

1 **Tobacco and Electronic Cigarette Modifications**

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Matt MacPherson

Senate Sponsor:

3 **LONG TITLE**

4 **General Description:**

5 This bill amends provisions related to tobacco and electronic cigarette products.

6 **Highlighted Provisions:**

7 This bill:

- 8 ▶ repeals the ban on flavored electronic cigarette products;
- 9 ▶ repeals the nicotine content limit for electronic cigarette products;
- 10 ▶ repeals the requirement that electronic cigarette products obtain premarket authorization
- 11 from the federal Food and Drug Administration;
- 12 ▶ creates penalties for general retail tobacco businesses that sell flavored electronic
- 13 cigarette products;
- 14 ▶ for retail tobacco specialty businesses:
 - 15 • raises licensing fees;
 - 16 • creates identification scanning requirements; and
 - 17 • creates surveillance footage requirements;
- 18 ▶ creates a tobacco handling permit for retail tobacco specialty business employees and
- 19 operators;
- 20 ▶ creates a tax on flavored electronic cigarette products; and
- 21 ▶ amends criminal penalties regarding the illegal sale of tobacco and electronic cigarette
- 22 products.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 This bill provides a special effective date.

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **10-8-41.6**, as last amended by Laws of Utah 2024, Chapter 470

30 **17-50-333**, as last amended by Laws of Utah 2024, Chapter 470

31 **26B-7-501**, as renumbered and amended by Laws of Utah 2023, Chapter 308
 32 **26B-7-505**, as last amended by Laws of Utah 2024, Chapter 470
 33 **26B-7-509**, as renumbered and amended by Laws of Utah 2023, Chapter 308
 34 **26B-7-511**, as renumbered and amended by Laws of Utah 2023, Chapter 308
 35 **26B-7-518**, as renumbered and amended by Laws of Utah 2023, Chapter 308
 36 **26B-7-521**, as renumbered and amended by Laws of Utah 2023, Chapter 308
 37 **59-14-102**, as last amended by Laws of Utah 2022, Chapter 199
 38 **59-14-807**, as last amended by Laws of Utah 2024, Chapter 470
 39 **76-10-101**, as last amended by Laws of Utah 2024, Chapter 470
 40 **76-10-104**, as last amended by Laws of Utah 2020, Chapters 302, 347
 41 **76-10-104.1**, as last amended by Laws of Utah 2020, Chapters 302, 347
 42 **76-10-105.1**, as last amended by Laws of Utah 2021, Chapter 348
 43 **76-10-111**, as last amended by Laws of Utah 2020, Chapters 302, 347
 44 **76-10-112**, as last amended by Laws of Utah 2020, Chapter 302
 45 **76-10-113**, as last amended by Laws of Utah 2024, Chapter 470
 46 **76-10-114**, as last amended by Laws of Utah 2021, First Special Session, Chapter 12

47 ENACTS:

48 **59-14-901**, Utah Code Annotated 1953
 49 **59-14-902**, Utah Code Annotated 1953
 50 **59-14-903**, Utah Code Annotated 1953
 51 **59-14-904**, Utah Code Annotated 1953
 52 **59-14-905**, Utah Code Annotated 1953
 53 **59-14-906**, Utah Code Annotated 1953
 54 **59-14-907**, Utah Code Annotated 1953

55 REPEALS:

56 **26A-1-131**, as enacted by Laws of Utah 2024, Chapter 470
 57 **59-14-810**, as enacted by Laws of Utah 2024, Chapter 470

58

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

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

61 **10-8-41.6 . Regulation of retail tobacco specialty business.**

62 (1) As used in this section:

63 (a) "Community location" means:

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

- 65 (ii) a licensed child-care facility or preschool;
- 66 (iii) a trade or technical school;
- 67 (iv) a church;
- 68 (v) a public library;
- 69 (vi) a public playground;
- 70 (vii) a public park;
- 71 (viii) a youth center or other space used primarily for youth oriented activities;
- 72 (ix) a public recreational facility;
- 73 (x) a public arcade; or
- 74 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
- 75 (b) "Department" means the Department of Health and Human Services created in
- 76 Section 26B-1-201.
- 77 (c) "Electronic cigarette product" means the same as that term is defined in Section
- 78 76-10-101.
- 79 (d) "Flavored electronic cigarette product" means the same as that term is defined in
- 80 Section 76-10-101.
- 81 ~~[(d)]~~ (e) "Licensee" means a person licensed under this section to conduct business as a
- 82 retail tobacco specialty business.
- 83 ~~[(e)]~~ (f) "Local health department" means the same as that term is defined in Section
- 84 26A-1-102.
- 85 ~~[(f)]~~ (g) "Nicotine product" means the same as that term is defined in Section 76-10-101.
- 86 ~~[(g)]~~ (h) "Retail tobacco specialty business" means a commercial establishment in which:
- 87 (i) sales of tobacco products, electronic cigarette products, and nicotine products
- 88 account for more than 35% of the total quarterly gross receipts for the
- 89 establishment;
- 90 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
- 91 storage of tobacco products, electronic cigarette products, or nicotine products;
- 92 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage
- 93 of tobacco products, electronic cigarette products, or nicotine products;
- 94 (iv) the commercial establishment:
- 95 (A) holds itself out as a retail tobacco specialty business; and
- 96 (B) causes a reasonable person to believe the commercial establishment is a retail
- 97 tobacco specialty business; ~~[(h)]~~
- 98 (v) the retail space features a self-service display for tobacco products, electronic

- 99 cigarette products, or nicotine products~~[-]~~ ; or
100 (vi) any flavored electronic cigarette product is sold.
- 101 ~~[(h)]~~ (i) "Self-service display" means the same as that term is defined in Section
102 76-10-105.1.
- 103 ~~[(i)]~~ (j) "Tobacco product" means:
104 (i) a tobacco product as defined in Section 76-10-101; or
105 (ii) tobacco paraphernalia as defined in Section 76-10-101.
- 106 (2) The regulation of a retail tobacco specialty business is an exercise of the police powers
107 of the state by the state or by delegation of the state's police powers to other
108 governmental entities.
- 109 (3)(a) A person may not operate a retail tobacco specialty business in a municipality
110 unless the person obtains a license from the municipality in which the retail tobacco
111 specialty business is located.
- 112 (b) A municipality may only issue a retail tobacco specialty business license to a person
113 if the person complies with the provisions of Subsections (4) and (5).
- 114 (4)(a) Except as provided in Subsection (7), a municipality may not issue a license for a
115 person to conduct business as a retail tobacco specialty business if the retail tobacco
116 specialty business is located within:
117 (i) 1,000 feet of a community location;
118 (ii) 600 feet of another retail tobacco specialty business; or
119 (iii) 600 feet from property used or zoned for:
120 (A) agriculture use; or
121 (B) residential use.
- 122 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in a
123 straight line from the nearest entrance of the retail tobacco specialty business to the
124 nearest property boundary of a location described in Subsections (4)(a)(i) through
125 (iii), without regard to intervening structures or zoning districts.
- 126 (5) A municipality may not issue or renew a license for a person to conduct business as a
127 retail tobacco specialty business until the person provides the municipality with proof
128 that the retail tobacco specialty business has:
129 (a) a valid permit for a retail tobacco specialty business issued under Title 26B, Chapter
130 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine Products, by the
131 local health department having jurisdiction over the area in which the retail tobacco
132 specialty business is located; and

- 133 (b)(i) for a retailer that sells a tobacco product, a valid license issued by the State Tax
134 Commission in accordance with Section 59-14-201 or 59-14-301 to sell a tobacco
135 product; and
- 136 (ii) for a retailer that sells an electronic cigarette product or a nicotine product, a valid
137 license issued by the State Tax Commission in accordance with Section 59-14-803
138 to sell an electronic cigarette product or a nicotine product.
- 139 (6)(a) Nothing in this section:
- 140 (i) requires a municipality to issue a retail tobacco specialty business license; or
- 141 (ii) prohibits a municipality from adopting more restrictive requirements on a person
142 seeking a license or renewal of a license to conduct business as a retail tobacco
143 specialty business.
- 144 (b) A municipality may suspend or revoke a retail tobacco specialty business license
145 issued under this section:
- 146 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,
147 Part 16, Pattern of Unlawful Activity Act;
- 148 (ii) if a licensee violates federal law or federal regulations restricting the sale and
149 distribution of tobacco products or electronic cigarette products to protect children
150 and adolescents;
- 151 (iii) upon the recommendation of the department or a local health department under
152 Title 26B, Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and
153 Nicotine Products; or
- 154 (iv) under any other provision of state law or local ordinance.
- 155 (7)(a) A retail tobacco specialty business is exempt from Subsection (4) if:
- 156 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
157 license to conduct business as a retail tobacco specialty business;
- 158 (ii) the retail tobacco specialty business is operating in a municipality in accordance
159 with all applicable laws except for the requirement in Subsection (4); and
- 160 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
161 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or
162 high school.
- 163 (b) A retail tobacco specialty business may maintain an exemption under Subsection
164 (7)(a) if:
- 165 (i) the license described in Subsection (7)(a)(i) is renewed continuously without lapse
166 or permanent revocation;

- 167 (ii) the retail tobacco specialty business does not close for business or otherwise
168 suspend the sale of tobacco products, electronic cigarette products, or nicotine
169 products for more than 60 consecutive days;
- 170 (iii) the retail tobacco specialty business does not substantially change the business
171 premises or business operation; and
- 172 (iv) the retail tobacco specialty business maintains the right to operate under the
173 terms of other applicable laws, including:
- 174 (A) Section 26B-7-503;
- 175 (B) zoning ordinances;
- 176 (C) building codes; and
- 177 (D) the requirements of the license described in Subsection (7)(a)(i).
- 178 (c) A retail tobacco specialty business that does not qualify for an exemption under
179 Subsection (7)(a) is exempt from Subsection (4) if:
- 180 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
181 general tobacco retailer permit or a retail tobacco specialty business permit under
182 Title 26B, Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and
183 Nicotine Products, by the local health department having jurisdiction over the area
184 in which the retail tobacco specialty business is located;
- 185 (ii) the retail tobacco specialty business is operating in the municipality in accordance
186 with all applicable laws except for the requirement in Subsection (4); and
- 187 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
188 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or
189 high school.
- 190 (d) Except as provided in Subsection (7)(e), a retail tobacco specialty business may
191 maintain an exemption under Subsection (7)(c) if:
- 192 (i) on or before December 31, 2020, the retail tobacco specialty business receives a
193 retail tobacco specialty business permit from the local health department having
194 jurisdiction over the area in which the retail tobacco specialty business is located;
- 195 (ii) the permit described in Subsection (7)(d)(i) is renewed continuously without
196 lapse or permanent revocation;
- 197 (iii) the retail tobacco specialty business does not close for business or otherwise
198 suspend the sale of tobacco products, electronic cigarette products, or nicotine
199 products for more than 60 consecutive days;
- 200 (iv) the retail tobacco specialty business does not substantially change the business

