

Senator Jen Plumb proposes the following substitute bill:

ELECTRONIC CIGARETTE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jen Plumb

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to electronic cigarettes.

Highlighted Provisions:

This bill:

- ▶ prohibits the sale of electronic cigarette products that have not received market authorization or are pending market authorization from the federal Food and Drug Administration;

- ▶ prohibits the sale of flavored electronic cigarette products; and

- ▶ creates a registry for electronic cigarette products.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

10-8-41.6, as last amended by Laws of Utah 2023, Chapter 327

17-50-333, as last amended by Laws of Utah 2023, Chapter 327

26B-7-505, as renumbered and amended by Laws of Utah 2023, Chapter 308



26 **59-14-807**, as last amended by Laws of Utah 2023, Chapters 98, 300, 329, and 531 and
27 last amended by Coordination Clause, Laws of Utah 2023, Chapter 531

28 **76-10-101**, as last amended by Laws of Utah 2023, Chapter 330

29 **76-10-113**, as enacted by Laws of Utah 2020, Chapter 302

30 ENACTS:

31 **26A-1-131**, Utah Code Annotated 1953

32 **59-14-810**, Utah Code Annotated 1953



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

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

36 **10-8-41.6. Regulation of retail tobacco specialty business.**

37 (1) As used in this section:

38 (a) "Community location" means:

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

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

41 (iii) a trade or technical school;

42 (iv) a church;

43 (v) a public library;

44 (vi) a public playground;

45 (vii) a public park;

46 (viii) a youth center or other space used primarily for youth oriented activities;

47 (ix) a public recreational facility;

48 (x) a public arcade; or

49 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.

50 (b) "Department" means the Department of Health and Human Services created in

51 Section **26B-1-201**.

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

53 **76-10-101**.

54 [~~(d)~~ "Flavored electronic cigarette product" means the same as that term is defined in

55 Section ~~76-10-101~~.]

56 [~~(e)~~ (d) "Licensee" means a person licensed under this section to conduct business as a

57 retail tobacco specialty business.

58 ~~[(f)]~~ (e) "Local health department" means the same as that term is defined in Section
59 [26A-1-102](#).

60 ~~[(g)]~~ (f) "Nicotine product" means the same as that term is defined in Section
61 [76-10-101](#).

62 ~~[(h)]~~ (g) "Retail tobacco specialty business" means a commercial establishment in
63 which:

64 (i) sales of tobacco products, electronic cigarette products, and nicotine products
65 account for more than 35% of the total quarterly gross receipts for the establishment;

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

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

70 (iv) the commercial establishment:

71 (A) holds itself out as a retail tobacco specialty business; and

72 (B) causes a reasonable person to believe the commercial establishment is a retail
73 tobacco specialty business; or

74 ~~[(v) any flavored electronic cigarette product is sold; or]~~

75 ~~[(vi)]~~ (v) the retail space features a self-service display for tobacco products, electronic
76 cigarette products, or nicotine products.

77 ~~[(i)]~~ (h) "Self-service display" means the same as that term is defined in Section
78 [76-10-105.1](#).

79 ~~[(j)]~~ (i) "Tobacco product" means:

80 (i) a tobacco product as defined in Section [76-10-101](#); or

81 (ii) tobacco paraphernalia as defined in Section [76-10-101](#).

82 (2) The regulation of a retail tobacco specialty business is an exercise of the police
83 powers of the state by the state or by delegation of the state's police powers to other
84 governmental entities.

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

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

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

- 93 (i) 1,000 feet of a community location;
- 94 (ii) 600 feet of another retail tobacco specialty business; or
- 95 (iii) 600 feet from property used or zoned for:
 - 96 (A) agriculture use; or
 - 97 (B) residential use.

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

102 (5) A municipality may not issue or renew a license for a person to conduct business as
103 a retail tobacco specialty business until the person provides the municipality with proof that the
104 retail tobacco specialty business has:

105 (a) a valid permit for a retail tobacco specialty business issued under Title 26B,
106 Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine Products, by the
107 local health department having jurisdiction over the area in which the retail tobacco specialty
108 business is located; and

109 (b) (i) for a retailer that sells a tobacco product, a valid license issued by the State Tax
110 Commission in accordance with Section 59-14-201 or 59-14-301 to sell a tobacco product; and

111 (ii) for a retailer that sells an electronic cigarette product or a nicotine product, a valid
112 license issued by the State Tax Commission in accordance with Section 59-14-803 to sell an
113 electronic cigarette product or a nicotine product.

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

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

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

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

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

123 (ii) if a licensee violates federal law or federal regulations restricting the sale and
124 distribution of tobacco products or electronic cigarette products to protect children and
125 adolescents;

126 (iii) upon the recommendation of the department or a local health department under
127 Title 26B, Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine
128 Products; or

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

130 (7) (a) A retail tobacco specialty business is exempt from Subsection (4) if:

131 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
132 license to conduct business as a retail tobacco specialty business;

133 (ii) the retail tobacco specialty business is operating in a municipality in accordance
134 with all applicable laws except for the requirement in Subsection (4); and

135 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
136 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

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

139 (i) the license described in Subsection (7)(a)(i) is renewed continuously without lapse
140 or permanent revocation;

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

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

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

148 (A) Section [26B-7-503](#);

149 (B) zoning ordinances;

150 (C) building codes; and

151 (D) the requirements of the license described in Subsection (7)(a)(i).

