product Tax Restricted
32 Account;
- 33 ▶ addresses use of revenue from the taxation of an electronic cigarette substance, a
34 prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic
35 nicotine device substance, and a prefilled nontherapeutic nicotine device;
- 36 ▶ provides criminal penalties for a sale or a purchase of an electronic cigarette product
37 or a nicotine product in violation of the law;
- 38 ▶ prohibits a manufacturer, a wholesaler, or a retailer from providing certain discounts
39 or giveaways for electronic cigarettes; and
- 40 ▶ makes technical and conforming changes.

41 **Money Appropriated in this Bill:**

42 None

43 **Other Special Clauses:**

44 This bill provides a special effective date.

45 **Utah Code Sections Affected:**

46 AMENDS:

- 47 **10-8-41.6**, as last amended by Laws of Utah 2018, Chapter 231
- 48 **17-50-333**, as last amended by Laws of Utah 2018, Chapter 231
- 49 **26-57-101**, as enacted by Laws of Utah 2015, Chapter 132
- 50 **26-57-102**, as enacted by Laws of Utah 2015, Chapter 132
- 51 **26-62-101**, as enacted by Laws of Utah 2018, Chapter 231
- 52 **26-62-102**, as renumbered and amended by Laws of Utah 2018, Chapter 231
- 53 **26-62-201**, as enacted by Laws of Utah 2018, Chapter 231
- 54 **26-62-202**, as last amended by Laws of Utah 2019, Chapter 157
- 55 **26-62-301**, as enacted by Laws of Utah 2018, Chapter 231
- 56 **26-62-304 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
- 57 **26-62-305 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
- 58 **26-62-306**, as renumbered and amended by Laws of Utah 2018, Chapter 231

- 59 **26A-1-128**, as enacted by Laws of Utah 2018, Chapter 231
- 60 **53-3-229**, as last amended by Laws of Utah 2010, Chapters 114 and 276
- 61 **53-3-810**, as last amended by Laws of Utah 2010, Chapters 114 and 276
- 62 **53G-4-402**, as last amended by Laws of Utah 2019, Chapters 83, 293, and 451
- 63 **53G-8-209**, as last amended by Laws of Utah 2019, Chapter 293
- 64 **59-14-102**, as last amended by Laws of Utah 2013, Chapter 148
- 65 **59-14-302**, as last amended by Laws of Utah 2014, Chapter 189
- 66 **59-14-801**, as enacted by Laws of Utah 2015, Chapter 132
- 67 **59-14-802**, as last amended by Laws of Utah 2019, Chapter 136
- 68 **59-14-803**, as last amended by Laws of Utah 2018, Chapter 231
- 69 **76-8-311.3**, as last amended by Laws of Utah 2010, Chapter 114
- 70 **76-10-101**, as last amended by Laws of Utah 2015, Chapters 66, 132 and last amended
- 71 by Coordination Clause, Laws of Utah 2015, Chapter 132
- 72 **76-10-104 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
- 73 **76-10-104.1 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
- 74 **76-10-105 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
- 75 **76-10-105.1 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232
- 76 **76-10-111**, as last amended by Laws of Utah 2010, Chapter 114
- 77 **77-39-101 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 232

78 ENACTS:

- 79 **26-57-104**, Utah Code Annotated 1953
- 80 **26-62-206**, Utah Code Annotated 1953
- 81 **59-14-804**, Utah Code Annotated 1953
- 82 **59-14-805**, Utah Code Annotated 1953
- 83 **59-14-806**, Utah Code Annotated 1953
- 84 **59-14-807**, Utah Code Annotated 1953



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

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

88 **10-8-41.6. Regulation of retail tobacco specialty business.**

89 (1) As used in this section:

- 90 (a) "Community location" means:
- 91 (i) a public or private kindergarten, elementary, middle, junior high, or high school;
- 92 (ii) a licensed child-care facility or preschool;
- 93 (iii) a trade or technical school;
- 94 (iv) a church;
- 95 (v) a public library;
- 96 (vi) a public playground;
- 97 (vii) a public park;
- 98 (viii) a youth center or other space used primarily for youth oriented activities;
- 99 (ix) a public recreational facility;
- 100 (x) a public arcade; or
- 101 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.

102 (b) "Department" means the Department of Health, created in Section 26-1-4.

103 (c) "Electronic cigarette product" means the same as that term is defined in Section
104 59-14-102.

105 (d) "Licensee" means a person licensed under this section to conduct business as a
106 retail tobacco specialty business.

107 [~~(e)~~] (e) "Local health department" means the same as that term is defined in Section
108 26A-1-102.

109 (f) "Nicotine product" means the same as that term is defined in Section 59-14-102.

110 [~~(d)~~] ~~"Permittee" means a person licensed under this section to conduct business as a~~
111 ~~retail tobacco specialty business.]~~

112 [~~(e)~~] (g) "Retail tobacco specialty business" means a commercial establishment in
113 which:

114 (i) [~~the sale of tobacco products accounts~~] sales of tobacco products, electronic
115 cigarette products, and nicotine products account for more than 35% of the total quarterly gross
116 receipts for the establishment;

117 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
118 storage of tobacco products, electronic cigarette products, and nicotine products;

119 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
120 tobacco products, electronic cigarette products, and nicotine products; or

121 (iv) the retail space features a self-service display for tobacco products, electronic
122 cigarette products, and nicotine products.

123 [~~(f)~~] (h) "Self-service display" means the same as that term is defined in Section
124 76-10-105.1.

125 [~~(g)~~] (i) "Tobacco product" means:

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

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

129 (A) chewing tobacco; or

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

131 and

132 (iii) tobacco paraphernalia, as that term is defined in Section 76-10-104.1.

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

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

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

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

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

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

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

146 (A) agriculture use; or

147 (B) residential use.

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

152 (5) ~~[(a) Except as provided in Subsection (5)(b), beginning July 1, 2018, a]~~ A
153 municipality may not issue or renew a license for a person to conduct business as a retail
154 tobacco specialty business until the person provides the municipality with proof that the retail
155 tobacco specialty business has:

156 ~~[(i)]~~ (a) a valid permit for a retail tobacco specialty business issued under Title 26,
157 Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local
158 health department having jurisdiction over the area in which the retail tobacco specialty
159 business is located; and

160 ~~[(ii)]~~ (b) (i) a valid license issued by the State Tax Commission in accordance with
161 Section 59-14-201 or 59-14-301 to sell ~~[tobacco products from the State Tax Commission:]~~ a
162 tobacco product; or

163 (ii) a valid license issued by the State Tax Commission in accordance with Section
164 59-14-803 to sell an electronic cigarette product or a nicotine product.

165 ~~[(b) A person that was licensed to conduct business as a retail tobacco specialty~~
166 ~~business in a municipality before July 1, 2018, shall obtain a permit from a local health~~
167 ~~department under Title 26, Chapter 62, Tobacco Retail Permit, on or before January 1, 2019.]~~

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

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

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

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

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

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

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

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

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

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

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

191 (ii) the retail tobacco specialty business does not close for business or otherwise
192 suspend the sale of tobacco products, electronic cigarette products, or nicotine products for
193 more than 60 consecutive days;

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

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

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

199 (B) zoning ordinances;

200 (C) building codes; and

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

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

204 **17-50-333. Regulation of retail tobacco specialty business.**

205 (1) As used in this section:

206 (a) "Community location" means:

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

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

209 (iii) a trade or technical school;

210 (iv) a church;

211 (v) a public library;

212 (vi) a public playground;

213 (vii) a public park;

- 214 (viii) a youth center or other space used primarily for youth oriented activities;
- 215 (ix) a public recreational facility;
- 216 (x) a public arcade; or
- 217 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
- 218 (b) "Department" means the Department of Health, created in Section [26-1-4](#).
- 219 (c) "Electronic cigarette product" means the same as that term is defined in Section
- 220 [59-14-102](#).
- 221 ~~[(e)]~~ (d) "Licensee" means a person licensed under this section to conduct business as a
- 222 retail tobacco specialty business.
- 223 ~~[(d)]~~ (e) "Local health department" means the same as that term is defined in Section
- 224 [26A-1-102](#).
- 225 (f) "Nicotine product" means the same as that term is defined in Section [59-14-102](#).
- 226 ~~[(e)]~~ (g) "Retail tobacco specialty business" means a commercial establishment in
- 227 which:
- 228 (i) ~~[the sale of tobacco products accounts]~~ sales of tobacco products, electronic
- 229 cigarette products, and nicotine products account for more than 35% of the total quarterly gross
- 230 receipts for the establishment;
- 231 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
- 232 storage of tobacco products, electronic cigarette products, and nicotine products;
- 233 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of
- 234 tobacco products, electronic cigarette products, and nicotine products; or
- 235 (iv) the retail space features a self-service display for tobacco products, electronic
- 236 cigarette products, and nicotine products.
- 237 ~~[(f)]~~ (h) "Self-service display" means the same as that term is defined in Section
- 238 [76-10-105.1](#).
- 239 ~~[(g)]~~ (i) "Tobacco product" means:
- 240 (i) any cigar~~;~~ or cigarette, ~~[or electronic cigarette]~~ as those terms are defined in
- 241 Section [76-10-101](#);
- 242 (ii) a tobacco product as that term is defined in Section [59-14-102](#), including:
- 243 (A) chewing tobacco; or
- 244 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;

245 and

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

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

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

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

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

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

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

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

260 (A) agriculture use; or

261 (B) residential use.

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

266 (5) [~~(a) Except as provided in Subsection (5)(b), beginning July 1, 2018, a~~] A county
267 may not issue or renew a license for a person to conduct business as a retail tobacco specialty
268 business until the person provides the county with proof that the retail tobacco specialty
269 business has:

270 [(~~ti~~)] (a) a valid permit for a retail tobacco specialty business issued under Title 26,
271 Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local
272 health department having jurisdiction over the area in which the retail tobacco specialty
273 business is located; and

274 [(~~ti~~)] (b) (i) a valid license issued by the State Tax Commission in accordance with
275 Section [59-14-201](#) or [59-14-301](#) to sell [~~tobacco products from the State Tax Commission.~~] a

276 tobacco product; or

277 (ii) a valid license issued by the State Tax Commission in accordance with Section
278 59-14-803 to sell an electronic cigarette product or a nicotine product.

279 [~~(b) A person that was licensed to conduct business as a retail tobacco specialty
280 business in a county before July 1, 2018, shall obtain a permit from a local health department
281 under Title 26, Chapter 62, Tobacco Retail Permit, on or before January 1, 2019.~~]

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

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

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

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

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

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

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

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

296 (7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has
297 a business license and is operating in a county in accordance with all applicable laws except for
298 the requirement in Subsection (4), on or before December 31, 2015, is exempt from Subsection
299 (4).

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

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

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

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

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

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

312 (B) zoning ordinances;

313 (C) building codes; and

314 (D) the requirements of a retail tobacco specialty business license issued before

315 December 31, 2015.

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

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

319 **26-57-101. Title.**

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

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

323 **26-57-102. Definitions.**

324 As used in this chapter:

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

326 (2) "Electronic cigarette" means the same as that term is defined in Section

327 ~~[59-14-802]~~ [59-14-102](#).

328 (3) "Electronic cigarette product" means an electronic cigarette or an electronic
329 cigarette substance.

330 (4) "Electronic cigarette substance" means the same as that term is defined in Section

331 ~~[59-14-802]~~ [59-14-102](#).