- 201 premises or business operation as the business existed when the retail tobacco
 202 specialty business received a permit under Subsection (7)(d)(i); and
 203 (v) the retail tobacco specialty business maintains the right to operate under the terms
 204 of other applicable laws, including:
 205 (A) Section 26B-7-503;
 206 (B) zoning ordinances;
 207 (C) building codes; and
 208 (D) the requirements of the retail tobacco permit described in Subsection (7)(d)(i).
 209 (e) A retail tobacco specialty business described in Subsection (7)(a) or (b) that is
 210 located within 1,000 feet of a public or private kindergarten, elementary, middle,
 211 junior high, or high school before July 1, 2022, is exempt from Subsection
 212 (4)(a)(iii)(B) if the retail tobacco specialty business:
 213 (i) relocates, before July 1, 2022, to a property that is used or zoned for commercial
 214 use and located within a group of architecturally unified commercial
 215 establishments built on a site that is planned, developed, owned, and managed as
 216 an operating unit; and
 217 (ii) continues to meet the requirements described in Subsection (7)(b) that are not
 218 directly related to the relocation described in this Subsection (7)(e).

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

220 **17-50-333 . Regulation of retail tobacco specialty business.**

- 221 (1) As used in this section:
 222 (a) "Community location" means:
 223 (i) a public or private kindergarten, elementary, middle, junior high, or high school;
 224 (ii) a licensed child-care facility or preschool;
 225 (iii) a trade or technical school;
 226 (iv) a church;
 227 (v) a public library;
 228 (vi) a public playground;
 229 (vii) a public park;
 230 (viii) a youth center or other space used primarily for youth oriented activities;
 231 (ix) a public recreational facility;
 232 (x) a public arcade; or
 233 (xi) for a new license issued on or after July 1, 2018, a homeless shelter.
 234 (b) "Department" means the Department of Health and Human Services created in

- 235 Section 26B-1-201.
- 236 (c) "Electronic cigarette product" means the same as that term is defined in Section
237 76-10-101.
- 238 (d) "Flavored electronic cigarette product" means the same as that term is defined in
239 Section 76-10-101.
- 240 [~~(d)~~] (e) "Licensee" means a person licensed under this section to conduct business as a
241 retail tobacco specialty business.
- 242 [~~(e)~~] (f) "Local health department" means the same as that term is defined in Section
243 26A-1-102.
- 244 [~~(f)~~] (g) "Nicotine product" means the same as that term is defined in Section 76-10-101.
- 245 [~~(g)~~] (h) "Retail tobacco specialty business" means a commercial establishment in which:
246 (i) sales of tobacco products, electronic cigarette products, and nicotine products
247 account for more than 35% of the total quarterly gross receipts for the
248 establishment;
- 249 (ii) 20% or more of the public retail floor space is allocated to the offer, display, or
250 storage of tobacco products, electronic cigarette products, or nicotine products;
- 251 (iii) 20% or more of the total shelf space is allocated to the offer, display, or storage
252 of tobacco products, electronic cigarette products, or nicotine products;
- 253 (iv) the commercial establishment:
254 (A) holds itself out as a retail tobacco specialty business; and
255 (B) causes a reasonable person to believe the commercial establishment is a retail
256 tobacco specialty business; [~~or~~]
- 257 (v) the retail space features a self-service display for tobacco products, electronic
258 cigarette products, or nicotine products[~~;~~]; or
259 (vi) any flavored electronic cigarette product is sold.
- 260 [~~(h)~~] (i) "Self-service display" means the same as that term is defined in Section
261 76-10-105.1.
- 262 [~~(i)~~] (j) "Tobacco product" means:
263 (i) the same as that term is defined in Section 76-10-101; or
264 (ii) tobacco paraphernalia as defined in Section 76-10-101.
- 265 (2) The regulation of a retail tobacco specialty business is an exercise of the police powers
266 of the state by the state or by the delegation of the state's police power to other
267 governmental entities.
- 268 (3)(a) A person may not operate a retail tobacco specialty business in a county unless the

- 269 person obtains a license from the county in which the retail tobacco specialty
270 business is located.
- 271 (b) A county may only issue a retail tobacco specialty business license to a person if the
272 person complies with the provisions of Subsections (4) and (5).
- 273 (4)(a) Except as provided in Subsection (7), a county may not issue a license for a
274 person to conduct business as a retail tobacco specialty business if the retail tobacco
275 specialty business is located within:
- 276 (i) 1,000 feet of a community location;
 - 277 (ii) 600 feet of another retail tobacco specialty business; or
 - 278 (iii) 600 feet from property used or zoned for:
 - 279 (A) agriculture use; or
 - 280 (B) residential use.
- 281 (b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in a
282 straight line from the nearest entrance of the retail tobacco specialty business to the
283 nearest property boundary of a location described in Subsections (4)(a)(i) through
284 (iii), without regard to intervening structures or zoning districts.
- 285 (5) A county may not issue or renew a license for a person to conduct business as a retail
286 tobacco specialty business until the person provides the county with proof that the retail
287 tobacco specialty business has:
- 288 (a) a valid permit for a retail tobacco specialty business issued under Title 26B, Chapter
289 7, Part 5, Regulation of Smoking, Tobacco Products, and Nicotine Products, by the
290 local health department having jurisdiction over the area in which the retail tobacco
291 specialty business is located; and
 - 292 (b)(i) for a retailer that sells a tobacco product, a valid license issued by the State Tax
293 Commission in accordance with Section 59-14-201 or 59-14-301 to sell a tobacco
294 product; or
 - 295 (ii) for a retailer that sells an electronic cigarette product or a nicotine product, a valid
296 license issued by the State Tax Commission in accordance with Section 59-14-803
297 to sell an electronic cigarette product or a nicotine product.
- 298 (6)(a) Nothing in this section:
- 299 (i) requires a county to issue a retail tobacco specialty business license; or
 - 300 (ii) prohibits a county from adopting more restrictive requirements on a person
301 seeking a license or renewal of a license to conduct business as a retail tobacco
302 specialty business.

- 303 (b) A county may suspend or revoke a retail tobacco specialty business license issued
304 under this section:
- 305 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,
306 Part 16, Pattern of Unlawful Activity Act;
- 307 (ii) if a licensee violates federal law or federal regulations restricting the sale and
308 distribution of tobacco products or electronic cigarette products to protect children
309 and adolescents;
- 310 (iii) upon the recommendation of the department or a local health department under
311 Title 26B, Chapter 7, Part 5, Regulation of Smoking, Tobacco Products, and
312 Nicotine Products; or
- 313 (iv) under any other provision of state law or local ordinance.
- 314 (7)(a) Except as provided in Subsection (7)(e), a retail tobacco specialty business is
315 exempt from Subsection (4) if:
- 316 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
317 license to conduct business as a retail tobacco specialty business;
- 318 (ii) the retail tobacco specialty business is operating in a county in accordance with
319 all applicable laws except for the requirement in Subsection (4); and
- 320 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
321 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or
322 high school.
- 323 (b) A retail tobacco specialty business may maintain an exemption under Subsection
324 (7)(a) if:
- 325 (i) the license described in Subsection (7)(a)(i) is renewed continuously without lapse
326 or permanent revocation;
- 327 (ii) the retail tobacco specialty business does not close for business or otherwise
328 suspend the sale of tobacco products, electronic cigarette products, or nicotine
329 products for more than 60 consecutive days;
- 330 (iii) the retail tobacco specialty business does not substantially change the business
331 premises or business operation; and
- 332 (iv) the retail tobacco specialty business maintains the right to operate under the
333 terms of other applicable laws, including:
- 334 (A) ~~[Title 26, Chapter 38, Utah Indoor Clean Air Act]~~ Section 26B-7-503;
- 335 (B) zoning ordinances;
- 336 (C) building codes; and

- 337 (D) the requirements of the license described in Subsection (7)(a)(i).
- 338 (c) A retail tobacco specialty business that does not qualify for an exemption under
339 Subsection (7)(a) is exempt from Subsection (4) if:
- 340 (i) on or before December 31, 2018, the retail tobacco specialty business was issued a
341 general tobacco retailer permit or a retail tobacco specialty business permit under [
342 ~~Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Nicotine Product Retail~~
343 ~~Permit]~~ Title 26B, Chapter 7, Part 5, Regulation of Smoking, Tobacco Products,
344 and Nicotine Products, by the local health department having jurisdiction over the
345 area in which the retail tobacco specialty business is located;
- 346 (ii) the retail tobacco specialty business is operating in the county in accordance with
347 all applicable laws except for the requirement in Subsection (4); and
- 348 (iii) beginning July 1, 2022, the retail tobacco specialty business is not located within
349 1,000 feet of a public or private kindergarten, elementary, middle, junior high, or
350 high school.
- 351 (d) A retail tobacco specialty business may maintain an exemption under Subsection
352 (7)(c) if:
- 353 (i) on or before December 31, 2020, the retail tobacco specialty business receives a
354 retail tobacco specialty business permit from the local health department having
355 jurisdiction over the area in which the retail tobacco specialty business is located;
- 356 (ii) the permit described in Subsection (7)(d)(i) is renewed continuously without
357 lapse or permanent revocation;
- 358 (iii) the retail tobacco specialty business does not close for business or otherwise
359 suspend the sale of tobacco products, electronic cigarette products, or nicotine
360 products for more than 60 consecutive days;
- 361 (iv) the retail tobacco specialty business does not substantially change the business
362 premises or business operation as the business existed when the retail tobacco
363 specialty business received a permit under Subsection (7)(d)(i); and
- 364 (v) the retail tobacco specialty business maintains the right to operate under the terms
365 of other applicable laws, including:
- 366 (A) [~~Title 26, Chapter 38, Utah Indoor Clean Air Act]~~ Section 26B-7-503;
- 367 (B) zoning ordinances;
- 368 (C) building codes; and
- 369 (D) the requirements of the retail tobacco permit described in Subsection (7)(d)(i).
- 370 (e) A retail tobacco specialty business described in Subsection (7)(a) or (b) that is

371 located within 1,000 feet of a public or private kindergarten, elementary, middle,
 372 junior high, or high school before July 1, 2022, is exempt from Subsection
 373 (4)(a)(iii)(B) if the retail tobacco specialty business:
 374 (i) relocates, before July 1, 2022, to a property that is used or zoned for commercial
 375 use and located within a group of architecturally unified commercial
 376 establishments built on a site that is planned, developed, owned, and managed as
 377 an operating unit; and
 378 (ii) continues to meet the requirements described in Subsection (7)(b) that are not
 379 directly related to the relocation described in this Subsection (7)(e).

