

Representative Brady Brammer proposes the following substitute bill:

ELECTRONIC CIGARETTE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jen Plumb

House Sponsor: Brady Brammer

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;

- ▶ codifies a nicotine limit for electronic cigarette products;

- ▶ 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



26 **26B-7-505**, as renumbered and amended by Laws of Utah 2023, Chapter 308
 27 **59-14-807**, as last amended by Laws of Utah 2023, Chapters 98, 300, 329, and 531 and
 28 last amended by Coordination Clause, Laws of Utah 2023, Chapter 531
 29 **76-10-101**, as last amended by Laws of Utah 2023, Chapter 330
 30 **76-10-113**, as enacted by Laws of Utah 2020, Chapter 302

31 ENACTS:

32 **26A-1-131**, Utah Code Annotated 1953
 33 **59-14-810**, Utah Code Annotated 1953



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

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

37 **10-8-41.6. Regulation of retail tobacco specialty business.**

38 (1) As used in this section:

39 (a) "Community location" means:

- 40 (i) a public or private kindergarten, elementary, middle, junior high, or high school;
- 41 (ii) a licensed child-care facility or preschool;
- 42 (iii) a trade or technical school;
- 43 (iv) a church;
- 44 (v) a public library;
- 45 (vi) a public playground;
- 46 (vii) a public park;
- 47 (viii) a youth center or other space used primarily for youth oriented activities;
- 48 (ix) a public recreational facility;
- 49 (x) a public arcade; or
- 50 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.

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

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

53 (c) "Electronic cigarette product" means the same as that term is defined in Section
54 **76-10-101**.

55 ~~[(d) "Flavored electronic cigarette product" means the same as that term is defined in~~
56 ~~Section **76-10-101**.]~~

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

59 [(f)] (e) "Local health department" means the same as that term is defined in Section
60 26A-1-102.

61 [(g)] (f) "Nicotine product" means the same as that term is defined in Section
62 76-10-101.

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

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

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

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

71 (iv) the commercial establishment:

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

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

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

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

78 [(i)] (h) "Self-service display" means the same as that term is defined in Section
79 76-10-105.1.

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

81 (i) a tobacco product as defined in Section 76-10-101; or

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

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

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

88 business is located.

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

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

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

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

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

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

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

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

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

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

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

119 business.

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

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

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

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

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

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

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

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

136 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
137 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

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

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

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

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

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

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

- 150 (B) zoning ordinances;
- 151 (C) building codes; and
- 152 (D) the requirements of the license described in Subsection (7)(a)(i).
- 153 (c) A retail tobacco specialty business that does not qualify for an exemption under
- 154 Subsection (7)(a) is exempt from Subsection (4) if:
 - 155 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
 - 156 general tobacco retailer permit or a retail tobacco specialty business permit under Title 26B,
 - 157 Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine Products, by the
 - 158 local health department having jurisdiction over the area in which the retail tobacco specialty
 - 159 business is located;
 - 160 (ii) the retail tobacco specialty business is operating in the municipality in accordance
 - 161 with all applicable laws except for the requirement in Subsection (4); and
 - 162 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
 - 163 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.
- 164 (d) Except as provided in Subsection (7)(e), a retail tobacco specialty business may
- 165 maintain an exemption under Subsection (7)(c) if:
 - 166 (i) on or before December 31, 2020, the retail tobacco specialty business receives a
 - 167 retail tobacco specialty business permit from the local health department having jurisdiction
 - 168 over the area in which the retail tobacco specialty business is located;
 - 169 (ii) the permit described in Subsection (7)(d)(i) is renewed continuously without lapse
 - 170 or permanent revocation;
 - 171 (iii) the retail tobacco specialty business does not close for business or otherwise
 - 172 suspend the sale of tobacco products, electronic cigarette products, or nicotine products for
 - 173 more than 60 consecutive days;
 - 174 (iv) the retail tobacco specialty business does not substantially change the business
 - 175 premises or business operation as the business existed when the retail tobacco specialty
 - 176 business received a permit under Subsection (7)(d)(i); and
 - 177 (v) the retail tobacco specialty business maintains the right to operate under the terms
 - 178 of other applicable laws, including:
 - 179 (A) Section [26B-7-503](#);
 - 180 (B) zoning ordinances;