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

333 [26A-1-102](#).

334 ~~[(5)]~~ (6) "Manufacture" includes:

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

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

337 ~~[(6)]~~ (7) "Manufacturer sealed electronic cigarette substance" means an electronic

338 cigarette substance that is sold in a container that:

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

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

341 (8) "Nicotine" means the same as that term is defined in Section 59-14-102.

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

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

344 **26-57-104. Labeling of nicotine products containing nicotine.**

345 (1) Any nicotine product shall contain the statement described in Subsection (2) if the
346 nicotine product:

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

349 (ii) is not otherwise required under federal or state law to contain a nicotine warning;

350 and

351 (b) contains nicotine.

352 (2) A statement shall appear on the exterior packaging of a nicotine product described
353 in Subsection (1) as follows:

354 "This product contains nicotine."

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

356 **CHAPTER 62. TOBACCO, ELECTRONIC CIGARETTE, AND NICOTINE**
357 **PRODUCT RETAIL PERMIT**

358 **26-62-101. Title.**

359 This chapter is known as "Tobacco, Electronic Cigarette, and Nicotine Product Retail
360 Permit."

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

362 **26-62-102. Definitions.**

363 As used in this chapter:

364 (1) "Community location" means the same as that term is defined:

365 (a) as it relates to a municipality, in Section 10-8-41.6; and

366 (b) as it relates to a county, in Section 17-50-333.

367 (2) "Electronic cigarette product" means the same as that term is defined in Section
368 59-14-102.

369 ~~[(2)]~~ (3) "Employee" means an employee of a tobacco retailer.

370 ~~[(3)]~~ (4) "Enforcing agency" means the state Department of Health, or any local health
371 department enforcing the provisions of this chapter.

372 ~~[(4)]~~ (5) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco
373 specialty business.

374 ~~[(5)]~~ (6) "Local health department" means the same as that term is defined in Section
375 [26A-1-102](#).

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

377 ~~[(6)]~~ (8) "Permit" means a tobacco retail permit issued under this chapter.

378 ~~[(7)]~~ (9) "Retail tobacco specialty business" means the same as that term is defined:

379 (a) as it relates to a municipality, in Section [10-8-41.6](#); and

380 (b) as it relates to a county, in Section [17-50-333](#).

381 ~~[(8)]~~ (10) "Tax commission license" means a license issued by the State Tax
382 Commission under:

383 (a) Section [59-14-201](#) to sell ~~[cigarettes]~~ a cigarette at retail;

384 (b) Section [59-14-301](#) to sell ~~[tobacco products]~~ a tobacco product at retail; or

385 (c) Section [59-14-803](#) to sell an electronic cigarette product or a nicotine product.

386 ~~[(9)]~~ (11) "Tobacco product" means:

387 (a) a cigar~~;~~ or cigarette, ~~[or electronic cigarette]~~ as those terms are defined in Section
388 [76-10-101](#);

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

390 (i) chewing tobacco; or

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

392 (c) tobacco paraphernalia as that term is defined in Section [76-10-104.1](#).

393 ~~[(10)]~~ (12) "Tobacco retailer" means a person that is required to obtain a tax
394 commission license.

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

396 **26-62-201. Permitting requirement.**

397 (1) (a) ~~[Beginning July 1, 2018, a]~~ A tobacco retailer shall hold a valid tobacco retail
398 permit issued in accordance with this chapter by the local health department with jurisdiction
399 over the physical location where the tobacco retailer operates.

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

401 (i) place [~~tobacco products~~] a tobacco product, an electronic cigarette product, or a
402 nicotine product in public view;

403 (ii) display any advertisement related to [~~tobacco products~~] a tobacco product, an
404 electronic cigarette product, or a nicotine product that promotes the sale, distribution, or use of
405 those products; or

406 (iii) sell, offer for sale, or offer to exchange for any form of consideration, tobacco [~~or~~
407 ~~tobacco products~~], a tobacco product, an electronic cigarette product, or a nicotine product.

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

410 (a) a general tobacco retailer; or

411 (b) a retail tobacco specialty business.

412 (3) A permit under this chapter is:

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

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

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

417 [~~(4) Notwithstanding the requirement in Subsection (1), a person that holds a tax~~
418 ~~commission license that was valid on July 1, 2018:]~~

419 [~~(a) may operate without a permit under this chapter until December 31, 2018; and]~~

420 [~~(b) shall obtain a permit from a local health department under this chapter before~~
421 ~~January 1, 2019:]~~

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

423 **26-62-202. Permit application.**

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

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

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

429 (2) An applicant for a permit shall:

430 (a) submit an application described in Subsection (3) to the local health department

- 431 with jurisdiction over the area where the tobacco retailer is located; and
- 432 (b) pay all applicable fees described in Section 26-62-203.
- 433 (3) The application for a permit shall include:
- 434 (a) the name, address, and telephone number of each proprietor;
- 435 (b) the name and mailing address of each proprietor authorized to receive
- 436 permit-related communication and notices;
- 437 (c) the business name, address, and telephone number of the single, fixed location for
- 438 which a permit is sought;
- 439 (d) evidence that the location for which a permit is sought has a valid tax commission
- 440 license;
- 441 (e) information regarding whether, in the past 24 months, any proprietor of the tobacco
- 442 retailer has been determined to have violated, or has been a proprietor at a location that has
- 443 been determined to have violated:
- 444 (i) a provision of this chapter;
- 445 (ii) Chapter 38, Utah Indoor Clean Air Act;
- 446 (iii) Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic Chemical
- 447 Solvents;
- 448 (iv) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
- 449 (v) regulations restricting the sale and distribution of cigarettes and smokeless tobacco
- 450 issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140; or
- 451 (vi) any other provision of state law or local ordinance regarding the sale, marketing, or
- 452 distribution of [~~tobacco products~~] a tobacco product, an electronic cigarette product, or a
- 453 nicotine product; and
- 454 (f) the dates of all violations disclosed under this Subsection (3).
- 455 (4) (a) In addition to the information described in Subsection (3), an applicant for a
- 456 retail tobacco specialty business permit shall include evidence showing whether the business is
- 457 located within:
- 458 (i) 1,000 feet of a community location;
- 459 (ii) 600 feet of another retail tobacco specialty business; or
- 460 (iii) 600 feet of property used or zoned for agricultural or residential use.
- 461 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in

462 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest
463 property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard
464 to intervening structures or zoning districts.

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

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

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

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

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

475 Section 10. Section 26-62-206 is enacted to read:

476 **26-62-206. Requirements for the sale of tobacco product, electronic cigarette**
477 **product, or nicotine product.**

478 (1) A tobacco retailer shall:

479 (a) provide the customer with an itemized receipt for each sale of a tobacco product, an
480 electronic cigarette product, or a nicotine product that separately identifies:

481 (i) the name of the tobacco product, the electronic cigarette product, or the nicotine
482 product;

483 (ii) the amount charged for each tobacco product, electronic cigarette product, or
484 nicotine product; and

485 (iii) the date and time of the sale; and

486 (b) maintain an itemized transaction log that separately identifies, for each sale of a
487 tobacco product, an electronic cigarette product, or a nicotine product:

488 (i) the name of the tobacco product, the electronic cigarette product, or the nicotine
489 product;

490 (ii) the amount charged for each tobacco product, electronic cigarette product, or
491 nicotine product; and

492 (iii) the date and time of the sale.

- 493 (2) The itemized transaction log described in Subsection (1)(b) shall be:
- 494 (a) maintained for at least one year from the date of each transaction in the itemized
- 495 transaction log; and
- 496 (b) made available to an enforcing agency or a peace officer at the request of the
- 497 enforcing agency or the peace officer.

498 Section 11. Section **26-62-301** is amended to read:

499 **26-62-301. Permit violation.**

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

- 501 (1) a provision of this chapter;
- 502 (2) a provision of licensing laws under Section 10-8-41.6 or Section 17-50-333;
- 503 (3) a provision of Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic
- 504 Chemical Solvents;
- 505 (4) a provision of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
- 506 (5) a regulation restricting the sale and distribution of cigarettes and smokeless tobacco
- 507 issued by the United States Food and Drug Administration under 21 C.F.R. Part 1140; or
- 508 (6) any other provision of state law or local ordinance regarding the sale, marketing, or
- 509 distribution of [~~tobacco products~~] a tobacco product, an electronic cigarette product, or a
- 510 nicotine product.

511 Section 12. Section **26-62-304 (Effective 07/01/20)** is amended to read:

512 **26-62-304 (Effective 07/01/20). Hearing -- Evidence of criminal conviction.**

513 (1) At a civil hearing conducted under Section 26-62-302, evidence of the final

514 criminal conviction of a tobacco retailer or employee for violation of Section 76-10-104 at the

515 same location and within the same time period as the location and time period alleged in the

516 civil hearing for violation of this chapter for sale of [~~tobacco products~~] a tobacco product, an

517 electronic cigarette product, or a nicotine product to an individual under the following ages is

518 prima facie evidence of a violation of this chapter:

- 519 (a) beginning July 1, 2020, and ending June 30, 2021, under 20 years old; and
- 520 (b) beginning July 1, 2021, under 21 years old.
- 521 (2) If the tobacco retailer is convicted of violating Section 76-10-104, the enforcing
- 522 agency:
- 523 (a) may not assess an additional monetary penalty under this chapter for the same

524 offense for which the conviction was obtained; and

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

526 Section 13. Section 26-62-305 (Effective 07/01/20) is amended to read:

527 **26-62-305 (Effective 07/01/20). Penalties.**

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

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

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

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

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

540 (i) a suspension of the retail tobacco business permit for 30 consecutive business days
541 within 60 days after the day on which the third or subsequent violation occurs; or

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

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

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

546 (b) in addition to a monetary penalty imposed under Subsection (2), suspend the permit
547 if the violation is due to a sale of [~~tobacco products~~] a tobacco product, an electronic cigarette
548 product, or a nicotine product to an individual under:

549 (i) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and

550 (ii) beginning July 1, 2021, 21 years old; and

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

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

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

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

560 (b) A person whose permit:

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

564 (ii) is revoked may not apply for a new permit for any tobacco retailer for a period of
565 24 months after the day on which an enforcing agency revokes the permit.

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

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

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

572 Section 14. Section 26-62-306 is amended to read:

573 **26-62-306. Recognition of tobacco retailer training program.**

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

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

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

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

585 (i) the tobacco retailer agrees to initiate a training program for employees at that

586 location; and

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

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

594 Section 15. Section **26A-1-128** is amended to read:

595 **26A-1-128. Tobacco, electronic cigarette, and nicotine product permits --**
596 **Enforcement.**

597 A local health department:

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

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

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

607 Section 16. Section **53-3-229** is amended to read:

608 **53-3-229. Prohibited uses of license certificate -- Penalty.**

609 (1) It is a class C misdemeanor for [~~a person~~] an individual to:

610 (a) lend or knowingly permit the use of a license certificate issued to the [~~person~~]
611 individual, by [~~a person~~] an individual not entitled to it;

612 (b) display or to represent as the [~~person's~~] individual's own a license certificate not
613 issued to the [~~person~~] individual;

614 (c) refuse to surrender to the division or a peace officer upon demand any license
615 certificate issued by the division;

616 (d) use a false name or give a false address in any application for a license or any

617 renewal or duplicate of the license certificate, or to knowingly make a false statement, or to
618 knowingly conceal a material fact or otherwise commit a fraud in the application;

619 (e) display a canceled, denied, revoked, suspended, or disqualified driver license
620 certificate as a valid driver license certificate;

621 (f) knowingly acquire, use, display, or transfer an item that purports to be an authentic
622 driver license certificate issued by a governmental entity if the item is not an authentic driver
623 license certificate issued by that governmental entity; or

624 (g) alter any information on an authentic driver license certificate so that it no longer
625 represents the information originally displayed.