380 Section 3. Section **26B-7-501** is amended to read:

381 **26B-7-501 . Definitions.**

382 As used in this part:

- 383 (1) "Community location" means the same as that term is defined:
 384 (a) as it relates to a municipality, in Section 10-8-41.6; and
 385 (b) as it relates to a county, in Section 17-50-333.
- 386 (2) "Electronic cigarette" means the same as that term is defined in Section 76-10-101.
- 387 (3) "Electronic cigarette product" means the same as that term is defined in Section
 388 76-10-101.
- 389 (4) "Electronic cigarette substance" means the same as that term is defined in Section
 390 76-10-101.
- 391 (5) "Employee" means an employee of a tobacco retailer.
- 392 (6) "Enforcing agency" means the department, or any local health department enforcing the
 393 provisions of this part.
- 394 (7) "Flavored electronic cigarette product" means the same as that term is defined in
 395 Section 76-10-101.
- 396 [~~(7)~~] (8) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco
 397 specialty business.
- 398 [~~(8)~~] (9) "Local health department" means the same as that term is defined in Section
 399 26A-1-102.
- 400 [~~(9)~~] (10) "Manufacture" includes:
 401 (a) to cast, construct, or make electronic cigarettes; or
 402 (b) to blend, make, process, or prepare an electronic cigarette substance.
- 403 [~~(10)~~] (11) "Manufacturer sealed electronic cigarette substance" means an electronic
 404 cigarette substance that is sold in a container that:

- 405 (a) is prefilled by the electronic cigarette substance manufacturer; and
- 406 (b) the electronic cigarette manufacturer does not intend for a consumer to open.
- 407 ~~[(11)]~~ (12) "Manufacturer sealed electronic cigarette product" means:
- 408 (a) an electronic cigarette substance or container that the electronic cigarette
- 409 manufacturer does not intend for a consumer to open or refill; or
- 410 (b) a prefilled electronic cigarette as that term is defined in Section 76-10-101.
- 411 ~~[(12)]~~ (13) "Nicotine" means the same as that term is defined in Section 76-10-101.
- 412 ~~[(13)]~~ (14) "Nicotine product" means the same as that term is defined in Section 76-10-101.
- 413 ~~[(14)]~~ (15) "Non-tobacco shisha" means any product that:
- 414 (a) does not contain tobacco or nicotine; and
- 415 (b) is smoked or intended to be smoked in a hookah or water pipe.
- 416 ~~[(15)]~~ (16) "Owner" means a person holding a 20% ownership interest in the business that is
- 417 required to obtain a permit under this part.
- 418 ~~[(16)]~~ (17) "Permit" means a tobacco retail permit issued under Section 26B-7-507.
- 419 ~~[(17)]~~ (18) "Place of public access" means any enclosed indoor place of business,
- 420 commerce, banking, financial service, or other service-related activity, whether publicly
- 421 or privately owned and whether operated for profit or not, to which persons not
- 422 employed at the place of public access have general and regular access or which the
- 423 public uses, including:
- 424 (a) buildings, offices, shops, elevators, or restrooms;
- 425 (b) means of transportation or common carrier waiting rooms;
- 426 (c) restaurants, cafes, or cafeterias;
- 427 (d) taverns as defined in Section 32B-1-102, or cabarets;
- 428 (e) shopping malls, retail stores, grocery stores, or arcades;
- 429 (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical sites,
- 430 auditoriums, or arenas;
- 431 (g) barber shops, hair salons, or laundromats;
- 432 (h) sports or fitness facilities;
- 433 (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and
- 434 breakfast" lodging facilities, and other similar lodging facilities, including the
- 435 lobbies, hallways, elevators, restaurants, cafeterias, other designated dining areas, and
- 436 restrooms of any of these;
- 437 (j)(i) any child care facility or program subject to licensure or certification under this
- 438 title, including those operated in private homes, when any child cared for under

- 439 that license is present; and
- 440 (ii) any child care, other than child care as defined in Section 26B-2-401, that is not
- 441 subject to licensure or certification under this title, when any child cared for by the
- 442 provider, other than the child of the provider, is present;
- 443 (k) public or private elementary or secondary school buildings and educational facilities
- 444 or the property on which those facilities are located;
- 445 (l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or
- 446 religious organization when used solely by the organization members or the
- 447 members' guests or families;
- 448 (m) any facility rented or leased for private functions from which the general public is
- 449 excluded and arrangements for the function are under the control of the function
- 450 sponsor;
- 451 (n) any workplace that is not a place of public access or a publicly owned building or
- 452 office but has one or more employees who are not owner-operators of the business;
- 453 (o) any area where the proprietor or manager of the area has posted a conspicuous sign
- 454 stating "no smoking", "thank you for not smoking", or similar statement; and
- 455 (p) a holder of a bar establishment license, as defined in Section 32B-1-102.
- 456 ~~[(18)]~~ (19)(a) "Proof of age" means:
- 457 (i) a valid identification card issued under Title 53, Chapter 3, Part 8, Identification
- 458 Card Act;
- 459 (ii) a valid identification that:
- 460 (A) is substantially similar to an identification card issued under Title 53, Chapter
- 461 3, Part 8, Identification Card Act;
- 462 (B) is issued in accordance with the laws of a state other than Utah in which the
- 463 identification is issued;
- 464 (C) includes date of birth; and
- 465 (D) has a picture affixed;
- 466 (iii) a valid driver license certificate that is issued under Title 53, Chapter 3, Uniform
- 467 Driver License Act, or in accordance with the laws of the state in which the valid
- 468 driver license is issued;
- 469 (iv) a valid United States military identification card that:
- 470 (A) includes date of birth; and
- 471 (B) has a picture affixed; or
- 472 (v) a valid passport.

- 473 (b) "Proof of age" does not include a valid driving privilege card issued in accordance
474 with Section 53-3-207.
- 475 ~~[(19)]~~ (20) "Publicly owned building or office" means any enclosed indoor place or portion
476 of a place owned, leased, or rented by any state, county, or municipal government, or by
477 any agency supported by appropriation of, or by contracts or grants from, funds derived
478 from the collection of federal, state, county, or municipal taxes.
- 479 ~~[(20)]~~ (21) "Retail tobacco specialty business" means the same as that term is defined:
480 (a) as it relates to a municipality, in Section 10-8-41.6; and
481 (b) as it relates to a county, in Section 17-50-333.
- 482 ~~[(21)]~~ (22) "Shisha" means any product that:
483 (a) contains tobacco or nicotine; and
484 (b) is smoked or intended to be smoked in a hookah or water pipe.
- 485 ~~[(22)]~~ (23) "Smoking" means:
486 (a) the possession of any lighted or heated tobacco product in any form;
487 (b) inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or
488 hookah that contains:
489 (i) tobacco or any plant product intended for inhalation;
490 (ii) shisha or non-tobacco shisha;
491 (iii) nicotine;
492 (iv) a natural or synthetic tobacco substitute; or
493 (v) a natural or synthetic flavored tobacco product;
494 (c) using an electronic cigarette; or
495 (d) using an oral smoking device intended to circumvent the prohibition of smoking in
496 this part.
- 497 ~~[(23)]~~ (24) "Tax commission license" means a license issued by the State Tax Commission
498 under:
499 (a) Section 59-14-201 to sell a cigarette at retail;
500 (b) Section 59-14-301 to sell a tobacco product at retail; or
501 (c) Section 59-14-803 to sell an electronic cigarette product or a nicotine product.
- 502 ~~[(24)]~~ (25) "Tobacco product" means:
503 (a) a tobacco product as defined in Section 76-10-101; or
504 (b) tobacco paraphernalia as defined in Section 76-10-101.
- 505 ~~[(25)]~~ (26) "Tobacco retailer" means a person that is required to obtain a tax commission
506 license.

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

508 **26B-7-505 . Electronic cigarette products -- Labeling -- Requirements to sell --**
509 **Advertising -- Labeling of nicotine products containing nicotine.**

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

- 514 (a) labeling;
- 515 (b) nicotine content;
- 516 (c) packaging; and
- 517 (d) product quality.

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

- 522 (a) labeling;
- 523 (b) nicotine content;
- 524 (c) packaging; and
- 525 (d) product quality.