152 (c) A retail tobacco specialty business that does not qualify for an exemption under
153 Subsection (7)(a) is exempt from Subsection (4) if:

154 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
155 general tobacco retailer permit or a retail tobacco specialty business permit under Title 26B,
156 Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine Products, by the
157 local health department having jurisdiction over the area in which the retail tobacco specialty
158 business is located;

159 (ii) the retail tobacco specialty business is operating in the municipality in accordance
160 with all applicable laws except for the requirement in Subsection (4); and

161 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
162 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

163 (d) Except as provided in Subsection (7)(e), a retail tobacco specialty business may
164 maintain an exemption under Subsection (7)(c) if:

165 (i) on or before December 31, 2020, the retail tobacco specialty business receives a
166 retail tobacco specialty business permit from the local health department having jurisdiction
167 over the area in which the retail tobacco specialty business is located;

168 (ii) the permit described in Subsection (7)(d)(i) is renewed continuously without lapse
169 or permanent revocation;

170 (iii) the retail tobacco specialty business does not close for business or otherwise
171 suspend the sale of tobacco products, electronic cigarette products, or nicotine products for
172 more than 60 consecutive days;

173 (iv) the retail tobacco specialty business does not substantially change the business
174 premises or business operation as the business existed when the retail tobacco specialty
175 business received a permit under Subsection (7)(d)(i); and

176 (v) the retail tobacco specialty business maintains the right to operate under the terms
177 of other applicable laws, including:

178 (A) Section [26B-7-503](#);

179 (B) zoning ordinances;

180 (C) building codes; and

181 (D) the requirements of the retail tobacco permit described in Subsection (7)(d)(i).

182 (e) A retail tobacco specialty business described in Subsection (7)(a) or (b) that is
183 located within 1,000 feet of a public or private kindergarten, elementary, middle, junior high,
184 or high school before July 1, 2022, is exempt from Subsection (4)(a)(iii)(B) if the retail tobacco
185 specialty business:

186 (i) relocates, before July 1, 2022, to a property that is used or zoned for commercial use
187 and located within a group of architecturally unified commercial establishments built on a site
188 that is planned, developed, owned, and managed as an operating unit; and

189 (ii) continues to meet the requirements described in Subsection (7)(b) that are not
190 directly related to the relocation described in this Subsection (7)(e).

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

192 **17-50-333. Regulation of retail tobacco specialty business.**

193 (1) As used in this section:

194 (a) "Community location" means:

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

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

197 (iii) a trade or technical school;

198 (iv) a church;

199 (v) a public library;

200 (vi) a public playground;

201 (vii) a public park;

202 (viii) a youth center or other space used primarily for youth oriented activities;

203 (ix) a public recreational facility;

204 (x) a public arcade; or

205 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.

206 (b) "Department" means the Department of Health and Human Services created in

207 Section [26B-1-201](#).

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

209 [76-10-101](#).

210 [~~(d) "Flavored electronic cigarette product" means the same as that term is defined in~~

211 ~~Section [76-10-101](#).]~~

212 [(e)] (d) "Licensee" means a person licensed under this section to conduct business as a
213 retail tobacco specialty business.

214 [(f)] (e) "Local health department" means the same as that term is defined in Section
215 26A-1-102.

216 [(g)] (f) "Nicotine product" means the same as that term is defined in Section
217 76-10-101.

218 [(h)] (g) "Retail tobacco specialty business" means a commercial establishment in
219 which:

220 (i) sales of tobacco products, electronic cigarette products, and nicotine products
221 account for more than 35% of the total quarterly gross receipts for the establishment;

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

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

226 (iv) the commercial establishment:

227 (A) holds itself out as a retail tobacco specialty business; and

228 (B) causes a reasonable person to believe the commercial establishment is a retail
229 tobacco specialty business; or

230 [~~(v) any flavored electronic cigarette product is sold; or~~]

231 [(vi)] (v) the retail space features a self-service display for tobacco products, electronic
232 cigarette products, or nicotine products.

233 [(i)] (h) "Self-service display" means the same as that term is defined in Section
234 76-10-105.1.

235 [(j)] (i) "Tobacco product" means:

236 (i) the same as that term is defined in Section 76-10-101; or

237 (ii) tobacco paraphernalia as defined in Section 76-10-101.

238 (2) The regulation of a retail tobacco specialty business is an exercise of the police
239 powers of the state by the state or by the delegation of the state's police power to other
240 governmental entities.

241 (3) (a) A person may not operate a retail tobacco specialty business in a county unless
242 the person obtains a license from the county in which the retail tobacco specialty business is

243 located.

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

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

- 249 (i) 1,000 feet of a community location;
- 250 (ii) 600 feet of another retail tobacco specialty business; or
- 251 (iii) 600 feet from property used or zoned for:
 - 252 (A) agriculture use; or
 - 253 (B) residential use.