626 (2) The provisions of Subsection (1)(e) do not prohibit the use of [~~a person's~~] an
627 individual's driver license certificate as a means of personal identification.

628 (3) It is a class A misdemeanor to knowingly:

629 (a) issue a driver license certificate with false or fraudulent information;

630 (b) issue a driver license certificate to a person younger than 21 years of age if the
631 driver license certificate is not distinguished as required for [~~a person~~] an individual younger
632 than 21 years of age under Section 53-3-207; or

633 (c) acquire, use, display, or transfer a false or altered driver license certificate to
634 procure:

635 (i) a cigarette;

636 (ii) an electronic cigarette product, as defined in Section 76-10-101;

637 (iii) tobacco; or

638 (iv) a tobacco product.

639 (4) [~~A person~~] An individual may not use, display, or transfer a false or altered driver
640 license certificate to procure alcoholic beverages, gain admittance to a place where alcoholic
641 beverages are sold or consumed, or obtain employment that may not be obtained by a minor in
642 violation of Section 32B-1-403.

643 (5) It is a third degree felony if [~~a person's~~] an individual's acquisition, use, display, or
644 transfer of a false or altered driver license certificate:

645 (a) aids or furthers the [~~person's~~] individual's efforts to fraudulently obtain goods or
646 services; or

647 (b) aids or furthers the [~~person's~~] individual's efforts to commit a violent felony.

648 Section 17. Section **53-3-810** is amended to read:

649 **53-3-810. Prohibited uses of identification card -- Penalties.**

650 (1) It is a class C misdemeanor to:

651 (a) lend or knowingly permit the use of an identification card issued to the [~~person~~]
652 individual, by [~~a person~~] an individual not entitled to it;

653 (b) display or to represent as the [~~person's~~] individual's own an identification card not
654 issued to the [~~person~~] individual;

655 (c) refuse to surrender to the division or a peace officer upon demand any identification
656 card issued by the division;

657 (d) use a false name or give a false address in any application for an identification card
658 or any renewal or duplicate of the identification card, or to knowingly make a false statement,
659 or to knowingly conceal a material fact in the application;

660 (e) display a revoked identification card as a valid identification card;

661 (f) knowingly acquire, use, display, or transfer an item that purports to be an authentic
662 identification card issued by a governmental entity if the item is not an authentic identification
663 card issued by that governmental entity; or

664 (g) alter any information contained on an authentic identification card so that it no
665 longer represents the information originally displayed.

666 (2) It is a class A misdemeanor to knowingly:

667 (a) issue an identification card with false or fraudulent information;

668 (b) issue an identification card to any [~~person~~] individual younger than 21 years of age
669 if the identification card is not distinguished as required for [~~a person~~] an individual younger
670 than 21 years of age under Section **53-3-806**; or

671 (c) acquire, use, display, or transfer a false or altered identification card to procure:

672 (i) a cigarette;

673 (ii) an electronic cigarette product, as defined in Section **76-10-101**;

674 (iii) tobacco; or

675 (iv) a tobacco product.

676 (3) [~~A person~~] An individual may not knowingly use, display, or transfer a false or
677 altered identification card to procure alcoholic beverages, gain admittance to a place where
678 alcoholic beverages are sold or consumed, or obtain employment that may not be obtained by a

679 minor in violation of Section [32B-1-403](#).

680 (4) It is a third degree felony if [~~a person's~~] an individual's acquisition, use, display, or
681 transfer of a false or altered identification card:

682 (a) aids or furthers the [~~person's~~] individual's efforts to fraudulently obtain goods or
683 services; or

684 (b) aids or furthers the [~~person's~~] individual's efforts to commit a violent felony.

685 Section 18. Section **53G-4-402** is amended to read:

686 **53G-4-402. Powers and duties generally.**

687 (1) A local school board shall:

688 (a) implement the core standards for Utah public schools using instructional materials
689 that best correlate to the core standards for Utah public schools and graduation requirements;

690 (b) administer tests, required by the state board, which measure the progress of each
691 student, and coordinate with the state superintendent and state board to assess results and create
692 plans to improve the student's progress, which shall be submitted to the state board for
693 approval;

694 (c) use progress-based assessments as part of a plan to identify schools, teachers, and
695 students that need remediation and determine the type and amount of federal, state, and local
696 resources to implement remediation;

697 (d) develop early warning systems for students or classes failing to make progress;

698 (e) work with the state board to establish a library of documented best practices,
699 consistent with state and federal regulations, for use by the local districts;

700 (f) implement training programs for school administrators, including basic
701 management training, best practices in instructional methods, budget training, staff
702 management, managing for learning results and continuous improvement, and how to help
703 every child achieve optimal learning in basic academic subjects; and

704 (g) ensure that the local school board meets the data collection and reporting standards
705 described in Section [53E-3-501](#).

706 (2) Local school boards shall spend Minimum School Program funds for programs and
707 activities for which the state board has established minimum standards or rules under Section
708 [53E-3-501](#).

709 (3) (a) A local school board may purchase, sell, and make improvements on school

710 sites, buildings, and equipment and construct, erect, and furnish school buildings.

711 (b) School sites or buildings may only be conveyed or sold on local school board
712 resolution affirmed by at least two-thirds of the members.

713 (4) (a) A local school board may participate in the joint construction or operation of a
714 school attended by children residing within the district and children residing in other districts
715 either within or outside the state.

716 (b) Any agreement for the joint operation or construction of a school shall:

717 (i) be signed by the president of the local school board of each participating district;

718 (ii) include a mutually agreed upon pro rata cost; and

719 (iii) be filed with the state board.

720 (5) A local school board may establish, locate, and maintain elementary, secondary,
721 and applied technology schools.

722 (6) Except as provided in Section [53E-3-905](#), a local school board may enroll children
723 in school who are at least five years of age before September 2 of the year in which admission
724 is sought.

725 (7) A local school board may establish and support school libraries.

726 (8) A local school board may collect damages for the loss, injury, or destruction of
727 school property.

728 (9) A local school board may authorize guidance and counseling services for children
729 and their parents before, during, or following enrollment of the children in schools.

730 (10) (a) A local school board shall administer and implement federal educational
731 programs in accordance with Title 53E, Chapter 3, Part 8, Implementing Federal or National
732 Education Programs.

733 (b) Federal funds are not considered funds within the school district budget under
734 Chapter 7, Part 3, Budgets.

735 (11) (a) A local school board may organize school safety patrols and adopt policies
736 under which the patrols promote student safety.

737 (b) A student appointed to a safety patrol shall be at least 10 years old and have written
738 parental consent for the appointment.

739 (c) Safety patrol members may not direct vehicular traffic or be stationed in a portion
740 of a highway intended for vehicular traffic use.

741 (d) Liability may not attach to a school district, its employees, officers, or agents or to a
742 safety patrol member, a parent of a safety patrol member, or an authorized volunteer assisting
743 the program by virtue of the organization, maintenance, or operation of a school safety patrol.

744 (12) (a) A local school board may on its own behalf, or on behalf of an educational
745 institution for which the local school board is the direct governing body, accept private grants,
746 loans, gifts, endowments, devises, or bequests that are made for educational purposes.

747 (b) These contributions are not subject to appropriation by the Legislature.

748 (13) (a) A local school board may appoint and fix the compensation of a compliance
749 officer to issue citations for violations of Subsection [76-10-105\(2\)\(b\)](#).

750 (b) A person may not be appointed to serve as a compliance officer without the
751 person's consent.

752 (c) A teacher or student may not be appointed as a compliance officer.

753 (14) A local school board shall adopt bylaws and policies for the local school board's
754 own procedures.

755 (15) (a) A local school board shall make and enforce policies necessary for the control
756 and management of the district schools.

757 (b) Local school board policies shall be in writing, filed, and referenced for public
758 access.

759 (16) A local school board may hold school on legal holidays other than Sundays.

760 (17) (a) A local school board shall establish for each school year a school traffic safety
761 committee to implement this Subsection (17).

762 (b) The committee shall be composed of one representative of:

763 (i) the schools within the district;

764 (ii) the Parent Teachers' Association of the schools within the district;

765 (iii) the municipality or county;

766 (iv) state or local law enforcement; and

767 (v) state or local traffic safety engineering.

768 (c) The committee shall:

769 (i) receive suggestions from school community councils, parents, teachers, and others
770 and recommend school traffic safety improvements, boundary changes to enhance safety, and
771 school traffic safety program measures;

772 (ii) review and submit annually to the Department of Transportation and affected
773 municipalities and counties a child access routing plan for each elementary, middle, and junior
774 high school within the district;

775 (iii) consult the Utah Safety Council and the Division of Family Health Services and
776 provide training to all school children in kindergarten through grade 6, within the district, on
777 school crossing safety and use; and

778 (iv) help ensure the district's compliance with rules made by the Department of
779 Transportation under Section [41-6a-303](#).

780 (d) The committee may establish subcommittees as needed to assist in accomplishing
781 its duties under Subsection (17)(c).

782 (18) (a) A local school board shall adopt and implement a comprehensive emergency
783 response plan to prevent and combat violence in the local school board's public schools, on
784 school grounds, on its school vehicles, and in connection with school-related activities or
785 events.

786 (b) The plan shall:

787 (i) include prevention, intervention, and response components;

788 (ii) be consistent with the student conduct and discipline policies required for school
789 districts under Chapter 11, Part 2, Miscellaneous Requirements;

790 (iii) require professional learning for all district and school building staff on what their
791 roles are in the emergency response plan;

792 (iv) provide for coordination with local law enforcement and other public safety
793 representatives in preventing, intervening, and responding to violence in the areas and activities
794 referred to in Subsection (18)(a); and

795 (v) include procedures to notify a student, to the extent practicable, who is off campus
796 at the time of a school violence emergency because the student is:

797 (A) participating in a school-related activity; or

798 (B) excused from school for a period of time during the regular school day to
799 participate in religious instruction at the request of the student's parent.

800 (c) The state board, through the state superintendent, shall develop comprehensive
801 emergency response plan models that local school boards may use, where appropriate, to
802 comply with Subsection (18)(a).

803 (d) A local school board shall, by July 1 of each year, certify to the state board that its
804 plan has been practiced at the school level and presented to and reviewed by its teachers,
805 administrators, students, and their parents and local law enforcement and public safety
806 representatives.

807 (19) (a) A local school board may adopt an emergency response plan for the treatment
808 of sports-related injuries that occur during school sports practices and events.

809 (b) The plan may be implemented by each secondary school in the district that has a
810 sports program for students.

811 (c) The plan may:

812 (i) include emergency personnel, emergency communication, and emergency
813 equipment components;

814 (ii) require professional learning on the emergency response plan for school personnel
815 who are involved in sports programs in the district's secondary schools; and

816 (iii) provide for coordination with individuals and agency representatives who:

817 (A) are not employees of the school district; and

818 (B) would be involved in providing emergency services to students injured while
819 participating in sports events.