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

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

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

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

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

- 541 (c) A local health department may not enact a rule or regulation regarding a
 542 manufacturer sealed electronic cigarette product.
- 543 (5) A person may not advertise an electronic cigarette product as a tobacco cessation device.
- 544 (6)(a) Any nicotine product shall contain the statement described in Subsection (6)(b) if
 545 the nicotine product:
- 546 (i)(A) is not a tobacco product as defined in 21 U.S.C. Sec. 321 and related federal
 547 regulations; or
- 548 (B) is not otherwise required under federal or state law to contain a nicotine
 549 warning; and
- 550 (ii) contains nicotine.
- 551 (b) A statement shall appear on the exterior packaging of a nicotine product described in
 552 Subsection (6)(a) as follows:
- 553 "This product contains nicotine."
- 554 Section 5. Section **26B-7-509** is amended to read:
- 555 **26B-7-509 . Permit term and fees.**
- 556 (1)(a) The term of a permit issued to a retail tobacco specialty business is one year.
- 557 (b) The term of a permit issued to a general tobacco retailer is two years.
- 558 (2)(a) A local health department may not issue a permit until the applicant has paid a
 559 permit fee to the local health department of:
- 560 (i) for a general tobacco retailer:
- 561 [(i)] (A) \$30 for a new permit;
- 562 [(ii)] (B) \$20 for a permit renewal; or
- 563 [(iii)] (C) \$30 for reinstatement of a permit that has been revoked, suspended, or
 564 allowed to expire[-] ; or
- 565 (ii) for a retail tobacco specialty business, \$3,000.
- 566 (b) A local health department that collects fees under Subsection (2)(a) shall use the fees
 567 to administer and enforce the permit requirements described in Sections 26B-7-506
 568 through [~~26B-7-521~~] 26B-7-522.
- 569 (c) In addition to the fee described in Subsection (2)(a), a local health department may
 570 establish and collect a fee to perform a plan review for a retail tobacco specialty
 571 business permit.
- 572 (d) Payment of the fee described in Subsection (2)(a)(ii) is due after an initial application
 573 is approved and when a renewal application is approved.
- 574 (3) A permit holder may apply for a renewal of a permit no earlier than 30 days before the

575 day on which the permit expires.

576 (4) A tobacco retailer that fails to renew a permit before the permit expires may apply to
577 reinstate the permit by submitting to the local health department:

578 (a) the information required in Subsection 26B-7-508(3) and, if applicable, Subsection
579 26B-7-508(4);

580 (b) the fee for the reinstatement of a permit; and

581 (c) a signed affidavit affirming that the tobacco retailer has not violated the prohibitions
582 in Subsection 26B-7-507(1)(b) after the permit expired.

583 Section 6. Section **26B-7-511** is amended to read:

584 **26B-7-511 . Permit requirements for a retail tobacco specialty business --**

585 **Tobacco handling permit.**

586 (1) A retail tobacco specialty business shall:

587 (a) electronically verify proof of age for any individual that enters the premises of the
588 business in accordance with Section 26B-7-521;

589 (b) except as provided in Subsection 76-10-105.1(4), prohibit any individual from
590 entering the business if the individual is under 21 years old; ~~and~~

591 (c) prominently display at the retail tobacco specialty business a sign on the public
592 entrance of the business that communicates:

593 (i) the prohibition on the presence of an individual under 21 years old in a retail
594 tobacco specialty business in Subsection 76-10-105.1(4); and

595 (ii) the prohibition on the sale of tobacco products and electronic cigarette products to
596 an individual under 21 years old as described in Sections 76-10-104, 76-10-104.1,
597 76-10-105.1, and 76-10-114[~~7~~] ; and

598 (d) implement security standards that include an electronic video monitoring system
599 with:

600 (i) at least one 19-inch or greater call-up monitor;

601 (ii) a printer, capable of producing a clear still photo from any video camera image;

602 (iii) video cameras with a recording resolution of at least 1280 x 720 pixels, or the
603 equivalent for analog, that records continuously during business hours and for one
604 hour before and after business hours, seven days a week, and is motion activated
605 after business hours that provides coverage of:

606 (A) all points of entry; and

607 (B) each point-of-sale;

608 (iv) a method for storing each video recording from the video camera for at least 45

- 609 days after the day on which the recording was taken;
 610 (v) a surveillance system with:
 611 (A) a storage device for locally stored footage secured in the business in a lock
 612 box, cabinet, closet, or secured in another manner, to protect from tampering or
 613 criminal theft; or
 614 (B) a storage system on a remote server which has restricted access to protect
 615 from tampering;
 616 (vi) a failure notification system that provides an audible or visual notification of an
 617 error within the electronic monitoring system; and
 618 (vii) a date and time stamp embedded on video camera recordings.

- 619 (2) A retail tobacco specialty business may not:
 620 (a) employ an individual under 21 years old to sell a tobacco product, an electronic
 621 cigarette product, or a nicotine product;[-or]
 622 (b) permit an employee under 21 years old to sell a tobacco product, an electronic
 623 cigarette product, or a nicotine product[-] ; or
 624 (c) employ an individual that does not have a tobacco handling permit described in
 625 Subsection (3).
 626 (3)(a) An employee, owner, or operator of a retail tobacco specialty business shall obtain
 627 and maintain a tobacco handling permit.
 628 (b) The department shall:
 629 (i) develop a course to instruct an individual described in Subsection (3)(a) regarding
 630 the laws and regulations that a retail tobacco specialty business must follow;
 631 (ii) issue a tobacco handling permit to any individual who completes the training; and
 632 (iii) establish a fee in accordance with Section 63J-1-504 to implement this
 633 Subsection (3).
 634 (c) A tobacco handling permit expires one year from the day the tobacco handling
 635 permit is issued.

636 Section 7. Section **26B-7-518** is amended to read:

637 **26B-7-518 . Penalties.**

- 638 (1)(a) If an enforcing agency determines that a person has violated the terms of a permit
 639 issued under this part, the enforcing agency may impose the penalties described in
 640 this section.
 641 (b) If multiple violations are found in a single inspection by an enforcing agency or a
 642 single investigation by a law enforcement agency under Section 77-39-101, the

- 643 enforcing agency shall treat the multiple violations as one single violation under
644 Subsections (2), (3), and (4).
- 645 (2) Except as provided in Subsections (3) and (4), if a violation is found in an investigation
646 by a law enforcement agency under Section 77-39-101 or an inspection by an enforcing
647 agency, the enforcing agency shall:
- 648 (a) on a first violation at a retail location, impose a penalty of \$1,000;
- 649 (b) on a second violation at the same retail location that occurs within one year of a
650 previous violation, impose a penalty of \$1,500;
- 651 (c) on a third violation at the same retail location that occurs within two years after two
652 previous violations, impose:
- 653 (i) a suspension of the permit for 30 consecutive business days within 60 days after
654 the day on which the third violation occurs; or
- 655 (ii) a penalty of \$2,000; and
- 656 (d) on a fourth or subsequent violation within two years of three previous violations:
- 657 (i) impose a penalty of \$2,000;
- 658 (ii) revoke a permit of the retailer; and
- 659 (iii) if applicable, recommend to a municipality or county that a retail tobacco
660 specialty business license issued under Section 10-8-41.6 or 17-50-333 be
661 suspended or revoked.
- 662 (3) If a violation is found in an investigation of a general tobacco retailer by a law
663 enforcement agency under Section 77-39-101 for the sale of a tobacco product, an
664 electronic cigarette product, or a nicotine product to an individual under 21 years old
665 and the violation is committed by the owner of the general tobacco retailer, the
666 enforcing agency shall:
- 667 (a) on a first violation, impose a fine of \$2,000 on the general tobacco retailer; and
- 668 (b) on the second violation for the same general tobacco retailer within one year of the
669 first violation:
- 670 (i) impose a fine of \$5,000; and
- 671 (ii) revoke the permit for the general tobacco retailer.
- 672 (4) If a violation is found in an investigation of a retail tobacco specialty business by a law
673 enforcement agency under Section 77-39-101 for the sale of a tobacco product, an
674 electronic cigarette product, or a nicotine product to an individual under 21 years old,
675 the enforcing agency shall:
- 676 (a) on the first violation:

- 677 (i) impose a fine of \$5,000; and
678 (ii) immediately suspend the permit for 30 consecutive days; and
679 (b) on the second violation at the same retail location within two years of the first
680 violation:
681 (i) impose a fine of \$10,000; and
682 (ii) revoke the permit for the retail tobacco specialty business.
- 683 (5)(a) Except when a transfer described in Subsection (6) occurs, a local health
684 department may not issue a permit to:
685 (i) a tobacco retailer for whom a permit is suspended or revoked under Subsection (2)
686 or (3); or
687 (ii) a tobacco retailer that has the same proprietor, director, corporate officer, partner,
688 or other holder of significant interest as another tobacco retailer for whom a
689 permit is suspended or revoked under Subsection (2), (3), or (4).
- 690 (b) A person whose permit:
691 (i) is suspended under this section may not apply for a new permit for any other
692 tobacco retailer for a period of 12 months after the day on which an enforcing
693 agency suspends the permit; and
694 (ii) is revoked under this section may not apply for a new permit for any tobacco
695 retailer for a period of 24 months after the day on which an enforcing agency
696 revokes the permit.
- 697 (6) Violations of this part, Section 10-8-41.6, or Section 17-50-333 that occur at a tobacco
698 retailer location shall stay on the record for that tobacco retailer location unless:
699 (a) the tobacco retailer is transferred to a new proprietor; and
700 (b) the new proprietor provides documentation to the local health department that the
701 new proprietor is acquiring the tobacco retailer in an arm's length transaction from
702 the previous proprietor.
- 703 (7) If a general tobacco retailer is found to be selling a flavored electronic cigarette product
704 in an inspection by an enforcing agency, the enforcing agency shall:
705 (a) on the first violation:
706 (i) impose a fine of \$5,000; and
707 (ii) immediately suspend the permit for 30 consecutive days; and
708 (b) on the second violation at the same retail location within two years of the first
709 violation:
710 (i) impose a fine of \$10,000; and

711 (ii) revoke the permit for the general tobacco retailer.

712 Section 8. Section **26B-7-521** is amended to read:

713 **26B-7-521 . Verification of proof of age -- Verification of identification.**

714 (1) As used in this section:

715 (a) "Employee" means an employee of a retail tobacco specialty business.

716 (b) "Electronic verification program" means a technology used by a retail tobacco
717 specialty business to confirm proof of age for an individual.

718 (2) A retail tobacco specialty business shall require that an employee verify proof of age as
719 provided in this section.

720 (3) To comply with Subsection (2), an employee shall:

721 (a) request the individual present proof of age; and

722 (b) verify the validity of the proof of age electronically in accordance with Subsection (4).

723 (4)(a) A retail tobacco specialty business shall use an electronic verification program to
724 assist the business in complying with the requirements of this section.