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

258 (5) A county may not issue or renew a license for a person to conduct business as a
259 retail tobacco specialty business until the person provides the county with proof that the retail
260 tobacco specialty business has:

261 (a) a valid permit for a retail tobacco specialty business issued under Title 26B,
262 Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine Products, by the
263 local health department having jurisdiction over the area in which the retail tobacco specialty
264 business is located; and

265 (b) (i) for a retailer that sells a tobacco product, a valid license issued by the State Tax
266 Commission in accordance with Section [59-14-201](#) or [59-14-301](#) to sell a tobacco product; or
267 (ii) for a retailer that sells an electronic cigarette product or a nicotine product, a valid
268 license issued by the State Tax Commission in accordance with Section [59-14-803](#) to sell an
269 electronic cigarette product or a nicotine product.

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

- 271 (i) requires a county to issue a retail tobacco specialty business license; or
- 272 (ii) prohibits a county from adopting more restrictive requirements on a person seeking
273 a license or renewal of a license to conduct business as a retail tobacco specialty business.

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

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

278 (ii) if a licensee violates federal law or federal regulations restricting the sale and
279 distribution of tobacco products or electronic cigarette products to protect children and
280 adolescents;

281 (iii) upon the recommendation of the department or a local health department under
282 Title 26B, Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine
283 Products; or

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

285 (7) (a) Except as provided in Subsection (7)(e), a retail tobacco specialty business is
286 exempt from Subsection (4) if:

287 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
288 license to conduct business as a retail tobacco specialty business;

289 (ii) the retail tobacco specialty business is operating in a county in accordance with all
290 applicable laws except for the requirement in Subsection (4); and

291 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
292 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

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

295 (i) the license described in Subsection (7)(a)(i) is renewed continuously without lapse
296 or permanent revocation;

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

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

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

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

- 305 (B) zoning ordinances;
- 306 (C) building codes; and
- 307 (D) the requirements of the license described in Subsection (7)(a)(i).
- 308 (c) A retail tobacco specialty business that does not qualify for an exemption under
- 309 Subsection (7)(a) is exempt from Subsection (4) if:
- 310 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
- 311 general tobacco retailer permit or a retail tobacco specialty business permit under Title 26,
- 312 Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail Permit, by the local
- 313 health department having jurisdiction over the area in which the retail tobacco specialty
- 314 business is located;
- 315 (ii) the retail tobacco specialty business is operating in the county in accordance with
- 316 all applicable laws except for the requirement in Subsection (4); and
- 317 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
- 318 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.
- 319 (d) A retail tobacco specialty business may maintain an exemption under Subsection
- 320 (7)(c) if:
- 321 (i) on or before December 31, 2020, the retail tobacco specialty business receives a
- 322 retail tobacco specialty business permit from the local health department having jurisdiction
- 323 over the area in which the retail tobacco specialty business is located;
- 324 (ii) the permit described in Subsection (7)(d)(i) is renewed continuously without lapse
- 325 or permanent revocation;
- 326 (iii) the retail tobacco specialty business does not close for business or otherwise
- 327 suspend the sale of tobacco products, electronic cigarette products, or nicotine products for
- 328 more than 60 consecutive days;
- 329 (iv) the retail tobacco specialty business does not substantially change the business
- 330 premises or business operation as the business existed when the retail tobacco specialty
- 331 business received a permit under Subsection (7)(d)(i); and
- 332 (v) the retail tobacco specialty business maintains the right to operate under the terms
- 333 of other applicable laws, including:
- 334 (A) Title 26, Chapter 38, Utah Indoor Clean Air Act;
- 335 (B) zoning ordinances;

336 (C) building codes; and

337 (D) the requirements of the retail tobacco permit described in Subsection (7)(d)(i).

338 (e) A retail tobacco specialty business described in Subsection (7)(a) or (b) that is
339 located within 1,000 feet of a public or private kindergarten, elementary, middle, junior high,
340 or high school before July 1, 2022, is exempt from Subsection (4)(a)(iii)(B) if the retail tobacco
341 specialty business:

342 (i) relocates, before July 1, 2022, to a property that is used or zoned for commercial use
343 and located within a group of architecturally unified commercial establishments built on a site
344 that is planned, developed, owned, and managed as an operating unit; and

345 (ii) continues to meet the requirements described in Subsection (7)(b) that are not
346 directly related to the relocation described in this Subsection (7)(e).

347 Section 3. Section **26A-1-131** is enacted to read:

348 **26A-1-131. Electronic cigarette registry enforcement.**

349 (1) (a) A local health department may examine the books, papers, and records of any
350 distributor, wholesaler, or dealer in this state, for the purpose of determining compliance with
351 Section [59-14-810](#).

352 (b) A local health department may make the inspections and examinations at any time
353 during ordinary business hours, and may inspect the premises and all desks, safes, vaults, and
354 other fixtures and furniture contained in or upon the premises for the purpose of ascertaining
355 whether an electronic cigarette product is held or possessed in violation of Section [59-14-810](#).