820 (d) The local school board, in collaboration with the schools referred to in Subsection
821 (19)(b), may review the plan each year and make revisions when required to improve or
822 enhance the plan.

823 (e) The state board, through the state superintendent, shall provide local school boards
824 with an emergency plan response model that local school boards may use to comply with the
825 requirements of this Subsection (19).

826 (20) A local school board shall do all other things necessary for the maintenance,
827 prosperity, and success of the schools and the promotion of education.

828 (21) (a) Before closing a school or changing the boundaries of a school, a local school
829 board shall:

830 (i) at least 120 days before approving the school closure or school boundary change,
831 provide notice to the following that the local school board is considering the closure or
832 boundary change:

833 (A) parents of students enrolled in the school, using the same form of communication

834 the local school board regularly uses to communicate with parents;

835 (B) parents of students enrolled in other schools within the school district that may be
836 affected by the closure or boundary change, using the same form of communication the local
837 school board regularly uses to communicate with parents; and

838 (C) the governing council and the mayor of the municipality in which the school is
839 located;

840 (ii) provide an opportunity for public comment on the proposed school closure or
841 school boundary change during at least two public local school board meetings; and

842 (iii) hold a public hearing as defined in Section 10-9a-103 and provide public notice of
843 the public hearing as described in Subsection (21)(b).

844 (b) The notice of a public hearing required under Subsection (21)(a)(iii) shall:

845 (i) indicate the:

846 (A) school or schools under consideration for closure or boundary change; and

847 (B) the date, time, and location of the public hearing;

848 (ii) at least 10 days before the public hearing, be:

849 (A) published:

850 (I) in a newspaper of general circulation in the area; and

851 (II) on the Utah Public Notice Website created in Section 63F-1-701; and

852 (B) posted in at least three public locations within the municipality in which the school
853 is located on the school district's official website, and prominently at the school; and

854 (iii) at least 30 days before the public hearing described in Subsection (21)(a)(iii), be
855 provided as described in Subsections (21)(a)(i)(A), (B), and (C).

856 (22) A local school board may implement a facility energy efficiency program
857 established under Title 11, Chapter 44, Performance Efficiency Act.

858 (23) A local school board may establish or partner with a certified youth court
859 program, in accordance with Section 78A-6-1203, or establish or partner with a comparable
860 restorative justice program, in coordination with schools in that district. A school may refer a
861 student to youth court or a comparable restorative justice program in accordance with Section
862 53G-8-211.

863 Section 19. Section 53G-8-209 is amended to read:

864 **53G-8-209. Extracurricular activities -- Prohibited conduct -- Reporting of**

865 **violations -- Limitation of liability.**

866 (1) The Legislature recognizes that:

867 (a) participation in student government and extracurricular activities may confer
868 important educational and lifetime benefits upon students, and encourages school districts and
869 charter schools to provide a variety of opportunities for all students to participate in such
870 activities in meaningful ways;

871 (b) there is no constitutional right to participate in these types of activities, and does
872 not through this section or any other provision of law create such a right;

873 (c) students who participate in student government and extracurricular activities,
874 particularly competitive athletics, and the adult coaches, advisors, and assistants who direct
875 those activities, become role models for others in the school and community;

876 (d) these individuals often play major roles in establishing standards of acceptable
877 behavior in the school and community, and establishing and maintaining the reputation of the
878 school and the level of community confidence and support afforded the school; and

879 (e) it is of the utmost importance that those involved in student government, whether as
880 officers or advisors, and those involved in competitive athletics and related activities, whether
881 students or staff, comply with all applicable laws and standards of behavior and conduct
882 themselves at all times in a manner befitting their positions and responsibilities.

883 (2) (a) The state board may, and local school boards and charter school governing
884 boards shall, adopt rules or policies implementing this section that apply to both students and
885 staff.

886 (b) The rules or policies described in Subsection (2)(a) shall include prohibitions
887 against the following types of conduct in accordance with Section 53G-8-211, while in the
888 classroom, on school property, during school sponsored activities, or regardless of the location
889 or circumstance, affecting a person or property described in Subsections 53G-8-203(1)(e)(i)
890 through (iv):

891 (i) use of foul, abusive, or profane language while engaged in school related activities;

892 (ii) illicit use, possession, or distribution of controlled substances or drug
893 paraphernalia, and the use, possession, or distribution of an electronic cigarette product as
894 defined in Section 76-10-101, tobacco, or alcoholic beverages contrary to law; and

895 (iii) hazing, demeaning, or assaultive behavior, whether consensual or not, including

896 behavior involving physical violence, restraint, improper touching, or inappropriate exposure
897 of body parts not normally exposed in public settings, forced ingestion of any substance, or any
898 act which would constitute a crime against a person or public order under [~~Utah~~] state law.

899 (3) (a) School employees who reasonably believe that a violation of this section may
900 have occurred shall immediately report that belief to the school principal, district
901 superintendent, or chief administrative officer of a charter school.

902 (b) Principals who receive a report under Subsection (3)(a) shall submit a report of the
903 alleged incident, and actions taken in response, to the district superintendent or the
904 superintendent's designee within 10 working days after receipt of the report.

905 (c) Failure of a person holding a professional certificate to report as required under this
906 Subsection (3) constitutes an unprofessional practice.

907 (4) Limitations of liability set forth under Section [53G-8-405](#) apply to this section.

908 Section 20. Section **59-14-102** is amended to read:

909 **59-14-102. Definitions.**

910 As used in this chapter:

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

914 (i) contains nicotine;

915 (ii) is intended for human consumption;

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

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

919 (b) "Alternative nicotine product" includes:

920 (i) pure nicotine;

921 (ii) snortable nicotine;

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

923 (iv) nicotine-laced food and beverage.

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

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

- 927 (a) regardless of:
- 928 (i) the size of the roll;
- 929 (ii) the shape of the roll; or
- 930 (iii) whether the tobacco is~~[-(A)-]~~ flavored~~[-(B)]~~, adulterated~~[-or-(C)]~~, or mixed with
- 931 any other ingredient; and
- 932 (b) if the wrapper or cover of the roll is made of paper or any other substance or
- 933 material except tobacco.
- 934 ~~[(2)]~~ (3) "Cigarette rolling machine" means a device or machine that has the capability
- 935 to produce at least 150 cigarettes in less than 30 minutes.
- 936 ~~[(3)]~~ (4) "Cigarette rolling machine operator" means a person who:
- 937 (a) (i) controls, leases, owns, possesses, or otherwise has available for use a cigarette
- 938 rolling machine; and
- 939 (ii) makes the cigarette rolling machine available for use by another person to produce
- 940 a cigarette; or
- 941 (b) offers for sale, at retail, a cigarette produced from the cigarette rolling machine.
- 942 ~~[(4)]~~ (5) "Consumer" means a person that is not required:
- 943 (a) under Section 59-14-201 to obtain a license under Section 59-14-202; ~~[or]~~
- 944 (b) under Section 59-14-301 to obtain a license under Section 59-14-202~~[-];~~ or
- 945 (c) to obtain a license under Section 59-14-803.
- 946 ~~[(5)]~~ (6) "Counterfeit cigarette" means:
- 947 (a) a cigarette that has a false manufacturing label; or
- 948 (b) a package of cigarettes bearing a counterfeit tax stamp.
- 949 (7) (a) "Electronic cigarette" means:
- 950 (i) an electronic device used to deliver or capable of delivering vapor containing
- 951 nicotine or another substance to an individual's respiratory system;
- 952 (ii) a component of the device described in Subsection (7)(a)(i); or
- 953 (iii) an accessory sold in the same package as the device described in Subsection
- 954 (7)(a)(i).
- 955 (b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section
- 956 26-38-2.
- 957 (8) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette

958 substance, or a prefilled electronic cigarette.

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

961 ~~[(7)]~~ (10) "Importer" means a person ~~[who]~~ that imports into the United States, either
 962 directly or indirectly, a finished cigarette for sale or distribution.

963 ~~[(7)]~~ (11) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity,
 964 or any other person doing business as a distributor or retailer of cigarettes on tribal lands
 965 located in the state.

966 ~~[(8)]~~ (12) "Little cigar" means a roll for smoking that:

- 967 (a) is made wholly or in part of tobacco;
- 968 (b) ~~[that]~~ uses an integrated cellulose acetate filter or other similar filter; and
- 969 (c) ~~[that]~~ is wrapped in a substance:
 - 970 (i) containing tobacco; and
 - 971 (ii) that is not exclusively natural leaf tobacco.

972 ~~[(9)]~~ (13) (a) Except as provided in Subsection ~~[(9)]~~ (13)(b), "manufacturer" means a
 973 person ~~[who]~~ that:

- 974 (i) manufactures, fabricates, assembles, processes, or labels a finished cigarette[-]; or
- 975 (ii) makes, modifies, mixes, manufactures, fabricates, assembles, processes, labels,
 976 repackages, relabels, or imports an electronic cigarette product or a nicotine product.

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

978 ~~[(10)]~~ (14) "Moist snuff" means tobacco that:

- 979 (a) is finely~~[-(i)-]~~ cut~~[-(ii)-]~~, ground~~[-or-(iii)-]~~, or powdered;
- 980 (b) has at least 45% moisture content, as determined by the commission by rule made
 981 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 982 (c) is not intended to be:
 - 983 (i) smoked; or
 - 984 (ii) placed in the nasal cavity; and
- 985 (d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or
 986 distributed in single-use units, including:
 - 987 (i) tablets;
 - 988 (ii) lozenges;

- 989 (iii) strips;
- 990 (iv) sticks; or
- 991 (v) packages containing multiple single-use units.

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

994 (16) "Nicotine product" means an alternative nicotine product or a nontherapeutic
995 nicotine product.

996 (17) (a) "Nontherapeutic nicotine device" means a device that:

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

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

1000 (iii) is not approved by the United States Food and Drug Administration as nicotine
1001 replacement therapy.

1002 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or
1003 nontherapeutic nicotine nasal spray.

1004 (18) "Nontherapeutic nicotine device substance" means a substance that:

1005 (a) contains nicotine;

1006 (b) is sold in a cartridge for use in a nontherapeutic nicotine device;

1007 (c) is not purchased with a prescription from a licensed physician; and

1008 (d) is not approved by the United States Food and Drug Administration as nicotine
1009 replacement therapy.

1010 (19) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device, a
1011 nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device.

1012 (20) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled
1013 with an electronic cigarette substance.

1014 (21) "Prefilled nontherapeutic nicotine device" means a nontherapeutic nicotine device
1015 that is sold prefilled with a nontherapeutic nicotine device substance.

1016 [(H)] (22) "Retailer" means a person that:

1017 (a) sells or distributes a cigarette, an electronic cigarette product, or a nicotine product
1018 to a consumer in the state; or

1019 (b) intends to sell or distribute a cigarette, an electronic cigarette product, or a nicotine

1020 product to a consumer in the state.

1021 [~~(12)~~] (23) "Stamp" means the indicia required to be placed on a cigarette package that
1022 evidences payment of the tax on cigarettes required by Section 59-14-205.

1023 [~~(13)~~] (24) (a) "Tobacco product" means a product made of, or containing, tobacco.

1024 (b) "Tobacco product" includes:

1025 (i) a cigarette produced from a cigarette rolling machine;

1026 (ii) a little cigar; or

1027 (iii) moist snuff.