725 (b) Beginning July 1, 2025, a retail tobacco specialty business shall use an identification
726 verification system.

727 (c) The identification verification system described in Subsection (4)(b) shall analyze
728 and conduct a forensic check of the front and back of a proof of identification for
729 authentic security features to detect a fraudulent proof of identification, which shall
730 include the ability to:

731 (i) read and identify ultraviolet and infrared images, microprint, laser perforation,
732 holograms, and other proof of identification specific security features;

733 (ii) scan and analyze a proof of identification issued from any state or territory within
734 the United States;

735 (iii) scan and read magstripe, 2D barcodes, and machine readable zones on United
736 States passport cards;

737 (iv) display easy to read results of the identification analysis and alert staff when a
738 proof of identification appears to be fake or false;

739 (v) detect and alert to an expired or invalid proof of identification;

740 (vi) ability to identify and alert to pass-back or proof of identification sharing; and

741 (vii) to capture a real time image of the individual presenting the proof of
742 identification.

743 (5)(a) A retail tobacco specialty business may not disclose information obtained under
744 this section except as provided under this part.

- 745 (b) Information obtained under this section:
- 746 (i) shall be kept for at least 180 days; and
- 747 (ii) is subject to inspection upon request by a peace officer or the representative of an
- 748 enforcing agency.
- 749 (6)(a) If an employee does not verify proof of age under this section, the employee may
- 750 not permit an individual to:
- 751 (i) except as provided in Subsection (6)(b), enter a retail tobacco specialty business; or
- 752 (ii) purchase a tobacco product or an electronic cigarette product.
- 753 (b) In accordance with Subsection 76-10-105.1(4), an individual who is under 21 years
- 754 old may be permitted to enter a retail tobacco specialty business if the individual is:
- 755 (i) accompanied by a parent or legal guardian who provides proof of age; or
- 756 (ii)(A) present at the retail tobacco specialty business solely for the purpose of
- 757 providing a commercial service to the retail tobacco specialty business,
- 758 including making a commercial delivery;
- 759 (B) monitored by the proprietor of the retail tobacco specialty business or an
- 760 employee of the retail tobacco specialty business; and
- 761 (C) not permitted to make any purchase or conduct any commercial transaction
- 762 other than the service described in Subsection (6)(b)(ii)(A).
- 763 (7) To determine whether the individual described in Subsection (2) is 21 years old or
- 764 older, the following may request an individual described in Subsection (2) to present
- 765 proof of age:
- 766 (a) an employee;
- 767 (b) a peace officer; or
- 768 (c) a representative of an enforcing agency.

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

770 **59-14-102 . Definitions.**

771 As used in this chapter:

- 772 (1) "Alternative nicotine product" means the same as that term is defined in Section
- 773 76-10-101.
- 774 (2) "Cigarette" means a roll made wholly or in part of tobacco:
- 775 (a) regardless of:
- 776 (i) the size of the roll;
- 777 (ii) the shape of the roll;
- 778 (iii) whether the tobacco is flavored, adulterated, or mixed with any other ingredient;

- 779 or
- 780 (iv) whether the tobacco is heated or burned; and
- 781 (b) if the roll has a wrapper or cover that is made of paper or any other substance or
- 782 material except tobacco.
- 783 (3) "Cigarette rolling machine" means a device or machine that has the capability to
- 784 produce at least 150 cigarettes in less than 30 minutes.
- 785 (4) "Cigarette rolling machine operator" means a person who:
- 786 (a)(i) controls, leases, owns, possesses, or otherwise has available for use a cigarette
- 787 rolling machine; and
- 788 (ii) makes the cigarette rolling machine available for use by another person to
- 789 produce a cigarette; or
- 790 (b) offers for sale, at retail, a cigarette produced from the cigarette rolling machine.
- 791 (5) "Consumer" means a person that is not required:
- 792 (a) under Section 59-14-201 to obtain a license under Section 59-14-202;
- 793 (b) under Section 59-14-301 to obtain a license under Section 59-14-202; [or]
- 794 (c) to obtain a license under Section 59-14-803[-] ; or
- 795 (d) to obtain a license under Section 59-14-902.
- 796 (6) "Counterfeit cigarette" means:
- 797 (a) a cigarette that has a false manufacturing label; or
- 798 (b) a package of cigarettes bearing a counterfeit tax stamp.
- 799 (7)(a) "Electronic cigarette" means the same as that term is defined in Section 76-10-101.
- 800 (b) "Electronic cigarette" does not include a cigarette or a tobacco product.
- 801 (8) "Electronic cigarette product" means the same as that term is defined in Section
- 802 76-10-101.
- 803 (9) "Electronic cigarette substance" means the same as that term is defined in Section
- 804 76-10-101.
- 805 (10) "Importer" means a person that imports into the United States, either directly or
- 806 indirectly, a finished cigarette for sale or distribution.
- 807 (11) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity, or any
- 808 other person doing business as a distributor or retailer of cigarettes on tribal lands
- 809 located in the state.
- 810 (12) "Little cigar" means a roll for smoking that:
- 811 (a) is made wholly or in part of tobacco;
- 812 (b) uses an integrated cellulose acetate filter or other similar filter; and

- 813 (c) is wrapped in a substance:
814 (i) containing tobacco; and
815 (ii) that is not exclusively natural leaf tobacco.
- 816 (13)(a) Except as provided in Subsection (13)(b), "manufacturer" means a person that:
817 (i) manufactures, fabricates, assembles, processes, or labels a finished cigarette; or
818 (ii) makes, modifies, mixes, manufactures, fabricates, assembles, processes, labels,
819 repackages, relabels, or imports an electronic cigarette product or a nicotine
820 product.
- 821 (b) "Manufacturer" does not include a cigarette rolling machine operator.
- 822 (14) "Moist snuff" means tobacco that:
823 (a) is finely cut, ground, or powdered;
824 (b) has at least 45% moisture content, as determined by the commission by rule made in
825 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
826 (c) is not intended to be:
827 (i) smoked; or
828 (ii) placed in the nasal cavity; and
829 (d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or
830 distributed in single-use units, including:
831 (i) tablets;
832 (ii) lozenges;
833 (iii) strips;
834 (iv) sticks; or
835 (v) packages containing multiple single-use units.
- 836 (15) "Nicotine" means the same as that term is defined in Section 76-10-101.
- 837 (16) "Nicotine product" means the same as that term is defined in Section 76-10-101.
- 838 (17) "Nontherapeutic nicotine device" means the same as that term is defined in Section
839 76-10-101.
- 840 (18) "Nontherapeutic nicotine device substance" means the same as that term is defined in
841 Section 76-10-101.
- 842 (19) "Nontherapeutic nicotine product" means the same as that term is defined in Section
843 76-10-101.
- 844 (20) "Prefilled electronic cigarette" means the same as that term is defined in Section
845 76-10-101.
- 846 (21) "Prefilled nontherapeutic nicotine device" means the same as that term is defined in

847 Section 76-10-101.

848 (22) "Retailer" means a person that:

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

851 (b) intends to sell or distribute a cigarette, an electronic cigarette product, or a nicotine
852 product to a consumer in the state.

853 (23) "Stamp" means the indicia required to be placed on a cigarette package that evidences
854 payment of the tax on cigarettes required by Section 59-14-205.

855 (24)(a) "Tobacco product" means a product made of, or containing, tobacco.

856 (b) "Tobacco product" includes:

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

858 (ii) a little cigar; or

859 (iii) moist snuff.

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

861 (25) "Tribal lands" means land held by the United States in trust for a federally recognized
862 Indian tribe.

863 Section 10. Section **59-14-807** is amended to read:

864 **59-14-807 . Electronic Cigarette Substance and Nicotine Product Proceeds**

865 **Restricted Account.**

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

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

870 (a) revenue collected from the tax imposed by Section 59-14-804;

871 (b) fees and penalties collected under Section 59-14-810;

872 (c) all money received by the attorney general or the Department of Commerce as a
873 result of any judgment, settlement, or compromise of claims pertaining to alleged
874 violations of law related to the manufacture, marketing, distribution, or sale of
875 electronic cigarette products, as defined in Section 76-10-101:

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

878 (ii) after reimbursement to the attorney general and the Department of Commerce for
879 expenses related to the matters described in Subsection (2)(c); and

880 (d) amounts appropriated by the Legislature.

- 881 (3)(a) For each fiscal year and subject to appropriation by the Legislature, the Division
 882 of Finance shall distribute from the Electronic Cigarette Substance and Nicotine
 883 Product Proceeds Restricted Account:
- 884 (i) \$2,000,000, which shall be allocated to the local health departments by the
 885 Department of Health and Human Services using the formula created in
 886 accordance with Section 26A-1-116;
 - 887 (ii) \$2,000,000 to the Department of Health and Human Services for statewide
 888 cessation programs and prevention education;
 - 889 (iii) \$1,180,000 to the Department of Public Safety for law enforcement officers
 890 aimed at disrupting organizations and networks that provide tobacco products,
 891 electronic cigarette products, nicotine products, and other illegal controlled
 892 substances to minors;
 - 893 (iv) \$3,000,000, which shall be allocated to the local health departments by the
 894 Department of Health and Human Services using the formula created in
 895 accordance with Section 26A-1-116;
 - 896 (v) \$5,084,200 to the State Board of Education for school-based prevention programs;
 897 and
 - 898 (vi) \$2,000,000 to the Department of Health and Human Services for alcohol,
 899 tobacco, and other drug prevention, reduction, cessation, and control programs
 900 that promote unified messages and make use of media outlets, including radio,
 901 newspaper, billboards, and television[; and] .
 - 902 [~~(vii) of the money deposited under Section 59-14-810;~~
 903 [~~(A) to the commission, in an amount equal to the amount necessary to create and
 904 maintain the registry described in Section 59-14-810;~~
 905 [~~(B) to the Department of Health and Human Services, in an amount necessary for
 906 completing duties described in Section 59-14-810; and]~~
 907 [~~(C) to the Department of Health and Human Services, the remainder to be
 908 divided among the local health departments for inspection and enforcement
 909 described in Sections 26A-1-131 and 59-14-810.]~~
 - 910 (b) If the amount in the Electronic Cigarette Substance and Nicotine Product Proceeds
 911 Restricted Account is insufficient to cover the distributions described in Subsection
 912 (3)(a), the distribution amounts shall be adjusted proportionately.
 - 913 (4)(a) The local health departments shall use the money received in accordance with
 914 Subsection (3)(a) for enforcing:

- 915 (i) the regulation provisions described in Section 26B-7-505;
 916 (ii) the labeling requirement described in Section 26B-7-505; and
 917 (iii) the penalty provisions described in Section 26B-7-518.
- 918 (b) The Department of Health and Human Services shall use the money received in
 919 accordance with Subsection (3)(a)(ii) for the Youth Electronic Cigarette, Marijuana,
 920 and Other Drug Prevention Program created in Section 26B-1-428.
- 921 (c) The local health departments shall use the money received in accordance with
 922 Subsection (3)(a)(iv) to issue grants under the Electronic Cigarette, Marijuana, and
 923 Other Drug Prevention Grant Program created in Section 26A-1-129.
- 924 (d) The State Board of Education shall use the money received in accordance with
 925 Subsection (3)(a)(v) to distribute to local education agencies to pay for:
- 926 (i)(A) stipends for positive behaviors specialists as described in Subsection
 927 53G-10-407(4)(a)(i);
 928 (B) the cost of administering the positive behaviors plan as described in
 929 Subsection 53G-10-407(4)(a)(ii); and
 930 (C) the cost of implementing an Underage Drinking and Substance Abuse
 931 Prevention Program in grade 4 or 5, as described in Subsection 53G-10-406
 932 (3)(b); or
 933 (ii) a comprehensive prevention plan, as that term is defined in Section 53F-2-525.
- 934 (5)(a) The fund shall earn interest.
- 935 (b) All interest earned on fund money shall be deposited into the fund.
- 936 (6) Subject to legislative appropriations, funds remaining in the Electronic Cigarette
 937 Substance and Nicotine Product Proceeds Restricted Account after the distribution
 938 described in Subsection (3) may only be used for:
- 939 (a) funding commission personnel to enforce compliance with the tax collection
 940 requirements of this part; and
 941 (b) programs and activities related to the prevention and cessation of electronic cigarette,
 942 nicotine products, marijuana, and other drug use.

943 Section 11. Section **59-14-901** is enacted to read:

944 **Part 9. Flavored Electronic Cigarette Tax**

945 **59-14-901 . Definitions.**

946 As used in this part:

- 947 (1) "Flavored electronic cigarette product" means the same as that term is defined in
 948 Section 76-10-101.

949 (2) "Licensee" means a person that holds a license to sell a flavored electronic cigarette
950 product under this part.

951 (3) "Retail price" means the amount charged by a retailer for a flavored electronic cigarette
952 product.

953 Section 12. Section **59-14-902** is enacted to read:

954 **59-14-902 . License to sell flavored electronic cigarette product.**

955 (1) A person may not sell or offer to sell a flavored electronic cigarette product in this state
956 without first:

957 (a) obtaining a license from the commission under this section to sell a flavored
958 electronic cigarette product; and

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

960 (2) A license described in this section is required in addition to any other license required
961 by law.

962 (3) The commission shall issue a license to sell a flavored electronic cigarette product to a
963 person that submits an application, on a form created by the commission, that includes:

964 (a) the person's name;

965 (b) the address of the facility where the person will sell a flavored cigarette product; and

966 (c) any other information the commission requires to implement this part.

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

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

969 (b) valid for three years;

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

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

972 (5)(a) The commission shall require a retailer that is responsible under this part for the
973 collection of tax on a flavored electronic cigarette product to post a bond.

974 (b) The retailer may post the bond required by Subsection (5)(a) in combination with
975 any bond required by Section 59-14-201, 59-14-301, or 59-14-803.

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

978 (d) The minimum amount of the bond shall be \$500.

979 (e) If a bond is posted in combination with another bond under (5)(b), the total amount
980 of the bond shall be equal to the sum total of \$500 plus the amount required by the
981 other provision of law.

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

983 Administrative Rulemaking Act, to establish the additional information described in
984 Subsection (3)(c) that a person shall provide in the application described in Subsection
985 (3).

986 (7) It is a class B misdemeanor for a person to violate Subsection (1).

987 (8) The commission may not charge a fee for a license under this section.

988 Section 13. Section **59-14-903** is enacted to read:

989 **59-14-903 . Publication of licensed distributors -- Retailer transaction only with**
990 **licensed distributor -- Penalty.**

991 (1)(a) The commission shall maintain a list that includes the identity of each person
992 licensed under this part to sell a flavored electronic cigarette product.

993 (b) The list shall be:

994 (i) published on the commission website; and

995 (ii) updated by the commission at least once per quarter.

996 (2) A distributor may sell a flavored electronic cigarette product only to a licensed retailer
997 identified on the list described in Subsection (1).

998 (3)(a) The commission may impose a penalty against a distributor that sells a flavored
999 electronic cigarette product from a person other than a licensed retailer.

1000 (b) The penalty is \$10,000 for each sale.

1001 Section 14. Section **59-14-904** is enacted to read:

1002 **59-14-904 . Taxation of flavored electronic cigarette products.**

1003 (1) Beginning on July 1, 2025, a tax is imposed on a flavored electronic cigarette product.

1004 (2)(a) The amount of tax imposed under Subsection (1) is .025 multiplied by the retail
1005 price of each product sold.

1006 (b) A tax described in this section is in addition to any other tax required by law on an
1007 electronic cigarette product.

1008 (3) If a product is sold in the same package as a product that is taxed under Subsection (1),
1009 the tax described in Subsection (2) shall apply to the retail price of the entire packaged
1010 product.

1011 (4) A retailer, consumer, or user shall pay the tax levied under Subsection (1) at the point of
1012 sale.

1013 (5)(a) The retailer shall remit the taxes collected in accordance with this section to the
1014 commission.

1015 (b) The commission shall deposit revenues generated by the tax imposed by this section
1016 into the Flavored Electronic Cigarette Product Proceeds Restricted Account created

1017 in Section 59-14-906.

1018 Section 15. Section **59-14-905** is enacted to read:

1019 **59-14-905 . Remittance of tax -- Returns -- Invoice required -- Filing**
1020 **requirement-- Exception -- Penalty -- Overpayment.**

1021 (1)(a) The retailer that collects the tax imposed on a flavored electronic cigarette product
1022 shall remit to the commission, in an electronic format approved by the commission:

1023 (i) the tax collected in the previous calendar quarter; and

1024 (ii) the quarterly tax return.

1025 (b) The tax collected and the return are due on or before the last day of April, July,
1026 October, and January.

1027 (2)(a) A consumer that purchases an untaxed flavored electronic cigarette product for
1028 use or other consumption shall:

1029 (i) file with the commission, on forms prescribed by the commission, a statement
1030 showing the quantity and description of the item subject to tax under this part; and

1031 (ii) pay the tax imposed by this part on that item.

1032 (b) The consumer shall file the statement described in Subsection (2)(a) and pay the tax
1033 due on or before the last day of the month immediately following the month during
1034 which the consumer purchased an untaxed flavored electronic cigarette product.

1035 (c) A consumer shall maintain records necessary to determine the amount of tax the
1036 consumer is liable to pay under this part for a period of three years following the date
1037 on which the statement required by this section was filed.

1038 (3) A tourist who imports an untaxed flavored electronic cigarette product into the state
1039 does not need to file the statement described in Subsection (2) or pay the tax if the item
1040 is for the tourist's own use or consumption while in this state.

1041 (4) In addition to the tax required by this part, a person shall pay a penalty as provided in
1042 Section 59-1-401, plus interest at the rate and in the manner prescribed in Section
1043 59-1-402, if a person subject to this section fails to:

1044 (a) pay the tax prescribed by this part;

1045 (b) pay the tax on time; or

1046 (c) file a return required by this part.

1047 (5) An overpayment of a tax imposed by this part shall accrue interest at the rate and in the
1048 manner prescribed in Section 59-1-402.

1049 Section 16. Section **59-14-906** is enacted to read:

1050 **59-14-906 . Flavored Electronic Cigarette Product Proceeds Restricted Account.**

- 1051 (1) There is created within the General Fund a restricted account known as the "Flavored
1052 Electronic Cigarette Product Proceeds Restricted Account."
- 1053 (2) The account consists of revenue collected by the tax imposed in Section 59-14-904.
- 1054 (3) Subject to Subsection (5), for each fiscal year and subject to appropriation by the
1055 Legislature, the Division of Finance shall distribute:
- 1056 (a) 80% of the amount in the account to the Department of Health and Human Services
1057 to be used as follows:
- 1058 (i) 50% of the amount transferred to the Department of Health and Human Services,
1059 for tobacco and nicotine prevention programs and for enforcement of state law
1060 related to electronic cigarette products by the Department of Health and Human
1061 Services and each local health department; and
- 1062 (ii) 50% of the amount transferred to the Department of Health and Human Services,
1063 for cancer research conducted by one or more cancer research organizations as
1064 determined by the Department of Health and Human Services; and
- 1065 (b) 20% of the amount in the account to the State Board of Education to pay for the
1066 school lunch program described in Section 53E-3-510.
- 1067 (4)(a) The fund shall earn interest.
- 1068 (b) Interest earned on fund money shall be deposited into the fund.
- 1069 (5) Subject to legislative appropriations, before any amount of money is distributed under
1070 Subsection (3), the Division of Finance shall distribute an amount to the commission to
1071 enforce compliance with the tax collection requirements of this part.
- 1072 Section 17. Section **59-14-907** is enacted to read:
- 1073 **59-14-907 . Reports of illegal product.**
- 1074 If the commission suspects that a flavored electronic cigarette product is being sold in
1075 violation of a law other than a law described in this part, the commission shall report the name
1076 of the seller, the type of product, and the county where the product was sold:
- 1077 (1) to the local health department for the county where the sale occurs;
1078 (2) to the Department of Health and Human Services; and
1079 (3) to the Department of Public Safety.
- 1080 Section 18. Section **76-10-101** is amended to read:
- 1081 **76-10-101 . Definitions.**
- 1082 As used in this part:
- 1083 (1)(a) "Alternative nicotine product" means a product, other than a cigarette, a
1084 counterfeit cigarette, an electronic cigarette product, a nontherapeutic nicotine