181 (C) building codes; and

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

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

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

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

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

193 **17-50-333. Regulation of retail tobacco specialty business.**

194 (1) As used in this section:

195 (a) "Community location" means:

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

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

198 (iii) a trade or technical school;

199 (iv) a church;

200 (v) a public library;

201 (vi) a public playground;

202 (vii) a public park;

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

204 (ix) a public recreational facility;

205 (x) a public arcade; or

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

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

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

209 (c) "Electronic cigarette product" means the same as that term is defined in Section
210 [76-10-101](#).

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

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

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

215 ~~[(f)]~~ (e) "Local health department" means the same as that term is defined in Section
216 26A-1-102.

217 ~~[(g)]~~ (f) "Nicotine product" means the same as that term is defined in Section
218 76-10-101.

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

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

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

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

227 (iv) the commercial establishment:

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

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

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

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

234 ~~[(i)]~~ (h) "Self-service display" means the same as that term is defined in Section
235 76-10-105.1.

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

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

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

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

242 (3) (a) A person may not operate a retail tobacco specialty business in a county unless

243 the person obtains a license from the county in which the retail tobacco specialty business is
244 located.

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

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

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

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

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

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

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

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

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

274 a license or renewal of a license to conduct business as a retail tobacco specialty business.

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

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

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

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

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

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

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

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

292 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
293 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or high school.

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

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

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

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

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

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

- 336 (B) zoning ordinances;
- 337 (C) building codes; and
- 338 (D) the requirements of the retail tobacco permit described in Subsection (7)(d)(i).
- 339 (e) A retail tobacco specialty business described in Subsection (7)(a) or (b) that is
- 340 located within 1,000 feet of a public or private kindergarten, elementary, middle, junior high,
- 341 or high school before July 1, 2022, is exempt from Subsection (4)(a)(iii)(B) if the retail tobacco
- 342 specialty business:
 - 343 (i) relocates, before July 1, 2022, to a property that is used or zoned for commercial use
 - 344 and located within a group of architecturally unified commercial establishments built on a site
 - 345 that is planned, developed, owned, and managed as an operating unit; and
 - 346 (ii) continues to meet the requirements described in Subsection (7)(b) that are not
 - 347 directly related to the relocation described in this Subsection (7)(e).

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

349 **26A-1-131. Electronic cigarette registry enforcement.**

- 350 (1) (a) A local health department may examine the books, papers, and records of a
- 351 retailer in this state, for the purpose of determining compliance with 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 retailers are required within 30 days
- 357 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 and shall be immediately embargoed by a local health
- 362 department.
- 363 (f) An electronic cigarette product described in Subsection (1)(e) may be embargoed
- 364 without a warrant by:
 - 365 (i) a local health department; or
 - 366 (ii) a law enforcement agency of this state if directed by a local health department with

367 jurisdiction over where the product is found.

368 (g) The cost of embargoing shall be borne by the retailer.

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 (i) A retailer shall remove any embargoed electronic cigarette product from the
372 retailer's active inventory and work with the wholesaler or distributor to return or dispose the
373 electronic cigarette product.

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

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

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

382 (3) A monetary penalty assessed to a retailer by a local health department under this
383 section shall be doubled if the retailer fails to provide documentation establishing a clear chain
384 of custody back to the manufacturer.

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

386 **26B-7-505. Electronic cigarette products -- Labeling -- Requirements to sell --**
387 **Advertising -- Labeling of nicotine products containing nicotine.**

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

392 (a) labeling;

393 (b) nicotine content;

394 (c) packaging; and

395 (d) product quality.

396 (2) On or before January 1, 2021, the department shall, in consultation with a local
397 health department and with input from members of the public, establish by rule made in

398 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the requirements
399 to sell a manufacturer sealed electronic cigarette product regarding:

- 400 (a) labeling;
- 401 (b) nicotine content;
- 402 (c) packaging; and
- 403 (d) product quality.