356 (c) Unannounced follow-up examinations of all noncompliant distributors,
357 wholesalers, and retailers are required within 30 days after any violation of Section [59-14-810](#).

358 (d) A local health department shall publish the results of all examinations at least
359 annually and shall make the results available to the public on request.

360 (e) Any electronic cigarette product offered for sale in violation of Section [59-14-810](#)
361 is declared to be a contraband good.

362 (f) An electronic cigarette product described in Subsection (1)(e) may be seized
363 without a warrant by:

364 (i) a local health department; or

365 (ii) a law enforcement agency of this state if directed by a local health department with
366 jurisdiction over where the product is found.

367 (g) The cost of such seizure, forfeiture, and destruction shall be borne by the person
368 from whom the products are confiscated.

369 (h) In an action brought under this section, a local health department may recover
370 reasonable expenses incurred in investigating and preparing the case and attorney fees.

371 (2) (a) A local health department shall disclose to the attorney general any information
372 received under this section which is requested by the attorney general for purposes of
373 determining compliance with and enforcing the provisions of this section or Section [59-14-810](#).

374 (b) A local health department and attorney general shall share with each other
375 information received under this section and Section [59-14-810](#) or corresponding laws of other
376 states.

377 (c) A local health department shall provide any necessary information to the State Tax
378 Commission regarding violations of Section [59-14-810](#).

379 Section 4. Section **26B-7-505** is amended to read:

380 **26B-7-505. Electronic cigarette products -- Labeling -- Requirements to sell --**
381 **Advertising -- Labeling of nicotine products containing nicotine.**

382 (1) The department shall, in consultation with a local health department and with input
383 from members of the public, establish by rule made in accordance with Title 63G, Chapter 3,
384 Utah Administrative Rulemaking Act, the requirements to sell an electronic cigarette substance
385 that is not a manufacturer sealed electronic cigarette substance regarding:

- 386 (a) labeling;
- 387 (b) nicotine content;
- 388 (c) packaging; and
- 389 (d) product quality.

390 (2) On or before January 1, 2021, the department shall, in consultation with a local
391 health department and with input from members of the public, establish by rule made in
392 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the requirements
393 to sell a manufacturer sealed electronic cigarette product regarding:

- 394 (a) labeling;
- 395 (b) nicotine content;
- 396 (c) packaging; and
- 397 (d) product quality.

398 (3) (a) A person may not sell an electronic cigarette substance unless the electronic
399 cigarette substance complies with the requirements established by the department under
400 Subsection (1).

401 (b) Beginning on July 1, 2021, a person may not sell a manufacturer sealed electronic
402 cigarette product unless the manufacturer sealed electronic cigarette product complies with the
403 requirements established by the department under Subsection (2).

404 (c) Notwithstanding Subsections (3)(a) and (3)(b), a person may not sell an electronic
405 cigarette product that is not a premarket authorized or pending electronic cigarette product as
406 that term is defined in Section [76-10-101](#).

407 (4) (a) A local health department may not enact a rule or regulation regarding
408 electronic cigarette substance labeling, nicotine content, packaging, or product quality that is
409 not identical to the requirements established by the department under Subsections (1) and (2).

410 (b) Except as provided in Subsection (4)(c), a local health department may enact a rule
411 or regulation regarding electronic cigarette substance manufacturing.

412 (c) A local health department may not enact a rule or regulation regarding a
413 manufacturer sealed electronic cigarette product.

414 (5) A person may not advertise an electronic cigarette product as a tobacco cessation
415 device.

416 (6) (a) Any nicotine product shall contain the statement described in Subsection ~~[(7)]~~
417 ~~(6)(b)~~ if the nicotine product:

418 ~~[(a)]~~ (i) ~~[(i)]~~ (A) is not a tobacco product as defined in 21 U.S.C. Sec. 321 and related
419 federal regulations; or

420 ~~[(ii)]~~ (B) is not otherwise required under federal or state law to contain a nicotine
421 warning; and

422 ~~[(b)]~~ (ii) contains nicotine.

423 ~~[(7)]~~ (b) A statement shall appear on the exterior packaging of a nicotine product
424 described in Subsection (6)(a) as follows:

425 "This product contains nicotine."

426 Section 5. Section **59-14-807** is amended to read:

427 **59-14-807. Electronic Cigarette Substance and Nicotine Product Proceeds**
428 **Restricted Account.**