1028 (c) "Tobacco product" does not include a cigarette.

1029 [~~(14)~~] (25) "Tribal lands" means land held by the United States in trust for a federally
1030 recognized Indian tribe.

1031 Section 21. Section 59-14-302 is amended to read:

1032 **59-14-302. Tax basis -- Rates.**

1033 (1) As used in this section:

1034 (a) "Manufacturer's sales price" means the amount the manufacturer of a tobacco
1035 product charges after subtracting a discount.

1036 (b) "Manufacturer's sales price" includes an original Utah destination freight charge,
1037 regardless of:

1038 (i) whether the tobacco product is shipped f.o.b. origin or f.o.b. destination; or

1039 (ii) who pays the original Utah destination freight charge.

1040 (2) There is levied a tax upon the sale, use, or storage of tobacco products in the state.

1041 (3) (a) Subject to Subsection (3)(b), the tax levied under Subsection (2) shall be paid
1042 by the manufacturer, jobber, distributor, wholesaler, retailer, user, or consumer.

1043 (b) The tax levied under Subsection (2) on a cigarette produced from a cigarette rolling
1044 machine shall be paid by the cigarette rolling machine operator.

1045 (4) For tobacco products except for moist snuff, a little cigar, or a cigarette produced
1046 from a cigarette rolling machine, the [~~rate~~] amount of the tax under this section is .86
1047 multiplied by the manufacturer's sales price.

1048 (5) (a) Subject to Subsection (5)(b), the tax under this section on moist snuff is
1049 imposed:

1050 (i) at a rate of \$1.83 per ounce; and

1051 (ii) on the basis of the net weight of the moist snuff as listed by the manufacturer.

1052 (b) If the net weight of moist snuff is in a quantity that is a fractional part of one ounce,
1053 a proportionate amount of the tax described in Subsection (5)(a) is imposed:

1054 (i) on that fractional part of one ounce; and

1055 (ii) in accordance with rules made by the commission in accordance with Title 63G,
1056 Chapter 3, Utah Administrative Rulemaking Act.

1057 (6) (a) A little cigar is taxed at the same tax rates as a cigarette is taxed under
1058 Subsection 59-14-204(2).

1059 (b) (i) Subject to Subsection (6)(b)(ii), a cigarette produced from a cigarette rolling
1060 machine is taxed at the same tax rates as a cigarette is taxed under Subsection 59-14-204(2).

1061 (ii) A tax under this Subsection (6)(b) is imposed on the date the cigarette is produced
1062 from the cigarette rolling machine.

1063 (7) (a) Moisture content of a tobacco product is determined at the time of packaging.

1064 (b) A manufacturer who distributes a tobacco product in, or into, Utah, shall:

1065 (i) for a period of three years after the last day on which the manufacturer distributes
1066 the tobacco product in, or into, Utah, keep valid scientific evidence of the moisture content of
1067 the tobacco product available for review by the commission, upon demand; and

1068 (ii) provide a document, to the person described in Subsection (3) to whom the
1069 manufacturer distributes the tobacco product, that certifies the moisture content of the tobacco
1070 product, as verified by the scientific evidence described in Subsection (7)(b)(i).

1071 (c) A manufacturer who fails to comply with the requirements of Subsection (7)(b) is
1072 liable for the nonpayment or underpayment of taxes on the tobacco product by a person who
1073 relies, in good faith, on the document described in Subsection (7)(b)(ii).

1074 (d) A person described in Subsection (3) who is required to pay tax on a tobacco
1075 product:

1076 (i) shall, for a period of three years after the last day on which the person pays the tax
1077 on the tobacco product, keep the document described in Subsection (7)(b)(ii) available for
1078 review by the commission, upon demand; and

1079 (ii) is not liable for nonpayment or underpayment of taxes on the tobacco product due
1080 to the person's good faith reliance on the document described in Subsection (7)(b)(ii).

1081 Section 22. Section 59-14-801 is amended to read:

1082 **Part 8. Electronic Cigarette and Nicotine Product Licensing and Taxation Act**1083 **59-14-801. Title.**

1084 This part is known as the "Electronic Cigarette and Nicotine Product Licensing and
1085 Taxation Act."

1086 Section 23. Section **59-14-802** is amended to read:

1087 **59-14-802. Definitions.**

1088 As used in this part:

1089 [~~(1) "Cigarette" means the same as that term is defined in Section 59-14-102.~~]

1090 [~~(2) (a) "Electronic cigarette" means:~~]

1091 [~~(i) an electronic device used to deliver or capable of delivering vapor containing~~
1092 ~~nicotine to an individual's respiratory system;~~]

1093 [~~(ii) a component of the device described in Subsection (2)(a)(i); or]~~

1094 [~~(iii) an accessory sold in the same package as the device described in Subsection~~
1095 ~~(2)(a)(i).~~]

1096 [~~(b) "Electronic cigarette" includes an e-cigarette as defined in Section 26-38-2.~~]

1097 [~~(3) "Electronic cigarette product" means an electronic cigarette or an electronic~~
1098 ~~cigarette substance.~~]

1099 [~~(4) "Electronic cigarette substance" means any substance, including liquid containing~~
1100 ~~nicotine, used or intended for use in an electronic cigarette.~~]

1101 [~~(5) (1) "Licensee" means a person that holds a valid license to sell an electronic~~
1102 ~~cigarette [products] product or a nicotine product.~~]

1103 [~~(6) "License to sell an electronic cigarette product" means a license issued by the~~
1104 ~~commission under Subsection 59-14-803(3).~~]

1105 (2) (a) "Manufacturer's sales price" means the amount that the manufacturer of an
1106 electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine product, a
1107 nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device charges
1108 after subtracting a discount.

1109 (b) "Manufacturer's sales price" includes an original Utah destination freight charge,
1110 regardless of:

1111 (i) whether the electronic cigarette substance, prefilled electronic cigarette, alternative
1112 nicotine product, nontherapeutic nicotine device substance, or prefilled nontherapeutic nicotine

1113 device is shipped f.o.b. origin or f.o.b. destination; or

1114 (ii) who pays the original Utah destination freight charge.

1115 Section 24. Section **59-14-803** is amended to read:

1116 **59-14-803. License to sell electronic cigarette product or nicotine product.**

1117 (1) [~~Except as provided in Subsection (2), a~~] A person may not sell, offer to sell, or
1118 distribute an electronic cigarette product [~~in Utah~~] or a nicotine product in this state without
1119 first:

1120 (a) except as provided in Subsection (2), obtaining a license from the commission
1121 under this section to sell an electronic cigarette product [~~from the commission under this~~
1122 section.] or a nicotine product; and

1123 (b) complying with any bonding requirement described in Subsection (5).

1124 (2) A person that holds a valid license to sell cigarettes under Section **59-14-201**[;] or a
1125 person that holds a valid license to sell tobacco products under Section **59-14-301**[;] may,
1126 without obtaining a separate license [~~to sell an electronic cigarette product under this part,~~] in
1127 accordance with this section, sell, offer to sell, or distribute an electronic cigarette product [~~in~~
1128 Utah in accordance with this part] or a nicotine product in this state.

1129 (3) The commission shall issue a license to sell an electronic cigarette product or a
1130 nicotine product to a person that submits an application, on a form created by the commission,
1131 that includes:

1132 (a) the person's name;

1133 (b) the address of the facility where the person will sell an electronic cigarette product
1134 or a nicotine product; and

1135 (c) any other information the commission requires to implement this chapter.

1136 (4) A license described in Subsection (3) is:

1137 (a) valid only at one fixed business address;

1138 (b) valid for three years;

1139 (c) valid only for a physical location; and

1140 (d) renewable if a licensee meets the criteria for licensing described in Subsection (3).

1141 (5) (a) The commission shall require a manufacturer, jobber, distributor, wholesaler, or
1142 retailer that is responsible under this part for the collection of tax on an electronic cigarette
1143 substance, a prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic

1144 nicotine device substance, or a prefilled nontherapeutic nicotine device to post a bond.

1145 (b) The manufacturer, jobber, distributor, wholesaler, or retailer may post the bond
1146 required by Subsection (5)(a) in combination with any bond required by Section [59-14-201](#) or
1147 [59-14-301](#).

1148 (c) Subject to Subsection (5)(d), the commission shall determine the form and amount
1149 of the bond.

1150 (d) The minimum amount of the bond shall be:

1151 (i) except as provided in Subsection (5)(d)(ii) or (iii), \$500;

1152 (ii) if the manufacturer, jobber, distributor, wholesaler, or retailer posts the bond
1153 required by Subsection (5)(a) in combination with a bond required by either Section [59-14-201](#)
1154 or [59-14-301](#), \$1,000; or

1155 (iii) if the manufacturer, jobber, distributor, wholesaler, or retailer posts the bond
1156 required by Subsection (5)(a) in combination with a bond required by both Sections [59-14-201](#)
1157 and [59-14-301](#), \$1,500.

1158 [~~5~~] (6) The commission may make rules in accordance with Title 63G, Chapter 3,
1159 Utah Administrative Rulemaking Act, to establish the additional information described in
1160 Subsection (3)(c) that a person [~~must~~] shall provide in the application described in Subsection
1161 (3).

1162 [~~6~~] (7) It is a class B misdemeanor for a person to violate Subsection (1).

1163 [~~7~~] (8) The commission may not charge a fee for a license under this section.

1164 Section 25. Section **59-14-804** is enacted to read:

1165 **59-14-804. Taxation of electronic cigarette substance, prefilled electronic**
1166 **cigarette, alternative nicotine product, nontherapeutic nicotine device substance, and**
1167 **prefilled nontherapeutic nicotine device.**

1168 (1) (a) There is levied a tax upon the following:

1169 (i) an electronic cigarette substance; and

1170 (ii) a prefilled electronic cigarette.

1171 (b) Beginning on July 1, 2021, there is levied a tax upon the following:

1172 (i) an alternative nicotine product;

1173 (ii) a nontherapeutic nicotine device substance; and

1174 (iii) a prefilled nontherapeutic nicotine device.

1175 (2) The amount of tax levied under Subsection (1) is .86 multiplied by the
1176 manufacturer's sales price.

1177 (3) (a) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user shall
1178 pay the tax levied under Subsection (1) at the time that an electronic cigarette substance, a
1179 prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic nicotine device
1180 substance, or a prefilled nontherapeutic nicotine device is first received in the state.

1181 (b) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user may not
1182 resell an electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine
1183 product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine
1184 device to another distributor, another retailer, or a consumer before paying the tax levied under
1185 Subsection (1).

1186 (4) (a) The manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user
1187 shall remit the taxes collected in accordance with this section to the commission.

1188 (b) The commission shall deposit, for each fiscal year:

1189 (i) the first \$3,000,000 remitted in accordance with this section into the Electronic
1190 Cigarette Substance and Nicotine Product Tax Restricted Account, created in Section
1191 [59-14-807](#); and

1192 (ii) the balance of remittances received in accordance with this section into the General
1193 Fund.

1194 Section 26. Section **59-14-805** is enacted to read:

1195 **59-14-805. Remittance of tax -- Returns -- Invoice required -- Filing requirement--**
1196 **Exception -- Penalty -- Overpayment.**

1197 (1) (a) The manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user
1198 that collects the tax imposed on an electronic cigarette substance, a prefilled electronic
1199 cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance, or a
1200 prefilled nontherapeutic nicotine device shall remit to the commission, in an electronic format
1201 approved by the commission:

1202 (i) the tax collected in the previous calendar quarter; and

1203 (ii) the quarterly tax return.