- 1085 product, or a tobacco product, that:
- 1086 (i) contains nicotine;
 - 1087 (ii) is intended for human consumption;
 - 1088 (iii) is not purchased with a prescription from a licensed physician; and
 - 1089 (iv) is not approved by the United States Food and Drug Administration as nicotine
 - 1090 replacement therapy.
- 1091 (b) "Alternative nicotine product" includes:
- 1092 (i) pure nicotine;
 - 1093 (ii) snortable nicotine;
 - 1094 (iii) dissolvable salts, orbs, pellets, sticks, or strips; and
 - 1095 (iv) nicotine-laced food and beverage.
- 1096 (c) "Alternative nicotine product" does not include a fruit, a vegetable, or a tea that
- 1097 contains naturally occurring nicotine.
- 1098 (2) "Cigar" means a product that contains nicotine, is intended to be burned under ordinary
- 1099 conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in any
- 1100 substance containing tobacco, other than any roll of tobacco that is a cigarette.
- 1101 (3) "Cigarette" means a product that contains nicotine, is intended to be heated or burned
- 1102 under ordinary conditions of use, and consists of:
- 1103 (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or
 - 1104 (b) any roll of tobacco wrapped in any substance containing tobacco which, because of
 - 1105 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is
 - 1106 likely to be offered to, or purchased by, consumers as a cigarette described in
 - 1107 Subsection (3)(a).
- 1108 (4)(a) "Electronic cigarette" means:
- 1109 (i) any electronic oral device:
 - 1110 (A) that provides an aerosol or a vapor of nicotine or other substance; and
 - 1111 (B) which simulates smoking through the use or inhalation of the device;
 - 1112 (ii) a component of the device described in Subsection (4)(a)(i); or
 - 1113 (iii) an accessory sold in the same package as the device described in Subsection
 - 1114 (4)(a)(i).
- 1115 (b) "Electronic cigarette" includes an oral device that is:
- 1116 (i) composed of a heating element, battery, or electronic circuit; and
 - 1117 (ii) marketed, manufactured, distributed, or sold as:
 - 1118 (A) an e-cigarette;

- 1119 (B) an e-cigar;
- 1120 (C) an e-pipe; or
- 1121 (D) any other product name or descriptor, if the function of the product meets the
- 1122 definition of Subsection (4)(a).
- 1123 (c) "Electronic cigarette" does not mean a medical cannabis device, as that term is
- 1124 defined in Section 26B-4-201.
- 1125 (5) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette
- 1126 substance, or a prefilled electronic cigarette.
- 1127 (6) "Electronic cigarette substance" means any substance, including liquid containing
- 1128 nicotine, used or intended for use in an electronic cigarette.
- 1129 (7)(a) "Flavored electronic cigarette product" means an electronic cigarette product that
- 1130 has a taste or smell that is distinguishable by an ordinary consumer either before or
- 1131 during use or consumption of the electronic cigarette product.
- 1132 (b) "Flavored electronic cigarette product" includes an electronic cigarette product that is
- 1133 labeled as, or has a taste or smell of any fruit, chocolate, vanilla, honey, candy,
- 1134 cocoa, dessert, alcoholic beverage, herb, spice, or mint.
- 1135 (c) "Flavored electronic cigarette product" does not include an electronic cigarette
- 1136 product that has a taste or smell of only tobacco or menthol.
- 1137 (8) "Nicotine" means a poisonous, nitrogen containing chemical that is made synthetically
- 1138 or derived from tobacco or other plants.
- 1139 (9) "Nicotine product" means an alternative nicotine product or a nontherapeutic nicotine
- 1140 product.
- 1141 (10)(a) "Nontherapeutic nicotine device" means a device that:
- 1142 (i) has a pressurized canister that is used to administer nicotine to the user through
- 1143 inhalation or intranasally;
- 1144 (ii) is not purchased with a prescription from a licensed physician; and
- 1145 (iii) is not approved by the United States Food and Drug Administration as nicotine
- 1146 replacement therapy.
- 1147 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or a
- 1148 nontherapeutic nicotine nasal spray.
- 1149 (11) "Nontherapeutic nicotine device substance" means a substance that:
- 1150 (a) contains nicotine;
- 1151 (b) is sold in a cartridge for use in a nontherapeutic nicotine device;
- 1152 (c) is not purchased with a prescription from a licensed physician; and

- 1153 (d) is not approved by the United States Food and Drug Administration as nicotine
1154 replacement therapy.
- 1155 (12) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device, a
1156 nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device.
- 1157 (13) "Place of business" includes:
- 1158 (a) a shop;
 - 1159 (b) a store;
 - 1160 (c) a factory;
 - 1161 (d) a public garage;
 - 1162 (e) an office;
 - 1163 (f) a theater;
 - 1164 (g) a recreation hall;
 - 1165 (h) a dance hall;
 - 1166 (i) a poolroom;
 - 1167 (j) a cafe;
 - 1168 (k) a cafeteria;
 - 1169 (l) a cabaret;
 - 1170 (m) a restaurant;
 - 1171 (n) a hotel;
 - 1172 (o) a lodging house;
 - 1173 (p) a streetcar;
 - 1174 (q) a bus;
 - 1175 (r) an interurban or railway passenger coach;
 - 1176 (s) a waiting room; and
 - 1177 (t) any other place of business.
- 1178 (14) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled with
1179 an electronic cigarette substance.
- 1180 (15) "Prefilled nontherapeutic nicotine device" means a nontherapeutic nicotine device that
1181 is sold prefilled with a nontherapeutic nicotine device substance.
- 1182 [~~(16) "Premarket authorized or pending electronic cigarette product" means an electronic~~
1183 ~~cigarette product that:]~~
- 1184 [~~(a)(i) has been approved by an order granting a premarket tobacco product~~
1185 ~~application of the electronic cigarette product by the United States Food and Drug~~
1186 ~~Administration under 21 U.S.C. Sec. 387j(c)(1)(A)(i); or]~~

- 1187 ~~[(ii)(A) was marketed in the United States on or before August 8, 2016;]~~
1188 ~~[(B) the manufacturer submitted a premarket tobacco product application for the~~
1189 ~~electronic cigarette product to the United States Food and Drug Administration~~
1190 ~~under 21 U.S.C. Sec. 387j on or before September 9, 2020; and]~~
1191 ~~[(C) has an application described in Subsection (16)(a)(ii) that either remains~~
1192 ~~under review by the United States Food and Drug Administration or a final~~
1193 ~~decision on the application has not taken effect; and]~~
1194 ~~[(b) does not exceed:]~~
1195 ~~[(i) 4.0% nicotine by weight per container; or]~~
1196 ~~[(ii) a nicotine concentration of 40 milligrams per milliliter.]~~
1197 ~~[(17)] (16) "Retail tobacco specialty business" means the same as that term is defined in~~
1198 ~~Section 26B-7-501.~~
1199 ~~[(18)] (17) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other~~
1200 ~~lighted smoking equipment.~~
1201 ~~[(19)] (18)(a) "Tobacco paraphernalia" means equipment, product, or material of any~~
1202 ~~kind that is used, intended for use, or designed for use to package, repackage, store,~~
1203 ~~contain, conceal, ingest, inhale, or otherwise introduce a tobacco product, an~~
1204 ~~electronic cigarette substance, or a nontherapeutic nicotine device substance into the~~
1205 ~~human body.~~
1206 (b) "Tobacco paraphernalia" includes:
1207 (i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
1208 screens, permanent screens, hashish heads, or punctured metal bowls;
1209 (ii) water pipes;
1210 (iii) carburetion tubes and devices;
1211 (iv) smoking and carburetion masks;
1212 (v) roach clips, meaning objects used to hold burning material, such as a cigarette,
1213 that has become too small or too short to be held in the hand;
1214 (vi) chamber pipes;
1215 (vii) carburetor pipes;
1216 (viii) electric pipes;
1217 (ix) air-driven pipes;
1218 (x) chillums;
1219 (xi) bongs; and
1220 (xii) ice pipes or chillers.

1221 (c) "Tobacco paraphernalia" does not include matches or lighters.

1222 [~~(20)~~] (19) "Tobacco product" means:

1223 (a) a cigar;

1224 (b) a cigarette; or

1225 (c) tobacco in any form, including:

1226 (i) chewing tobacco; and

1227 (ii) any substitute for tobacco, including flavoring or additives to tobacco.

1228 [~~(21)~~] (20) "Tobacco retailer" means:

1229 (a) a general tobacco retailer, as that term is defined in Section 26B-7-501; or

1230 (b) a retail tobacco specialty business.

1231 Section 19. Section **76-10-104** is amended to read:

1232 **76-10-104 . Providing a cigar, a cigarette, an electronic cigarette product, a**
 1233 **nicotine product, or tobacco to a minor -- Penalties.**

1234 (1) As used in this section "provides":

1235 (a) includes selling, giving, furnishing, sending, or causing to be sent; and

1236 (b) does not include the acts of the United States Postal Service or other common carrier
 1237 when engaged in the business of transporting and delivering packages for others or
 1238 the acts of a person, whether compensated or not, who transports or delivers a
 1239 package for another person without any reason to know of the package's content.

1240 (2) An individual who knowingly, intentionally, recklessly, or with criminal negligence
 1241 provides a tobacco product, an electronic cigarette product, or a nicotine product to an
 1242 individual who is under 21 years old, is guilty of:

1243 (a) a class ~~[C]~~ B misdemeanor on the first offense; and

1244 [~~(b)~~] ~~a class B misdemeanor on the second offense; and]~~

1245 [~~(c)~~] (b) a class A misdemeanor on any subsequent offense.

1246 (3) This section does not apply to conduct of an employee of a tobacco retailer that is a
 1247 violation of Section 76-10-114.