429 (1) There is created within the General Fund a restricted account known as the
430 "Electronic Cigarette Substance and Nicotine Product Proceeds Restricted Account."
431 (2) The Electronic Cigarette Substance and Nicotine Product Proceeds Restricted
432 Account consists of:
433 (a) revenue collected from the tax imposed by Section 59-14-804;
434 (b) fees and penalties collected under Section 59-14-810;
435 ~~(b)~~ (c) all money received by the attorney general or the Department of Commerce as
436 a result of any judgment, settlement, or compromise of claims pertaining to alleged violations
437 of law related to the manufacture, marketing, distribution, or sale of electronic cigarette
438 products, as defined in Section 76-10-101:
439 (i) if the total amount of the judgment, settlement, or compromise received by the state
440 exceeds \$1,000,000; and
441 (ii) after reimbursement to the attorney general and the Department of Commerce for
442 expenses related to the matters described in Subsection ~~(2)(b)~~ (2)(c); and
443 ~~(c)~~ (d) amounts appropriated by the Legislature.
444 (3) (a) For each fiscal year and subject to appropriation by the Legislature, the Division
445 of Finance shall distribute from the Electronic Cigarette Substance and Nicotine Product
446 Proceeds Restricted Account:
447 (i) \$2,000,000, which shall be allocated to the local health departments by the
448 Department of Health and Human Services using the formula created in accordance with
449 Section 26A-1-116;
450 (ii) \$2,000,000 to the Department of Health and Human Services for statewide
451 cessation programs and prevention education;
452 (iii) \$1,180,000 to the Department of Public Safety for law enforcement officers aimed
453 at disrupting organizations and networks that provide tobacco products, electronic cigarette
454 products, nicotine products, and other illegal controlled substances to minors;
455 (iv) \$3,000,000, which shall be allocated to the local health departments by the
456 Department of Health and Human Services using the formula created in accordance with
457 Section 26A-1-116;
458 (v) \$5,084,200 to the State Board of Education for school-based prevention programs;
459 [and]

460 (vi) \$2,000,000 to the Department of Health and Human Services for alcohol, tobacco,
461 and other drug prevention, reduction, cessation, and control programs that promote unified
462 messages and make use of media outlets, including radio, newspaper, billboards, and
463 television[-]; and

464 (vii) of the money deposited under Section 59-14-810:

465 (A) to the commission, in an amount equal to the amount necessary to create and
466 maintain the registry described in Section 59-14-810;

467 (B) to the Department of Health and Human Services, in an amount necessary for
468 completing duties described in Section 59-14-810; and

469 (C) to the Department of Health and Human Services, the remainder to be divided
470 among the local health departments for inspection and enforcement described in Sections
471 26A-1-131 and 59-14-810.

472 (b) If the amount in the Electronic Cigarette Substance and Nicotine Product Proceeds
473 Restricted Account is insufficient to cover the distributions described in Subsection (3)(a), the
474 distribution amounts shall be adjusted proportionately.

475 (4) (a) The local health departments shall use the money received in accordance with
476 Subsection (3)(a) for enforcing:

477 (i) the regulation provisions described in Section 26B-7-505;

478 (ii) the labeling requirement described in Section 26B-7-505; and

479 (iii) the penalty provisions described in Section 26B-7-518.

480 (b) The Department of Health and Human Services shall use the money received in
481 accordance with Subsection (3)(a)(ii) for the Youth Electronic Cigarette, Marijuana, and Other
482 Drug Prevention Program created in Section 26B-1-428.

483 (c) The local health departments shall use the money received in accordance with
484 Subsection (3)(a)(iv) to issue grants under the Electronic Cigarette, Marijuana, and Other Drug
485 Prevention Grant Program created in Section 26A-1-129.

486 (d) The State Board of Education shall use the money received in accordance with
487 Subsection (3)(a)(v) to distribute to local education agencies to pay for:

488 (i) (A) stipends for positive behaviors specialists as described in Subsection
489 53G-10-407(4)(a)(i);

490 (B) the cost of administering the positive behaviors plan as described in Subsection

491 [53G-10-407](#)(4)(a)(ii); and

492 (C) the cost of implementing an Underage Drinking and Substance Abuse Prevention
493 Program in grade 4 or 5, as described in Subsection [53G-10-406](#)(3)(b); or

494 (ii) a comprehensive prevention plan, as that term is defined in Section [53F-2-525](#).

495 (5) (a) The fund shall earn interest.

496 (b) All interest earned on fund money shall be deposited into the fund.

497 (6) Subject to legislative appropriations, funds remaining in the Electronic Cigarette
498 Substance and Nicotine Product Proceeds Restricted Account after the distribution described in
499 Subsection (3) may only be used for:

500 (a) funding commission personnel to enforce compliance with the tax collection
501 requirements of this part; and

502 (b) programs and activities related to the prevention and cessation of electronic
503 cigarette, nicotine products, marijuana, and other drug use.

504 Section 6. Section **59-14-810** is enacted to read:

505 **59-14-810. Electronic cigarette product registry.**

506 (1) Beginning on August 1, 2024, every manufacturer of an electronic cigarette product
507 that is sold in this state, whether directly or through a distributor, wholesaler, retailer, or similar
508 intermediary or intermediaries, shall certify under penalty of perjury on a form and in the
509 manner prescribed by the commission, that:

510 (a) the manufacturer agrees to comply with this section; and

511 (b) the electronic cigarette product is a premarket authorized or pending electronic
512 cigarette product as defined in Section [76-10-101](#).

513 (2) When submitting the certification a manufacturer shall submit a form that
514 separately lists each electronic cigarette product that is sold in this state.