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

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

410 (c) Notwithstanding Subsections (3)(a) and (3)(b), beginning on January 1, 2025, a
411 person may not sell an electronic cigarette product that is not a premarket authorized or
412 pending electronic cigarette product as that term is defined in Section [76-10-101](#).

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

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

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

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

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

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

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

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

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

431 "This product contains nicotine."

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

433 **59-14-807. Electronic Cigarette Substance and Nicotine Product Proceeds**
434 **Restricted Account.**

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

437 (2) The Electronic Cigarette Substance and Nicotine Product Proceeds Restricted
438 Account consists of:

439 (a) revenue collected from the tax imposed by Section [59-14-804](#);

440 (b) fees and penalties collected under Section [59-14-810](#);

441 ~~[(b)]~~ (c) all money received by the attorney general or the Department of Commerce as
442 a result of any judgment, settlement, or compromise of claims pertaining to alleged violations
443 of law related to the manufacture, marketing, distribution, or sale of electronic cigarette
444 products, as defined in Section [76-10-101](#):

445 (i) if the total amount of the judgment, settlement, or compromise received by the state
446 exceeds \$1,000,000; and

447 (ii) after reimbursement to the attorney general and the Department of Commerce for
448 expenses related to the matters described in Subsection ~~[(2)(b)]~~ (2)(c); and

449 ~~[(c)]~~ (d) amounts appropriated by the Legislature.

450 (3) (a) For each fiscal year and subject to appropriation by the Legislature, the Division
451 of Finance shall distribute from the Electronic Cigarette Substance and Nicotine Product
452 Proceeds Restricted Account:

453 (i) \$2,000,000, which shall be allocated to the local health departments by the
454 Department of Health and Human Services using the formula created in accordance with
455 Section [26A-1-116](#);

456 (ii) \$2,000,000 to the Department of Health and Human Services for statewide
457 cessation programs and prevention education;

458 (iii) \$1,180,000 to the Department of Public Safety for law enforcement officers aimed
459 at disrupting organizations and networks that provide tobacco products, electronic cigarette

460 products, nicotine products, and other illegal controlled substances to minors;

461 (iv) \$3,000,000, which shall be allocated to the local health departments by the
462 Department of Health and Human Services using the formula created in accordance with
463 Section [26A-1-116](#);

464 (v) \$5,084,200 to the State Board of Education for school-based prevention programs;
465 [~~and~~]

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

470 (vii) of the money deposited under Section [59-14-810](#):

471 (A) to the commission, in an amount equal to the amount necessary to create and
472 maintain the registry described in Section [59-14-810](#);

473 (B) to the Department of Health and Human Services, in an amount necessary for
474 completing duties described in Section [59-14-810](#); and

475 (C) to the Department of Health and Human Services, the remainder to be divided
476 among the local health departments for inspection and enforcement described in Sections
477 [26A-1-131](#) and [59-14-810](#).

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

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

483 (i) the regulation provisions described in Section [26B-7-505](#);

484 (ii) the labeling requirement described in Section [26B-7-505](#); and

485 (iii) the penalty provisions described in Section [26B-7-518](#).

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

489 (c) The local health departments shall use the money received in accordance with
490 Subsection (3)(a)(iv) to issue grants under the Electronic Cigarette, Marijuana, and Other Drug

491 Prevention Grant Program created in Section [26A-1-129](#).

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

494 (i) (A) stipends for positive behaviors specialists as described in Subsection
495 [53G-10-407\(4\)\(a\)\(i\)](#);

496 (B) the cost of administering the positive behaviors plan as described in Subsection
497 [53G-10-407\(4\)\(a\)\(ii\)](#); and

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

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

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

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

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

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

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

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

511 **59-14-810. Electronic cigarette product registry.**

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

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

517 (b) the electronic cigarette product is a premarket authorized or pending electronic
518 cigarette product as defined in Section [76-10-101](#) and will not be illegal to be sold in the state
519 as of January 1, 2025.