1248 Section 20. Section **76-10-104.1** is amended to read:

1249 **76-10-104.1 . Providing tobacco paraphernalia to a minor -- Penalties.**

1250 (1) As used in this section, "provides":

1251 (a) includes selling, giving, furnishing, sending, or causing to be sent; and

1252 (b) does not include the acts of the United States Postal Service or other common carrier
 1253 when engaged in the business of transporting and delivering packages for others or
 1254 the acts of a person, whether compensated or not, who transports or delivers a

1255 package for another person without any reason to know of the package's content.

1256 (2)(a) It is unlawful for an individual to knowingly, intentionally, recklessly, or with
1257 criminal negligence provide tobacco paraphernalia to an individual under 21 years
1258 old.

1259 (b) An individual who violates this section is guilty of:

1260 (i) a class [€] B misdemeanor on the first offense; and

1261 (ii) a class [B] A misdemeanor on any subsequent offense.

1262 Section 21. Section **76-10-105.1** is amended to read:

1263 **76-10-105.1 . Requirement of direct, face-to-face sale of a tobacco product, an**
1264 **electronic cigarette product, or a nicotine product -- Minors not allowed in tobacco**
1265 **specialty shop -- Penalties.**

1266 (1) As used in this section:

1267 (a)(i) "Face-to-face exchange" means a transaction made in person between an
1268 individual and a retailer or retailer's employee.

1269 (ii) "Face-to-face exchange" does not include a sale through a:

1270 (A) vending machine; or

1271 (B) self-service display.

1272 (b) "Retailer" means a person who:

1273 (i) sells a tobacco product, an electronic cigarette product, or a nicotine product to an
1274 individual for personal consumption; or

1275 (ii) operates a facility with a vending machine that sells a tobacco product, an
1276 electronic cigarette product, or a nicotine product.

1277 (c) "Self-service display" means a display of a tobacco product, an electronic cigarette
1278 product, or a nicotine product to which the public has access without the intervention
1279 of a retailer or retailer's employee.

1280 (2) Except as provided in Subsection (3), a retailer may sell a tobacco product, an electronic
1281 cigarette product, or a nicotine product only in a face-to-face exchange.

1282 (3) The face-to-face sale requirement in Subsection (2) does not apply to:

1283 (a) a mail-order, telephone, or Internet sale made in compliance with Section 59-14-509;

1284 (b) a sale from a vending machine or self-service display that is located in an area of a
1285 retailer's facility:

1286 (i) that is distinct and separate from the rest of the facility; and

1287 (ii) where the retailer only allows an individual who complies with Subsection (4) to
1288 be present; or

- 1289 (c) a sale at a retail tobacco specialty business.
- 1290 (4) An individual who is under 21 years old may not enter or be present at a retail tobacco
 1291 specialty business unless the individual is:
- 1292 (a) accompanied by a parent or legal guardian; or
- 1293 (b)(i) present at the retail tobacco specialty business solely for the purpose of
 1294 providing a service to the retail tobacco specialty business, including making a
 1295 delivery;
- 1296 (ii) monitored by the proprietor of the retail tobacco specialty business or an
 1297 employee of the retail tobacco specialty business; and
- 1298 (iii) not permitted to make any purchase or conduct any commercial transaction other
 1299 than the service described in Subsection (4)(b)(i).
- 1300 (5) A parent or legal guardian who accompanies, under Subsection (4)(a), an individual into
 1301 an area described in Subsection (3)(b) or into a retail tobacco specialty business may not
 1302 allow the individual to purchase a tobacco product, an electronic cigarette product, or a
 1303 nicotine product.
- 1304 (6) A violation of Subsection (2) or (4) is a:
- 1305 (a) class [C] B misdemeanor on the first offense; and
 1306 [~~(b)~~ class ~~B~~ misdemeanor on the second offense; and]
 1307 [~~(e)~~] (b) class A misdemeanor on any subsequent offenses.
- 1308 (7) An individual who violates Subsection (5) is guilty of an offense under Section
 1309 76-10-104.
- 1310 Section 22. Section **76-10-111** is amended to read:
- 1311 **76-10-111 . Restrictions on sale of smokeless tobacco or electronic cigarette**
 1312 **products -- Exceptions.**
- 1313 (1) The Legislature finds that:
- 1314 (a) smokeless tobacco, or chewing tobacco, is harmful to the health of individuals who
 1315 use those products because research indicates that they may cause mouth or oral
 1316 cancers;
- 1317 (b) the use of smokeless tobacco among juveniles in this state is increasing rapidly;
- 1318 (c) the use of electronic cigarette products may lead to unhealthy behavior such as the
 1319 use of tobacco products; and
- 1320 (d) it is necessary to restrict the gift of the products described in this Subsection (1) in
 1321 the interest of the health of the citizens of this state.
- 1322 (2)(a) Except as provided in Subsection (3), it is unlawful for a manufacturer,

- 1323 wholesaler, and retailer to:
- 1324 (i) give or distribute without charge any smokeless tobacco, chewing tobacco, or
1325 electronic cigarette product in this state;
- 1326 (ii) sell, offer for sale, or furnish any electronic cigarette product at less than the cost,
1327 including the amount of any applicable tax, of the product to the manufacturer,
1328 wholesaler, or retailer; or
- 1329 (iii) give, distribute, sell, offer for sale, or furnish any electronic cigarette product for
1330 free or at a lower price because the recipient of the electronic cigarette product
1331 makes another purchase.
- 1332 (b) The price that a manufacturer, wholesaler, or retailer may charge under Subsection
1333 (2)(a)(ii) does not include a discount for:
- 1334 (i) a physical manufacturer coupon:
- 1335 (A) that is surrendered to the wholesaler or retailer at the time of sale; and
1336 (B) for which the manufacturer will reimburse the wholesaler or the retailer for
1337 the full amount of the discount described in the manufacturer coupon and
1338 provided to the purchaser;
- 1339 (ii) a rebate that will be paid to the manufacturer, the wholesaler, or the retailer for
1340 the full amount of the rebate provided to the purchaser; or
- 1341 (iii) a promotional fund that will be paid to the manufacturer, the wholesaler, or the
1342 retailer for the full amount of the promotional fund provided to the purchaser.
- 1343 (c) Any individual who violates this section is guilty of:
- 1344 (i) a class [€] B misdemeanor for the first offense; and
1345 (ii) a class [B] A misdemeanor for any subsequent offense.
- 1346 (3) Smokeless tobacco, chewing tobacco, or an electronic cigarette product may be
1347 distributed to adults without charge at professional conventions where the general public
1348 is excluded.

1349 Section 23. Section **76-10-112** is amended to read:

1350 **76-10-112 . Prohibition of distribution of a tobacco product -- Exceptions.**

- 1351 (1) Except as provided in Subsection (3), it is unlawful for a manufacturer, wholesaler, or
1352 retailer to give or distribute a tobacco product in this state without charge.
- 1353 (2) An individual who violates this subsection is guilty of:
- 1354 (a) a class [€] B misdemeanor for the first offense; and
1355 (b) a class [B] A misdemeanor for any subsequent offense.
- 1356 (3) A tobacco product may be distributed to an adult without charge at a professional

1357 convention where the general public is excluded.

1358 (4) The prohibition described in Subsection (1) does not apply to a tobacco retailer, a
1359 manufacturer, or a distributor that gives a tobacco product to an individual who is 21
1360 years old or older upon the individual's purchase of a tobacco product.

1361 Section 24. Section **76-10-113** is amended to read:

1362 **76-10-113 . Prohibition on distribution of flavored electronic cigarette products**
1363 **-- Prohibition of electronic cigarette products without federal authorization.**

1364 (1) [~~Subject to Subsection (2), it~~] It is unlawful for a tobacco retailer that is not a retail
1365 tobacco specialty business to give, distribute, sell, offer for sale, or furnish a flavored
1366 electronic cigarette product to any person.

1367 [~~(2) Notwithstanding Subsection (1), and beginning on January 1, 2025, it is unlawful for a~~
1368 ~~person to give, distribute, sell, offer for sale, or furnish to any person a flavored~~
1369 ~~electronic cigarette product.]~~

1370 [~~(3) Beginning on January 1, 2025, it is unlawful for a person to give, distribute, sell, offer~~
1371 ~~for sale, or furnish to any person an electronic cigarette product that is not a premarket~~
1372 ~~authorized or pending electronic cigarette product.]~~

1373 [~~(4)~~] (2) An individual who violates this section is guilty of:

- 1374 (a) a class [~~C~~] B misdemeanor for the first offense; and
1375 (b) a class [~~B~~] A misdemeanor for any subsequent offense.

1376 Section 25. Section **76-10-114** is amended to read:

1377 **76-10-114 . Unlawful sale of a tobacco product, electronic cigarette product, or**
1378 **nicotine product.**

1379 (1) As used in this section:

- 1380 (a) "Compensatory service" means service or unpaid work performed by an employee, in
1381 lieu of the payment of a fine or imprisonment.
1382 (b) "Employee" means an employee or an owner of a tobacco retailer.

1383 (2) It is unlawful for an employee to knowingly or intentionally sell or give a tobacco
1384 product, an electronic cigarette product, or a nicotine product in the course of business to
1385 an individual who is under 21 years old.

1386 (3) An employee who violates this section is:

- 1387 (a) on a first violation:
1388 (i) guilty of [~~an infraction~~] a class C misdemeanor; and
1389 (ii) subject to:
1390 (A) a fine not exceeding \$1,000; or

- 1391 (B) compensatory service; or
1392 (b) on any subsequent violation:
1393 (i) guilty of a class [C] B misdemeanor; and
1394 (ii) subject to:
1395 (A) a fine not exceeding \$2,000; or
1396 (B) compensatory service.

1397 Section 26. **Repealer.**

1398 This bill repeals:

1399 Section **26A-1-131, Electronic cigarette registry enforcement.**

1400 Section **59-14-810, Electronic cigarette product registry.**

1401 Section 27. **Effective Date.**

1402 This bill takes effect:

1403 (1) except as provided in Subsection (2), May 7, 2025; or

1404 (2) if approved by two-thirds of all members elected to each house:

1405 (a) upon approval by the governor;

1406 (b) without the governor's signature, the day following the constitutional time limit of
1407 Utah Constitution, Article VII, Section 8; or

1408 (c) in the case of a veto, the date of veto override.