1204 (b) The tax collected and the return are due on or before the last day of April, July,
1205 October, and January.

1206 (2) (a) A manufacturer, jobber, distributor, wholesaler, retailer, or any other person
1207 selling an electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine
1208 product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine
1209 device to a person other than the ultimate consumer shall furnish the purchaser with an
1210 itemized invoice showing:

1211 (i) the seller's name and address;
1212 (ii) the name and address of the purchaser;
1213 (iii) the date of sale;
1214 (iv) the name and price of the product; and
1215 (v) the discount, if any.

1216 (b) The invoice shall show whether the price includes the tax.

1217 (c) The seller and the purchaser shall retain copies of the invoice and make the invoice
1218 available for inspection at the request of the commission or the commission's agent for a period
1219 of three years following the sale.

1220 (3) (a) A consumer that purchases an untaxed electronic cigarette substance, prefilled
1221 electronic cigarette, alternative nicotine product, nontherapeutic nicotine device substance, or
1222 prefilled nontherapeutic nicotine device for use or other consumption shall:

1223 (i) file with the commission, on forms prescribed by the commission, a statement
1224 showing the quantity and description of the item subject to tax under this part; and
1225 (ii) pay the tax imposed by this part on that item.

1226 (b) The consumer shall file the statement described in Subsection (3)(a) and pay the tax
1227 due on or before the last day of the month immediately following the month during which the
1228 consumer purchased an untaxed electronic cigarette substance, prefilled electronic cigarette,
1229 alternative nicotine device substance, nontherapeutic nicotine product, or prefilled
1230 nontherapeutic nicotine device.

1231 (c) A consumer shall maintain records necessary to determine the amount of tax the
1232 consumer is liable to pay under this part for a period of three years following the date on which
1233 the statement required by this section was filed.

1234 (4) A tourist who imports an untaxed electronic cigarette substance, a prefilled
1235 electronic cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance,
1236 or a prefilled nontherapeutic nicotine device into the state does not need to file the statement

1237 described in Subsection (3) or pay the tax if the item is for the tourist's own use or consumption
1238 while in this state.

1239 (5) In addition to the tax required by this part, a person shall pay a penalty as provided
1240 in Section 59-1-401, plus interest at the rate and in the manner prescribed in Section 59-1-402,
1241 if a person subject to this section fails to:

1242 (a) pay the tax prescribed by this part;

1243 (b) pay the tax on time; or

1244 (c) file a return required by this part.

1245 (6) An overpayment of a tax imposed by this part shall accrue interest at the rate and in
1246 the manner prescribed in Section 59-1-402.

1247 Section 27. Section 59-14-806 is enacted to read:

1248 **59-14-806. Refund of taxes paid -- Exemption for exported electronic cigarettes**
1249 **and nicotine products.**

1250 (1) When an electronic cigarette substance, a prefilled electronic cigarette, an
1251 alternative nicotine product, a nontherapeutic nicotine device substance, or a prefilled
1252 nontherapeutic nicotine device taxed under this chapter is sold and shipped to a regular dealer
1253 in those articles in another state, the seller in this state shall be entitled to a refund of the actual
1254 amount of the taxes paid, upon condition that the seller in this state:

1255 (a) is a licensed dealer;

1256 (b) signs an affidavit that the electronic cigarette substance, the prefilled electronic
1257 cigarette, the alternative nicotine product, the nontherapeutic nicotine device substance, or the
1258 prefilled nontherapeutic nicotine device was sold and shipped to a regular dealer in those
1259 articles in another state;

1260 (c) furnishes, from the purchaser, a written acknowledgment that the purchaser has
1261 received the electronic cigarette substance, the prefilled electronic cigarette, the alternative
1262 nicotine product, the nontherapeutic nicotine device substance, or the prefilled nontherapeutic
1263 nicotine device; and

1264 (d) reports the name and address of the purchaser.

1265 (2) A wholesaler or distributor in this state that exports an electronic cigarette
1266 substance, a prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic
1267 nicotine device substance, or a prefilled nontherapeutic nicotine device to a regular dealer in

1268 those articles in another state shall be exempt from the payment of any tax under this chapter
1269 upon furnishing proof of the sale and exportation as the commission may require.

1270 Section 28. Section **59-14-807** is enacted to read:

1271 **59-14-807. Electronic Cigarette Substance and Nicotine Product Tax Restricted**

1272 **Account.**

1273 (1) There is created within the General Fund a restricted account known as the
1274 "Electronic Cigarette Substance and Nicotine Product Tax Restricted Account."

1275 (2) The Electronic Cigarette Substance and Nicotine Product Tax Restricted Account
1276 consists of:

1277 (a) for each fiscal year, the first \$3,000,000 collected from the tax imposed by Section
1278 59-14-804; and

1279 (b) amounts appropriated by the Legislature.

1280 (3) (a) For each fiscal year, beginning with fiscal year 2021, and subject to
1281 appropriation by the Legislature, the Division of Finance shall distribute from the Electronic
1282 Cigarette Substance and Nicotine Product Tax Restricted Account:

1283 (i) \$1,000,000 to the Department of Human Services; and

1284 (ii) the balance of the account to the local health departments as directed by the
1285 Department of Health, which shall determine the allocation for each local health department
1286 using the formula created in accordance with Section 26A-1-116.

1287 (b) The Department of Human Services shall use the money received in accordance
1288 with Subsection (3)(a)(i) to provide substance abuse treatment.

1289 (c) The local health departments shall use the money received in accordance with
1290 Subsection (3)(a)(ii) for:

1291 (i) the development and implementation of evidence-based tobacco, electronic
1292 cigarette, and nicotine product cessation programs for individuals under the age of 19;

1293 (ii) enforcing:

1294 (A) the regulation provisions described in Section 26-57-103;

1295 (B) the labeling requirement described in Section 26-57-104; and

1296 (C) the penalty provisions described in Section 26-62-305; and

1297 (iii) developing and providing tobacco, electronic cigarette, and nicotine product use
1298 prevention education to individuals under the age of 19.

1299 Section 29. Section 76-8-311.3 is amended to read:

1300 **76-8-311.3. Items prohibited in correctional and mental health facilities --**

1301 **Penalties.**

1302 (1) As used in this section:

1303 (a) "Contraband" means any item not specifically prohibited for possession by
1304 offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

1305 (b) "Controlled substance" means any substance defined as a controlled substance
1306 under Title 58, Chapter 37, Utah Controlled Substances Act.

1307 (c) "Correctional facility" means:

1308 (i) any facility operated by or contracting with the Department of Corrections to house
1309 offenders in either a secure or nonsecure setting;

1310 (ii) any facility operated by a municipality or a county to house or detain criminal
1311 offenders;

1312 (iii) any juvenile detention facility; and

1313 (iv) any building or grounds appurtenant to the facility or lands granted to the state,
1314 municipality, or county for use as a correctional facility.

1315 (d) "Electronic cigarette" [~~is as~~] means an electronic cigarette product as that term is
1316 defined in Section 76-10-101.

1317 (e) "Medicine" means any prescription drug as defined in Title 58, Chapter 17b,
1318 Pharmacy Practice Act, but does not include any controlled substances as defined in Title 58,
1319 Chapter 37, Utah Controlled Substances Act.

1320 (f) "Mental health facility" [~~is as~~] means the same as that term is defined in Section
1321 62A-15-602.

1322 (g) "Offender" means a person in custody at a correctional facility.

1323 (h) "Secure area" [~~is as~~] means the same as that term is defined in Section 76-8-311.1.

1324 (2) Notwithstanding Section 76-10-500, a correctional or mental health facility may
1325 provide by rule that no firearm, ammunition, dangerous weapon, implement of escape,
1326 explosive, controlled substance, spirituous or fermented liquor, medicine, or poison in any
1327 quantity may be:

1328 (a) transported to or upon a correctional or mental health facility;

1329 (b) sold or given away at any correctional or mental health facility;

- 1330 (c) given to or used by any offender at a correctional or mental health facility; or
- 1331 (d) knowingly or intentionally possessed at a correctional or mental health facility.
- 1332 (3) It is a defense to any prosecution under this section if the accused in committing the
- 1333 act made criminal by this section with respect to:
 - 1334 (a) a correctional facility operated by the Department of Corrections, acted in
 - 1335 conformity with departmental rule or policy;
 - 1336 (b) a correctional facility operated by a municipality, acted in conformity with the
 - 1337 policy of the municipality;
 - 1338 (c) a correctional facility operated by a county, acted in conformity with the policy of
 - 1339 the county; or
 - 1340 (d) a mental health facility, acted in conformity with the policy of the mental health
 - 1341 facility.
- 1342 (4) (a) Any ~~[person]~~ individual who transports to or upon a correctional facility, or into
- 1343 a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or
- 1344 implement of escape with intent to provide or sell it to any offender, is guilty of a second
- 1345 degree felony.
 - 1346 (b) Any ~~[person]~~ individual who provides or sells to any offender at a correctional
 - 1347 facility, or any detainee at a secure area of a mental health facility, any firearm, ammunition,
 - 1348 dangerous weapon, or implement of escape is guilty of a second degree felony.
 - 1349 (c) Any offender who possesses at a correctional facility, or any detainee who
 - 1350 possesses at a secure area of a mental health facility, any firearm, ammunition, dangerous
 - 1351 weapon, or implement of escape is guilty of a second degree felony.
 - 1352 (d) Any ~~[person]~~ individual who, without the permission of the authority operating the
 - 1353 correctional facility or the secure area of a mental health facility, knowingly possesses at a
 - 1354 correctional facility or a secure area of a mental health facility any firearm, ammunition,
 - 1355 dangerous weapon, or implement of escape is guilty of a third degree felony.
 - 1356 (e) Any ~~[person]~~ individual violates Section 76-10-306 who knowingly or intentionally
 - 1357 transports, possesses, distributes, or sells any explosive in a correctional facility or mental
 - 1358 health facility.
 - 1359 (5) (a) ~~[A person]~~ An individual is guilty of a third degree felony who, without the
 - 1360 permission of the authority operating the correctional facility or secure area of a mental health

1361 facility, knowingly transports to or upon a correctional facility or into a secure area of a mental
1362 health facility any:

- 1363 (i) spirituous or fermented liquor;
- 1364 (ii) medicine, whether or not lawfully prescribed for the offender; or
- 1365 (iii) poison in any quantity.

1366 (b) [~~A person~~] An individual is guilty of a third degree felony who knowingly violates
1367 correctional or mental health facility policy or rule by providing or selling to any offender at a
1368 correctional facility or detainee within a secure area of a mental health facility any:

- 1369 (i) spirituous or fermented liquor;
- 1370 (ii) medicine, whether or not lawfully prescribed for the offender; or
- 1371 (iii) poison in any quantity.

1372 (c) An inmate is guilty of a third degree felony who, in violation of correctional or
1373 mental health facility policy or rule, possesses at a correctional facility or in a secure area of a
1374 mental health facility any:

- 1375 (i) spirituous or fermented liquor;
- 1376 (ii) medicine, other than medicine provided by the facility's health care providers in
1377 compliance with facility policy; or
- 1378 (iii) poison in any quantity.