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

522 (3) (a) Each certification form shall include:
523 (i) the name of the electronic cigarette product, nicotine content level by percentage,
524 and any flavors contained in the product;
525 (ii) (A) a copy of the order granting a premarket tobacco product application of the
526 electronic cigarette product by the United States Food and Drug Administration under 21
527 U.S.C. Sec. 387j(c)(1)(A)(i); or
528 (B) evidence that the premarket tobacco product application for the electronic cigarette
529 product or nicotine product was submitted to the United States Food and Drug Administration
530 before September 9, 2020, and a final authorization or order has not yet taken effect;
531 (iii) a nonrefundable \$1,000 fee for an electronic cigarette product that is being added
532 to the registry in the first instance; and
533 (iv) information described in Subsection (10) if applicable.
534 (b) The commission shall make the materials submitted under Subsection (3)(a)
535 available to the Department of Health and Human Services for review and approval.
536 (c) A manufacturer required to submit a certification form under this section shall
537 notify the commission and the Department of Health and Human Services in a manner
538 prescribed by the commission within 30 days of any material change making the certification
539 form no longer accurate, including:
540 (i) the issuance or denial of a marketing authorization or other order by the United
541 States Food and Drug Administration under 21 U.S.C. Sec. 387j; or
542 (ii) any other order or action by the United States Food and Drug Administration or any
543 court that affects the ability of the electronic cigarette product to be introduced or delivered
544 into interstate commerce for commercial distribution in the United States.
545 (d) On or before January 31 of each year and in a manner prescribed by the
546 commission, a manufacturer shall:
547 (i) recertify that the information contained in the certification is correct and accurate;
548 (ii) correct or amend information if necessary; and
549 (iii) pay a \$250 nonrefundable fee for each electronic cigarette product on the registry
550 that is manufactured by the manufacturer.
551 (e) A manufacturer may amend a certification, including to add additional electronic
552 cigarette products to the registry, if all requirements of this section are met.

553 (f) The commission shall:

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

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

558 (4) (a) The Department of Health and Human Services shall review materials described
559 in Subsection (3)(a) and notify the commission regarding whether an electronic cigarette
560 product should be included in the registry.

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

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

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

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

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

577 (i) to decertify an electronic cigarette product;

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

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

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

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

587 (7) (a) Beginning on January 1, 2025, a person may not sell or offer for retail sale an
588 electronic cigarette product in this state that is not included in the registry.

589 (b) A manufacturer may not sell, either directly or through a distributor, wholesaler,
590 retailer, or similar intermediary or intermediaries, an electronic cigarette product in this state
591 that is not included in the registry.

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

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

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

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

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

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

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

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

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

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

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

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

615 (9) (a) To assist in ensuring compliance and enforcement of this section and Section
616 26A-1-131, the commission shall disclose to the following entities, upon request, any
617 information obtained under this section:

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

619 (ii) a local health department; or

620 (iii) the attorney general.

621 (b) The commission and attorney general shall share with each other information
622 received under this section, or corresponding laws of other states.

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

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

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

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

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

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

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

642 (a) the status of the registry;

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

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

645 (d) enforcement activities undertaken under this section and Section 26A-1-131.

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

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

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

652 **76-10-101. Definitions.**

653 As used in this part:

654 (1) (a) "Alternative nicotine product" means a product, other than a cigarette, a
655 counterfeit cigarette, an electronic cigarette product, a nontherapeutic nicotine product, or a
656 tobacco product, that:

657 (i) contains nicotine;

658 (ii) is intended for human consumption;

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

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

662 (b) "Alternative nicotine product" includes:

663 (i) pure nicotine;

664 (ii) snortable nicotine;

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

666 (iv) nicotine-laced food and beverage.

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

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

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

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

675 (b) any roll of tobacco wrapped in any substance containing tobacco which, because of
676 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to

677 be offered to, or purchased by, consumers as a cigarette described in Subsection (3)(a).

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

679 (i) any electronic oral device:

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

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

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

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

684 (4)(a)(i).

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

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

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

688 (A) an e-cigarette;

689 (B) an e-cigar;

690 (C) an e-pipe; or

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

692 definition of Subsection (4)(a).