515 (3) (a) Each certification form shall include:

516 (i) the name of the electronic cigarette product, nicotine content level by percentage,
517 and any flavors contained in the product;

518 (ii) (A) a copy of the order granting a premarket tobacco product application of the
519 electronic cigarette product by the United States Food and Drug Administration under 21
520 U.S.C. Sec. 387j(c)(1)(A)(i); or

521 (B) evidence that the premarket tobacco product application for the electronic cigarette

522 product or nicotine product was submitted to the United States Food and Drug Administration
523 before September 9, 2020, and a final authorization or order has not yet taken effect;

524 (iii) a nonrefundable \$1,000 fee for an electronic cigarette product that is being added
525 to the registry in the first instance; and

526 (iv) information described in Subsection (10) if applicable.

527 (b) The commission shall make the materials submitted under Subsection (3)(a)
528 available to the Department of Health and Human Services for review and approval.

529 (c) A manufacturer required to submit a certification form under this section shall
530 notify the commission and the Department of Health and Human Services in a manner
531 prescribed by the commission within 30 days of any material change making the certification
532 form no longer accurate, including:

533 (i) the issuance or denial of a marketing authorization or other order by the United
534 States Food and Drug Administration under 21 U.S.C. Sect. 387j; or

535 (ii) any other order or action by the United States Food and Drug Administration or any
536 court that affects the ability of the electronic cigarette product to be introduced or delivered
537 into interstate commerce for commercial distribution in the United States.

538 (d) On or before January 31 of each year and in a manner prescribed by the
539 commission, a manufacturer shall:

540 (i) recertify that the information contained in the certification is correct and accurate;

541 (ii) correct or amend information if necessary; and

542 (iii) pay a \$250 nonrefundable fee for each electronic cigarette product on the registry
543 that is manufactured by the manufacturer.

544 (e) A manufacturer may amend a certification, including to add additional electronic
545 cigarette products to the registry, if all requirements of this section are met.

546 (f) The commission shall:

547 (i) provide an electronic notification to a manufacturer that has not submitted a
548 recertification under Subsection (3)(d); and

549 (ii) remove a manufacturer or an electronic cigarette product that is not recertified from
550 the registry by March 15.

551 (4) (a) The Department of Health and Human Services shall review materials described
552 in Subsection (3)(a) and notify the commission regarding whether an electronic cigarette

553 product should be included in the registry.

554 (b) On or before October 1, 2024, the commission shall make publicly available on the
555 commission's website a registry that lists each electronic cigarette product manufacturer and
556 each electronic cigarette product for which certification forms have been approved by the
557 Department of Health and Human Services.

558 (c) An electronic cigarette product may not be listed on the registry unless the
559 Department of Health and Human Services determines the requirements of Subsection (3)(a)
560 are met.

561 (5) (a) If the Department of Health and Human Services obtains information that an
562 electronic cigarette product should not be listed in the registry, the Department of Health and
563 Human Services shall provide the manufacturer notice and an opportunity to cure deficiencies
564 before notifying the commission to remove the manufacturer or products from the registry.

565 (b) Except as provided in Subsection (5)(c), the Department of Health and Human
566 Services shall comply with Title 63G, Chapter 4, Administrative Procedures Act, before
567 notifying the commission to remove an electronic cigarette product or manufacturer from the
568 registry.

569 (c) Subsection (5)(b) does not apply to a manufacturer failing:

570 (i) to decertify an electronic cigarette product;

571 (ii) to provide fees and documentation described in Subsection (3)(a) or (3)(d); or

572 (iii) to comply with Subsection (10).

573 (6) (a) If a product is removed from the registry, each retailer, distributor, and
574 wholesaler shall have 30 days from the day on which the product is removed from the registry
575 to remove the product from any inventory and return the product to the manufacturer for
576 disposal.

577 (b) After the period described in Subsection (6)(a), any electronic cigarette product of a
578 manufacturer identified in the notice of removal are contraband and are subject to penalties
579 under Subsection (8) and seizure, forfeiture, and destruction under Section [26A-1-131](#).

580 (7) (a) Beginning on November 1, 2024, a person may not sell or offer for retail sale an
581 electronic cigarette product in this state that is not included in the registry.

582 (b) A manufacturer may not sell, either directly or through a distributor, wholesaler,
583 retailer, or similar intermediary or intermediaries, an electronic cigarette product in this state

584 that is not included in the registry.

585 (8) (a) A wholesaler, distributor, or retailer who sells or offers for retail sale an
586 electronic cigarette product in this state that is not included in the registry shall be subject to a
587 civil penalty of:

588 (i) \$1,000 for each product offered for sale in violation of this section; and

589 (ii) \$100 per day until the offending product is removed from the market or until the
590 offending product is properly listed on the registry.

591 (b) The commission shall suspend the person's license issued under Section [59-14-803](#)
592 for a violation of Subsection (8)(a) as follows:

593 (i) for a second violation within a 12-month period, at least 14 days;

594 (ii) for a third violation within a 12-month period, at least 60 days; or

595 (iii) for a fourth violation within a 12-month period, at least one year.

596 (c) A manufacturer whose electronic cigarette products are not listed in the registry and
597 are sold in this state, whether directly or through a distributor, wholesaler, retailer, or similar
598 intermediary or intermediaries, is subject to a civil penalty of:

599 (i) \$1,000 for each product offered for retail sale in violation of this section; and

600 (ii) \$100 per day until the offending product is removed from the market or until the
601 offending product is properly listed on the registry.