1379 (d) [~~A person~~] An individual is guilty of a class A misdemeanor who, with the intent to
1380 directly or indirectly provide or sell any tobacco product or electronic cigarette to an offender,
1381 directly or indirectly:

- 1382 (i) transports, delivers, or distributes any tobacco product or electronic cigarette to an
1383 offender or on the grounds of any correctional facility;
- 1384 (ii) solicits, requests, commands, coerces, encourages, or intentionally aids another
1385 person to transport any tobacco product or electronic cigarette to an offender or on any
1386 correctional facility, if the person is acting with the mental state required for the commission of
1387 an offense; or
- 1388 (iii) facilitates, arranges, or causes the transport of any tobacco product or electronic
1389 cigarette in violation of this section to an offender or on the grounds of any correctional
1390 facility.

1391 (e) [~~A person~~] An individual is guilty of a class A misdemeanor who, without the

1392 permission of the authority operating the correctional or mental health facility, fails to declare
1393 or knowingly possesses at a correctional facility or in a secure area of a mental health facility
1394 any:

1395 (i) spirituous or fermented liquor;

1396 (ii) medicine; or

1397 (iii) poison in any quantity.

1398 (f) (i) ~~[A person]~~ Except as provided in Subsection (5)(f)(ii), an individual is guilty of a
1399 class B misdemeanor who, without the permission of the authority operating the correctional
1400 facility, knowingly engages in any activity that would facilitate the possession of any
1401 contraband by an offender in a correctional facility.

1402 (ii) The provisions of Subsection (5)(d) regarding any tobacco product or electronic
1403 cigarette take precedence over this Subsection (5)(f).

1404 (g) Exemptions may be granted for worship for Native American inmates pursuant to
1405 Section 64-13-40.

1406 (6) The possession, distribution, or use of a controlled substance at a correctional
1407 facility or in a secure area of a mental health facility shall be prosecuted in accordance with
1408 Title 58, Chapter 37, Utah Controlled Substances Act.

1409 (7) The department shall make rules under Title 63G, Chapter 3, Utah Administrative
1410 Rulemaking Act, to establish guidelines for providing written notice to visitors that providing
1411 any tobacco product or electronic cigarette to offenders is a class A misdemeanor.

1412 Section 30. Section **76-10-101** is amended to read:

1413 **76-10-101. Definitions.**

1414 As used in this part:

1415 (1) "Cigar" means a product that contains nicotine, is intended to be burned under
1416 ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in
1417 any substance containing tobacco, other than any roll of tobacco that is a cigarette as described
1418 in Subsection (2).

1419 (2) "Cigarette" means a product that contains nicotine, is intended to be burned under
1420 ordinary conditions of use, and consists of:

1421 (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

1422 (b) any roll of tobacco wrapped in any substance containing tobacco which, because of

1423 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to
1424 be offered to, or purchased by, consumers as a cigarette described in Subsection (2)(a).

1425 ~~[(3) "Electronic cigarette" means an electronic cigarette product, as defined in Section~~
1426 ~~59-14-802;]~~

1427 (3) (a) "Electronic cigarette" means:

1428 (i) an electronic device used to deliver or capable of delivering vapor containing
1429 nicotine to an individual's respiratory system;

1430 (ii) a component of the device described in Subsection (3)(a)(i); or

1431 (iii) an accessory sold in the same package as the device described in Subsection
1432 (3)(a)(i).

1433 (b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section
1434 26-38-2.

1435 (4) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette
1436 substance, or a prefilled electronic cigarette.

1437 (5) "Electronic cigarette substance" means any substance, including liquid containing
1438 nicotine, used or intended for use in an electronic cigarette.

1439 (6) "Nicotine product" means the same as that term is defined in Section 59-14-102.

1440 (7) (a) "Nontherapeutic nicotine device" means a device that:

1441 (i) has a pressurized canister that is used to administer nicotine to the user through
1442 inhalation or intranasally;

1443 (ii) is not purchased with a prescription from a licensed physician; and

1444 (iii) is not approved by the United States Food and Drug Administration as nicotine
1445 replacement therapy.

1446 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or a
1447 nontherapeutic nicotine nasal spray.

1448 (8) "Nontherapeutic nicotine device substance" means a substance that:

1449 (a) contains nicotine;

1450 (b) is sold in a cartridge for use in a nontherapeutic nicotine device;

1451 (c) is not purchased with a prescription from a licensed physician; and

1452 (d) is not approved by the United States Food and Drug Administration as nicotine
1453 replacement therapy.

1454 [(4)] (9) "Place of business" includes:

1455 (a) a shop;

1456 (b) a store;

1457 (c) a factory;

1458 (d) a public garage;

1459 (e) an office;

1460 (f) a theater;

1461 (g) a recreation hall;

1462 (h) a dance hall;

1463 (i) a poolroom;

1464 (j) a café;

1465 (k) a cafeteria;

1466 (l) a cabaret;

1467 (m) a restaurant;

1468 (n) a hotel;

1469 (o) a lodging house;

1470 (p) a streetcar;

1471 (q) a bus;

1472 (r) an interurban or railway passenger coach;

1473 (s) a waiting room; and

1474 (t) any other place of business.

1475 (10) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled
1476 with an electronic cigarette substance.

1477 [(5)] (11) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other
1478 lighted smoking equipment.

1479 Section 31. Section **76-10-104 (Effective 07/01/20)** is amended to read:

1480 **76-10-104 (Effective 07/01/20). Providing a cigar, a cigarette, an electronic**
1481 **cigarette product, a nicotine product, or tobacco to a minor -- Penalties.**

1482 (1) ~~[A person violates this section who]~~ An individual is guilty of a class C
1483 misdemeanor on the first offense, a class B misdemeanor on the second offense, and a class A
1484 misdemeanor on subsequent offenses if the individual knowingly, intentionally, recklessly, or

1485 with criminal negligence provides a cigar, a cigarette, an electronic cigarette product, a nicotine
 1486 product, or tobacco in any form[;] to an individual under the following ages[; ~~is guilty of a class~~
 1487 ~~C misdemeanor on the first offense, a class B misdemeanor on the second offense, and a class~~
 1488 ~~A misdemeanor on subsequent offenses~~]:

1489 (a) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and

1490 (b) beginning July 1, 2021, 21 years old.

1491 (2) As used in this section "provides":

1492 (a) includes selling, giving, furnishing, sending, or causing to be sent; and

1493 (b) does not include the acts of the United States Postal Service or other common
 1494 carrier when engaged in the business of transporting and delivering packages for others or the
 1495 acts of a person, whether compensated or not, who transports or delivers a package for another
 1496 person without any reason to know of the package's content.

1497 Section 32. Section **76-10-104.1 (Effective 07/01/20)** is amended to read:

1498 **76-10-104.1 (Effective 07/01/20). Providing tobacco paraphernalia to a minor --**

1499 **Penalties.**

1500 (1) For purposes of this section:

1501 (a) "Provides":

1502 (i) includes selling, giving, furnishing, sending, or causing to be sent; and

1503 (ii) does not include the acts of the United States Postal Service or other common
 1504 carrier when engaged in the business of transporting and delivering packages for others or the
 1505 acts of a person, whether compensated or not, who transports or delivers a package for another
 1506 person without any reason to know of the package's content.

1507 (b) (i) "Tobacco paraphernalia"[; ~~(i)~~] means equipment, product, or material of any
 1508 kind that is used, intended for use, or designed for use to package, repackage, store, contain,
 1509 conceal, ingest, inhale, or otherwise introduce a cigar, a cigarette, an electronic cigarette
 1510 substance, a nontherapeutic nicotine device substance, or tobacco in any form into the human
 1511 body[; ~~including~~].

1512 (ii) "Tobacco paraphernalia" includes:

1513 (A) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
 1514 screens, permanent screens, hashish heads, or punctured metal bowls;

1515 (B) water pipes;

- 1516 (C) carburetion tubes and devices;
 1517 (D) smoking and carburetion masks;
 1518 (E) roach clips, meaning objects used to hold burning material, such as a cigarette, that
 1519 has become too small or too short to be held in the hand;
 1520 (F) chamber pipes;
 1521 (G) carburetor pipes;
 1522 (H) electric pipes;
 1523 (I) air-driven pipes;
 1524 (J) chillums;
 1525 (K) bongs; and
 1526 (L) ice pipes or chillers~~;~~ and].

1527 [(ii)] (iii) "Tobacco paraphernalia" does not include matches or lighters.

1528 (2) (a) It is unlawful for ~~[a person]~~ an individual to knowingly, intentionally,
 1529 recklessly, or with criminal negligence provide tobacco paraphernalia to an individual under:

- 1530 (i) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and
 1531 (ii) beginning July 1, 2021, 21 years old.

1532 (b) ~~[A person]~~ An individual who violates this section is guilty of a class C
 1533 misdemeanor on the first offense and a class B misdemeanor on subsequent offenses.

1534 Section 33. Section **76-10-105 (Effective 07/01/20)** is amended to read:

1535 **76-10-105 (Effective 07/01/20). Buying or possessing a cigar, a cigarette, an**
 1536 **electronic cigarette product, a nicotine product, or tobacco by a minor -- Penalty --**
 1537 **Compliance officer authority -- Juvenile court jurisdiction.**

1538 (1) (a) An individual who is 18 years or older, but younger than the age specified in
 1539 Subsection (1)(b), and buys or attempts to buy, accepts, or has in the individual's possession
 1540 any cigar, cigarette, electronic cigarette product, nicotine product, or tobacco in any form is
 1541 guilty of an infraction and subject to:

- 1542 (i) a minimum fine or penalty of \$60; and
 1543 (ii) participation in a court-approved tobacco education or cessation program, which
 1544 may include a participation fee.

1545 (b) For purposes of Subsection (1)(a), the individual is younger than:

- 1546 (i) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and

1547 (ii) beginning July 1, 2021, 21 years old.

1548 (2) (a) An individual under the age of 18 who buys or attempts to buy, accepts, or has
1549 in the individual's possession any cigar, cigarette, electronic cigarette product, nicotine product,
1550 or tobacco in any form is subject to the jurisdiction of the juvenile court and subject to Section
1551 78A-6-602, unless the violation is committed on school property.

1552 (b) If a violation under this section is adjudicated under Section 78A-6-117, the minor
1553 may be subject to the following:

1554 ~~[(a)]~~ (i) a fine or penalty, in accordance with Section 78A-6-117; and

1555 ~~[(b)]~~ (ii) participation in a court-approved tobacco education program, which may
1556 include a participation fee.

1557 (3) (a) A compliance officer appointed by a board of education under Section
1558 53G-4-402 may not issue a citation for a violation of this section committed on school
1559 property.

1560 (b) A cited violation committed on school property shall be addressed in accordance
1561 with Section 53G-8-211.

1562 (4) (a) This section does not apply to the purchase or possession of a cigar, cigarette,
1563 electronic cigarette, tobacco, or tobacco paraphernalia by an individual who is 18 years or older
1564 and is:

1565 (i) on active duty in the United States Armed Forces; or

1566 (ii) a spouse or dependent of an individual who is on active duty in the United States
1567 Armed Forces.

1568 (b) A valid, government-issued military identification card is required to verify proof
1569 of age under Subsection (4)(a).