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

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

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

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

702 (b) "Flavored electronic cigarette product" includes an electronic cigarette product that
703 is labeled as, or has a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa,
704 dessert, alcoholic beverage, herb, ~~[or]~~ spice, or mint.

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

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

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

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

713 (9) "Nicotine product" means an alternative nicotine product or a nontherapeutic
714 nicotine product.

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

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

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

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

721 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or a
722 nontherapeutic nicotine nasal spray.

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

724 (a) contains nicotine;

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

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

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

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

731 (13) "Place of business" includes:

732 (a) a shop;

733 (b) a store;

734 (c) a factory;

735 (d) a public garage;

736 (e) an office;

737 (f) a theater;

738 (g) a recreation hall;

- 739 (h) a dance hall;
740 (i) a poolroom;
741 (j) a cafe;
742 (k) a cafeteria;
743 (l) a cabaret;
744 (m) a restaurant;
745 (n) a hotel;
746 (o) a lodging house;
747 (p) a streetcar;
748 (q) a bus;
749 (r) an interurban or railway passenger coach;
750 (s) a waiting room; and
751 (t) any other place of business.

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

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

756 (16) "Premarket authorized or pending electronic cigarette product" means an
757 electronic cigarette product that:

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

761 (ii) (A) was marketed in the United States on or before August 8, 2016;

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

765 (C) has an application described in Subsection (16)(b)(ii) that either remains under
766 review by the United States Food and Drug Administration or a final decision on the
767 application has not taken effect; and

768 (b) does not exceed:

769 (i) 4.0% nicotine by weight per container; or

770 (ii) a nicotine concentration of 40 milligrams per milliliter.

771 [~~(16)~~] (17) "Retail tobacco specialty business" means the same as that term is defined
772 in Section 26B-7-501.

773 [~~(17)~~] (18) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or
774 other lighted smoking equipment.

775 [~~(18)~~] (19) (a) "Tobacco paraphernalia" means equipment, product, or material of any
776 kind that is used, intended for use, or designed for use to package, repackage, store, contain,
777 conceal, ingest, inhale, or otherwise introduce a tobacco product, an electronic cigarette
778 substance, or a nontherapeutic nicotine device substance into the human body.

779 (b) "Tobacco paraphernalia" includes:

780 (i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
781 screens, permanent screens, hashish heads, or punctured metal bowls;

782 (ii) water pipes;

783 (iii) carburetion tubes and devices;

784 (iv) smoking and carburetion masks;

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

787 (vi) chamber pipes;

788 (vii) carburetor pipes;

789 (viii) electric pipes;

790 (ix) air-driven pipes;

791 (x) chillums;

792 (xi) bongs; and

793 (xii) ice pipes or chillers.

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

795 [~~(19)~~] (20) "Tobacco product" means:

796 (a) a cigar;

797 (b) a cigarette; or

798 (c) tobacco in any form, including:

799 (i) chewing tobacco; and

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

801 [~~20~~] (21) "Tobacco retailer" means:

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

803 (b) a retail tobacco specialty business.

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

805 **76-10-113. Prohibition on distribution of flavored electronic cigarette products --**
806 **Prohibition of electronic cigarette products without federal authorization.**

807 (1) [~~1~~] Subject to Subsection (2), it is unlawful for a tobacco retailer that is not a retail
808 tobacco specialty business to give, distribute, sell, offer for sale, or furnish a flavored electronic
809 cigarette product to any person.

810 (2) Notwithstanding Subsection (1), and beginning on January 1, 2025, it is unlawful
811 for a person to give, distribute, sell, offer for sale, or furnish to any person a flavored electronic
812 cigarette product.

813 (3) Beginning on January 1, 2025, it is unlawful for a person to give, distribute, sell,
814 offer for sale, or furnish to any person an electronic cigarette product that is not a premarket
815 authorized or pending electronic cigarette product.

816 [~~2~~] (4) An individual who violates this section is guilty of:

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

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

819 Section 9. **Effective date.**

820 This bill takes effect on July 1, 2024.