602 (d) A manufacturer that falsely represents any information required by a certification
603 form described in this section shall be guilty of a class C misdemeanor for each false
604 representation.

605 (e) A repeated violation of this section shall constitute a deceptive act or practice as
606 provided in Sections [13-11-4](#) and [13-11a-3](#) and shall be subject to any remedies or penalties
607 available for a violation of those sections.

608 (9) (a) To assist in ensuring compliance and enforcement of this section and Section
609 [26A-1-131](#), the commission shall disclose to the following entities, upon request, any
610 information obtained under this section:

611 (i) the Department of Health and Human Services;

612 (ii) a local health department; or

613 (iii) the attorney general.

614 (b) The commission and attorney general shall share with each other information

615 received under this section, or corresponding laws of other states.

616 (10) (a) (i) The commission may not list a nonresident manufacturer of an electronic
617 cigarette product in the registry unless:

618 (A) the nonresident manufacturer has registered to do business in the state as a foreign
619 corporation or business entity; or

620 (B) the nonresident manufacturer appoints and maintains without interruption the
621 services of an agent in this state to receive any service of process on behalf of the
622 manufacturer.

623 (b) The nonresident manufacturer shall provide the name, address, telephone number
624 of the agent to the commission.

625 (c) (i) A nonresident manufacturer shall provide notice to the commission 30 days
626 before the termination of the authority of an agent and shall further provide proof to the
627 satisfaction of the commission of the appointment of a new agent no less than five calendar
628 days prior to the termination of an existing agent appointment.

629 (ii) In the event an agent terminates an agency appointment, the manufacturer shall
630 notify the commission of the termination within five calendar days and shall include proof to
631 the satisfaction of the commission of the appointment of a new agent.

632 (11) Before May 31 of each year, the commission and the Department of Health and
633 Human Services shall provide a report to the Revenue and Taxation Interim Committee and the
634 Health and Human Services Interim Committee regarding:

635 (a) the status of the registry;

636 (b) manufacturers and products included in the registry;

637 (c) revenue and expenditures related to administration of this section; and

638 (d) enforcement activities undertaken under this section and Section [26A-1-131](#).

639 (12) All fees and penalties collected under this section shall be used for administration
640 and enforcement of this section and Section [26A-1-131](#).

641 (13) The commission, in consultation with the Department of Health and Human
642 Services, may make rules in accordance with Title 63G, Chapter 3, Utah Administrative
643 Rulemaking Act, to implement this section.

644 Section 7. Section **76-10-101** is amended to read:

645 **76-10-101. Definitions.**

646 As used in this part:

647 (1) (a) "Alternative nicotine product" means a product, other than a cigarette, a
648 counterfeit cigarette, an electronic cigarette product, a nontherapeutic nicotine product, or a
649 tobacco product, that:

650 (i) contains nicotine;

651 (ii) is intended for human consumption;

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

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

655 (b) "Alternative nicotine product" includes:

656 (i) pure nicotine;

657 (ii) snortable nicotine;

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

659 (iv) nicotine-laced food and beverage.

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

662 (2) "Cigar" means a product that contains nicotine, is intended to be burned under
663 ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in
664 any substance containing tobacco, other than any roll of tobacco that is a cigarette.

665 (3) "Cigarette" means a product that contains nicotine, is intended to be heated or
666 burned under ordinary conditions of use, and consists of:

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

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

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

672 (i) any electronic oral device:

673 (A) that provides an aerosol or a vapor of nicotine or other substance; and

674 (B) which simulates smoking through the use or inhalation of the device;

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

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

677 (4)(a)(i).

678 (b) "Electronic cigarette" includes an oral device that is:

679 (i) composed of a heating element, battery, or electronic circuit; and

680 (ii) marketed, manufactured, distributed, or sold as:

681 (A) an e-cigarette;

682 (B) an e-cigar;

683 (C) an e-pipe; or

684 (D) any other product name or descriptor, if the function of the product meets the

685 definition of Subsection (4)(a).

686 (c) "Electronic cigarette" does not mean a medical cannabis device, as that term is
687 defined in Section [26B-4-201](#).

688 (5) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette
689 substance, or a prefilled electronic cigarette.

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

692 (7) (a) "Flavored electronic cigarette product" means an electronic cigarette product
693 that has a taste or smell that is distinguishable by an ordinary consumer either before or during
694 use or consumption of the electronic cigarette product.

695 (b) "Flavored electronic cigarette product" includes an electronic cigarette product that
696 is labeled as, or has a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa,
697 dessert, alcoholic beverage, herb, or spice.

698 (c) "Flavored electronic cigarette product" does not include an electronic cigarette
699 product that~~[:]~~ has a taste or smell of only tobacco, mint, or menthol.

700 ~~[(i) has a taste or smell of only tobacco, mint, or menthol; or]~~

701 ~~[(ii) has been approved by an order granting a premarket tobacco product application of~~
702 ~~the electronic cigarette product by the United States Food and Drug Administration under 21~~
703 ~~U.S.C. Sec. 387j(c)(1)(A)(i).]~~

704 (8) "Nicotine" means a poisonous, nitrogen containing chemical that is made
705 synthetically or derived from tobacco or other plants.