1570 Section 34. Section **76-10-105.1 (Effective 07/01/20)** is amended to read:

1571 **76-10-105.1 (Effective 07/01/20). Requirement of direct, face-to-face sale of a**
1572 **cigarette, tobacco, an electronic cigarette product, or a nicotine product -- Minors not**
1573 **allowed in tobacco specialty shop -- Penalties.**

1574 (1) As used in this section:

1575 (a) "Cigarette" means the same as that term is defined in Section 59-14-102.

1576 (b) (i) "Face-to-face exchange" means a transaction made in person between an
1577 individual and a retailer or retailer's employee.

- 1578 (ii) "Face-to-face exchange" does not include a sale through a:
- 1579 (A) vending machine; or
- 1580 (B) self-service display.
- 1581 (c) "Retailer" means a person who:
- 1582 (i) sells a cigarette, tobacco, [or] an electronic cigarette product, or a nicotine product
- 1583 to an individual for personal consumption; or
- 1584 (ii) operates a facility with a vending machine that sells a cigarette, tobacco, [or] an
- 1585 electronic cigarette product, or a nicotine product.
- 1586 (d) "Self-service display" means a display of a cigarette, tobacco, [or] an electronic
- 1587 cigarette product, or a nicotine product to which the public has access without the intervention
- 1588 of a retailer or retailer's employee.
- 1589 (e) "Tobacco" means any product, except a cigarette, made of or containing tobacco.
- 1590 (f) "Tobacco specialty shop" means a "retail tobacco specialty business" as that term is
- 1591 defined:
- 1592 (i) as it relates to a municipality, in Section [10-8-41.6](#); and
- 1593 (ii) as it relates to a county, in Section [17-50-333](#).
- 1594 (2) Except as provided in Subsection (3), a retailer may sell a cigarette, tobacco, [or] an
- 1595 electronic cigarette product, or a nicotine product only in a face-to-face exchange.
- 1596 (3) The face-to-face sale requirement in Subsection (2) does not apply to:
- 1597 (a) a mail-order, telephone, or Internet sale made in compliance with Section
- 1598 [59-14-509](#);
- 1599 (b) a sale from a vending machine or self-service display that is located in an area of a
- 1600 retailer's facility:
- 1601 (i) that is distinct and separate from the rest of the facility; and
- 1602 (ii) where the retailer only allows an individual who complies with Subsection (4) to be
- 1603 present; or
- 1604 (c) a sale at a tobacco specialty shop.
- 1605 (4) (a) An individual who is less than the age specified in Subsection (4)(b) may not
- 1606 enter or be present at a tobacco specialty shop unless the individual is:
- 1607 (i) accompanied by a parent or legal guardian;
- 1608 (ii) present at the tobacco shop for a bona fide commercial purpose other than to

1609 purchase a cigarette, tobacco, [or] an electronic cigarette product, or a nicotine product; or

1610 (iii) 18 years old or older and an active duty member of the United States Armed

1611 Forces, as demonstrated by a valid, government-issued military identification card.

1612 (b) For purposes of Subsection (4)(a), the individual is younger than:

1613 (i) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and

1614 (ii) beginning July 1, 2021, 21 years old.

1615 (5) A parent or legal guardian who accompanies, under Subsection (4)(a)(i), an

1616 individual into an area described in Subsection (3)(b), or into a tobacco specialty shop, may not

1617 allow the individual to purchase a cigarette, tobacco, [or] an electronic cigarette product, or a

1618 nicotine product.

1619 (6) A violation of Subsection (2) or (4) is a:

1620 (a) class C misdemeanor on the first offense;

1621 (b) class B misdemeanor on the second offense; and

1622 (c) class A misdemeanor on the third and all subsequent offenses.

1623 (7) An individual who violates Subsection (5) is guilty of providing tobacco to a minor

1624 under Section 76-10-104.

1625 (8) (a) An ordinance, regulation, or rule adopted by the governing body of a political

1626 subdivision of the state or by a state agency that affects the sale, minimum age of sale,

1627 placement, or display of [~~cigarettes~~] a cigarette, tobacco, [or] an electronic [~~cigarettes~~]

1628 cigarette product, or a nicotine product that is not essentially identical to this section and

1629 Section 76-10-102 is superseded.

1630 (b) Subsection (8)(a) does not apply to the adoption or enforcement of a land use

1631 ordinance by a municipal or county government.

1632 Section 35. Section 76-10-111 is amended to read:

1633 **76-10-111. Restrictions on sale of smokeless tobacco or electronic cigarette**

1634 **products -- Exceptions.**

1635 (1) The Legislature finds that:

1636 (a) smokeless tobacco, or chewing tobacco, is harmful to the health of individuals who

1637 use those products because research indicates that they may cause mouth or oral cancers;

1638 (b) the use of smokeless tobacco among juveniles in this state is increasing rapidly;

1639 (c) the use of electronic [~~cigarettes~~] cigarette products may lead to unhealthy behavior

1640 such as the use of tobacco products; and

1641 (d) it is necessary to restrict the gift of the products described in this Subsection (1) in
1642 the interest of the health of the citizens of this state.

1643 (2) (a) Except as provided in Subsection (3), it is unlawful for a manufacturer,
1644 wholesaler, and retailer to:

1645 (i) give or distribute without charge any smokeless tobacco, chewing tobacco, or
1646 electronic cigarette product in this state[-];

1647 (ii) sell, offer for sale, or furnish any electronic cigarette product at less than 90% of
1648 the cost of the product to the manufacturer, wholesaler, or retailer; or

1649 (iii) give, distribute, sell, offer for sale, or furnish any electronic cigarette product for
1650 free or at a lower price because the recipient of the electronic cigarette product makes another
1651 purchase.

1652 (b) The price that a manufacturer, wholesaler, or retailer may charge under Subsection
1653 (2)(a)(ii) does not include a discount for:

1654 (i) a physical manufacturer coupon:

1655 (A) that is surrendered to the wholesaler or retailer at the time of sale; and

1656 (B) for which the manufacturer will reimburse the wholesaler or the retailer for the full
1657 amount of the discount described in the manufacturer coupon and provided to the purchaser;

1658 (ii) a rebate that will be paid to the manufacturer, the wholesaler, or the retailer for the
1659 full amount of the rebate provided to the purchaser; or

1660 (iii) a promotional fund that will be paid to the manufacturer, the wholesaler, or the
1661 retailer for the full amount of the promotional fund provided to the purchaser.

1662 (c) Any ~~[person]~~ individual who violates this section is guilty of:

1663 (i) a class C misdemeanor for the first offense~~[-and is guilty of];~~ or

1664 (ii) a class B misdemeanor for any subsequent offense.

1665 (3) ~~[(a)]~~ Smokeless tobacco, chewing tobacco, or an electronic cigarette product may
1666 be distributed to adults without charge at professional conventions where the general public is
1667 excluded.

1668 ~~[(b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who gives~~
1669 ~~smokeless tobacco, chewing tobacco, or an electronic cigarette to a person of legal age upon~~
1670 ~~the person's purchase of another tobacco product or electronic cigarette.]~~

1671 Section 36. Section 77-39-101 (Effective 07/01/20) is amended to read:

1672 77-39-101 (Effective 07/01/20). Investigation of sales of alcohol, tobacco, and
1673 electronic cigarette products to underage individuals.

1674 (1) As used in this section, "electronic cigarette" [~~is~~as] means an electronic cigarette
1675 product as that term is defined in Section 76-10-101.

1676 (2) (a) A peace officer, as defined by Title 53, Chapter 13, Peace Officer
1677 Classifications, may investigate the possible violation of:

1678 (i) Section 32B-4-403 by requesting an individual under 21 years old to enter into and
1679 attempt to purchase or make a purchase of alcohol from a retail establishment; or

1680 (ii) Section 76-10-104 by requesting an individual under the age specified in
1681 Subsection (2)(e) to enter into and attempt to purchase or make a purchase from a retail
1682 establishment of:

1683 (A) a cigar;

1684 (B) a cigarette;

1685 (C) tobacco in any form; or

1686 (D) an electronic cigarette.

1687 (b) A peace officer who is present at the site of a proposed purchase shall direct,
1688 supervise, and monitor the individual requested to make the purchase.

1689 (c) Immediately following a purchase or attempted purchase or as soon as practical the
1690 supervising peace officer shall inform the cashier and the proprietor or manager of the retail
1691 establishment that the attempted purchaser was under the legal age to purchase:

1692 (i) alcohol; or

1693 (ii) (A) a cigar;

1694 (B) a cigarette;

1695 (C) tobacco in any form; or

1696 (D) an electronic cigarette.

1697 (d) If a citation or information is issued, it shall be issued within seven days of the
1698 purchase.

1699 (e) For purposes of Subsection (2)(a)(ii), the individual is younger than:

1700 (i) beginning July 1, 2020, and ending June 30, 2021, 20 years old; and

1701 (ii) beginning July 1, 2021, 21 years old.

1702 (3) (a) If an individual under the age of 18 years old is requested to attempt a purchase,
1703 a written consent of that individual's parent or guardian shall be obtained prior to that
1704 individual participating in any attempted purchase.

1705 (b) An individual requested by the peace officer to attempt a purchase may:

1706 (i) be a trained volunteer; or

1707 (ii) receive payment, but may not be paid based on the number of successful purchases
1708 of alcohol, tobacco, or an electronic cigarette.

1709 (4) The individual requested by the peace officer to attempt a purchase and anyone
1710 accompanying the individual attempting a purchase may not during the attempted purchase
1711 misrepresent the age of the individual by false or misleading identification documentation in
1712 attempting the purchase.

1713 (5) An individual requested to attempt to purchase or make a purchase pursuant to this
1714 section is immune from prosecution, suit, or civil liability for the purchase of, attempted
1715 purchase of, or possession of alcohol, a cigar, a cigarette, tobacco in any form, or an electronic
1716 cigarette if a peace officer directs, supervises, and monitors the individual.

1717 (6) (a) Except as provided in Subsection (6)(b), a purchase attempted under this section
1718 shall be conducted:

1719 (i) on a random basis; and

1720 (ii) within a 12-month period at any one retail establishment location not more often
1721 than:

1722 (A) two times for the attempted purchase of:

1723 (I) a cigar;

1724 (II) a cigarette;

1725 (III) tobacco in any form; or

1726 (IV) an electronic cigarette; and

1727 (B) four times for the attempted purchase of alcohol.

1728 (b) This section does not prohibit an investigation or an attempt to purchase tobacco
1729 under this section if:

1730 (i) there is reasonable suspicion to believe the retail establishment has sold alcohol, a
1731 cigar, a cigarette, tobacco in any form, or an electronic cigarette to an individual under the age
1732 established by Section [32B-4-403](#) or [76-10-104](#); and

1733 (ii) the supervising peace officer makes a written record of the grounds for the
1734 reasonable suspicion.

1735 (7) (a) The peace officer exercising direction, supervision, and monitoring of the
1736 attempted purchase shall make a report of the attempted purchase, whether or not a purchase
1737 was made.

1738 (b) The report required by this Subsection (7) shall include:

1739 (i) the name of the supervising peace officer;

1740 (ii) the name of the individual attempting the purchase;

1741 (iii) a photograph of the individual attempting the purchase showing how that
1742 individual appeared at the time of the attempted purchase;

1743 (iv) the name and description of the cashier or proprietor from whom the individual
1744 attempted the purchase;

1745 (v) the name and address of the retail establishment; and

1746 (vi) the date and time of the attempted purchase.

1747 Section 37. **Effective date.**

1748 This bill takes effect on July 1, 2020.