706 (9) "Nicotine product" means an alternative nicotine product or a nontherapeutic
707 nicotine product.

708 (10) (a) "Nontherapeutic nicotine device" means a device that:

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

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

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

714 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or a
715 nontherapeutic nicotine nasal spray.

716 (11) "Nontherapeutic nicotine device substance" means a substance that:

717 (a) contains nicotine;

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

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

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

722 (12) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device, a
723 nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device.

724 (13) "Place of business" includes:

725 (a) a shop;

726 (b) a store;

727 (c) a factory;

728 (d) a public garage;

729 (e) an office;

730 (f) a theater;

731 (g) a recreation hall;

732 (h) a dance hall;

733 (i) a poolroom;

734 (j) a cafe;

735 (k) a cafeteria;

736 (l) a cabaret;

737 (m) a restaurant;

738 (n) a hotel;

- 739 (o) a lodging house;
- 740 (p) a streetcar;
- 741 (q) a bus;
- 742 (r) an interurban or railway passenger coach;
- 743 (s) a waiting room; and
- 744 (t) any other place of business.

745 (14) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled
746 with an electronic cigarette substance.

747 (15) "Prefilled nontherapeutic nicotine device" means a nontherapeutic nicotine device
748 that is sold prefilled with a nontherapeutic nicotine device substance.

749 (16) "Premarket authorized or pending electronic cigarette product" means an
750 electronic cigarette product that:

751 (a) has been approved by an order granting a premarket tobacco product application of
752 the electronic cigarette product by the United States Food and Drug Administration under 21
753 U.S.C. Sec. 387j(c)(1)(A)(i); or

754 (b) (i) was marketed in the United States on or before August 8, 2016;

755 (ii) the manufacturer submitted a premarket tobacco product application for the
756 electronic cigarette product to the United States Food and Drug Administration under 21
757 U.S.C. Sec. 387j on or before September 9, 2020; and

758 (iii) has an application described in Subsection (16)(b)(ii) that either remains under
759 review by the United States Food and Drug Administration or a final decision on the
760 application has not taken effect.

761 ~~[(16)]~~ (17) "Retail tobacco specialty business" means the same as that term is defined
762 in Section 26B-7-501.

763 ~~[(17)]~~ (18) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or
764 other lighted smoking equipment.

765 ~~[(18)]~~ (19) (a) "Tobacco paraphernalia" means equipment, product, or material of any
766 kind that is used, intended for use, or designed for use to package, repackage, store, contain,
767 conceal, ingest, inhale, or otherwise introduce a tobacco product, an electronic cigarette
768 substance, or a nontherapeutic nicotine device substance into the human body.

769 (b) "Tobacco paraphernalia" includes:

- 770 (i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
771 screens, permanent screens, hashish heads, or punctured metal bowls;
- 772 (ii) water pipes;
- 773 (iii) carburetion tubes and devices;
- 774 (iv) smoking and carburetion masks;
- 775 (v) roach clips, meaning objects used to hold burning material, such as a cigarette, that
776 has become too small or too short to be held in the hand;
- 777 (vi) chamber pipes;
- 778 (vii) carburetor pipes;
- 779 (viii) electric pipes;
- 780 (ix) air-driven pipes;
- 781 (x) chillums;
- 782 (xi) bongs; and
- 783 (xii) ice pipes or chillers.

784 (c) "Tobacco paraphernalia" does not include matches or lighters.

785 ~~[(19)]~~ (20) "Tobacco product" means:

786 (a) a cigar;

787 (b) a cigarette; or

788 (c) tobacco in any form, including:

789 (i) chewing tobacco; and

790 (ii) any substitute for tobacco, including flavoring or additives to tobacco.

791 ~~[(20)]~~ (21) "Tobacco retailer" means:

792 (a) a general tobacco retailer, as that term is defined in Section 26B-7-501; or

793 (b) a retail tobacco specialty business.

794 Section 8. Section 76-10-113 is amended to read:

795 **76-10-113. Prohibition on distribution of flavored electronic cigarette products --**

796 **Prohibition of electronic cigarette products without federal authorization.**

797 (1) ~~[It is unlawful for a tobacco retailer that is not a retail tobacco specialty business to~~
798 ~~give, distribute, sell, offer for sale, or furnish a flavored electronic cigarette product to any~~
799 ~~person.] It is unlawful for a person to give, distribute, sell, offer for sale, or furnish to any~~
800 person a flavored electronic cigarette product.

801 (2) It is unlawful for a person to give, distribute, sell, offer for sale, or furnish to any
802 person an electronic cigarette product that is not a premarket authorized or pending electronic
803 cigarette product.

804 ~~[(2)]~~ (3) An individual who violates this section is guilty of:

805 (a) a class C misdemeanor for the first offense; and

806 (b) a class B misdemeanor for any subsequent offense.

807 Section 9. **Effective date.**

808 This bill takes effect on July 1, 2024.