

Jason E. Thompson proposes the following substitute bill:

Non-nicotine Inhalation Product Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jason E. Thompson

Senate Sponsor: Brady Brammer

LONG TITLE

General Description:

This bill amends provisions related to non-nicotine inhalation products.

Highlighted Provisions:

This bill:

- defines terms;
- bans the sale of non-nicotine inhalation products that do not have federal approval for sale;
- modifies the definition of "electronic cigarette product" to include a non-nicotine inhalation product;
- modifies the electronic cigarette product registry to include a non-nicotine inhalation product;
- creates penalties for selling non-nicotine inhalation products that do not have federal approval for sale; and
- creates criminal penalties.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26B-7-501, as renumbered and amended by Laws of Utah 2023, Chapter 308

59-14-802, as last amended by Laws of Utah 2020, Chapter 347

59-14-810, as enacted by Laws of Utah 2024, Chapter 470

76-10-101, as last amended by Laws of Utah 2024, Chapter 470

ENACTS:

29 **26B-7-523**, Utah Code Annotated 1953

30 **76-10-117**, Utah Code Annotated 1953

31

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

33 Section 1. Section **26B-7-501** is amended to read:

34 **26B-7-501 . Definitions.**

35 As used in this part:

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

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

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

39 (2) "Electronic cigarette" means the same as that term is defined in Section 76-10-101.

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

41 76-10-101.

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

43 76-10-101.

44 (5) "Employee" means an employee of a tobacco retailer.

45 (6) "Enforcing agency" means the department, or any local health department enforcing the
46 provisions of this part.

47 (7) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco specialty
48 business.

49 (8) "Local health department" means the same as that term is defined in Section 26A-1-102.

50 (9) "Manufacture" includes:

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

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

53 (10) "Manufacturer sealed electronic cigarette substance" means an electronic cigarette
54 substance that is sold in a container that:

55 (a) is prefilled by the electronic cigarette substance manufacturer; and

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

57 (11) "Manufacturer sealed electronic cigarette product" means:

58 (a) an electronic cigarette substance or container that the electronic cigarette

59 manufacturer does not intend for a consumer to open or refill; or

60 (b) a prefilled electronic cigarette as that term is defined in Section 76-10-101.

61 (12) "Nicotine" means the same as that term is defined in Section 76-10-101.

62 (13) "Nicotine product" means the same as that term is defined in Section 76-10-101.

63 (14) "Non-nicotine inhalation product" means the same as that term is defined in Section
64 76-10-101.

65 [(14)] (15) "Non-tobacco shisha" means any product that:

66 (a) does not contain tobacco or nicotine; and

67 (b) is smoked or intended to be smoked in a hookah or water pipe.

68 [(15)] (16) "Owner" means a person holding a 20% ownership interest in the business that is
69 required to obtain a permit under this part.

70 [(16)] (17) "Permit" means a tobacco retail permit issued under Section 26B-7-507.

71 [(17)] (18) "Place of public access" means any enclosed indoor place of business,
72 commerce, banking, financial service, or other service-related activity, whether publicly
73 or privately owned and whether operated for profit or not, to which persons not
74 employed at the place of public access have general and regular access or which the
75 public uses, including:

76 (a) buildings, offices, shops, elevators, or restrooms;

77 (b) means of transportation or common carrier waiting rooms;

78 (c) restaurants, cafes, or cafeterias;

79 (d) taverns as defined in Section 32B-1-102, or cabarets;

80 (e) shopping malls, retail stores, grocery stores, or arcades;

81 (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical sites,
82 auditoriums, or arenas;

83 (g) barber shops, hair salons, or laundromats;

84 (h) sports or fitness facilities;

85 (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and
86 breakfast" lodging facilities, and other similar lodging facilities, including the
87 lobbies, hallways, elevators, restaurants, cafeterias, other designated dining areas, and
88 restrooms of any of these;

89 (j)(i) any child care facility or program subject to licensure or certification under this
90 title, including those operated in private homes, when any child cared for under
91 that license is present; and

92 (ii) any child care, other than child care as defined in Section 26B-2-401, that is not
93 subject to licensure or certification under this title, when any child cared for by the
94 provider, other than the child of the provider, is present;

95 (k) public or private elementary or secondary school buildings and educational facilities
96 or the property on which those facilities are located;

- 97 (l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or
98 religious organization when used solely by the organization members or the
99 members' guests or families;
- 100 (m) any facility rented or leased for private functions from which the general public is
101 excluded and arrangements for the function are under the control of the function
102 sponsor;
- 103 (n) any workplace that is not a place of public access or a publicly owned building or
104 office but has one or more employees who are not owner-operators of the business;
- 105 (o) any area where the proprietor or manager of the area has posted a conspicuous sign
106 stating "no smoking", "thank you for not smoking", or similar statement; and
- 107 (p) a holder of a bar establishment license, as defined in Section 32B-1-102.
- 108 [~~(18)~~] (19)(a) "Proof of age" means:
- 109 (i) a valid identification card issued under Title 53, Chapter 3, Part 8, Identification
110 Card Act;
- 111 (ii) a valid identification that:
- 112 (A) is substantially similar to an identification card issued under Title 53, Chapter
113 3, Part 8, Identification Card Act;
- 114 (B) is issued in accordance with the laws of a state other than Utah in which the
115 identification is issued;
- 116 (C) includes date of birth; and
- 117 (D) has a picture affixed;
- 118 (iii) a valid driver license certificate that is issued under Title 53, Chapter 3, Uniform
119 Driver License Act, or in accordance with the laws of the state in which the valid
120 driver license is issued;
- 121 (iv) a valid United States military identification card that:
- 122 (A) includes date of birth; and
- 123 (B) has a picture affixed; or
- 124 (v) a valid passport.
- 125 (b) "Proof of age" does not include a valid driving privilege card issued in accordance
126 with Section 53-3-207.
- 127 [~~(19)~~] (20) "Publicly owned building or office" means any enclosed indoor place or portion
128 of a place owned, leased, or rented by any state, county, or municipal government, or by
129 any agency supported by appropriation of, or by contracts or grants from, funds derived
130 from the collection of federal, state, county, or municipal taxes.

- 131 [~~(20)~~] (21) "Retail tobacco specialty business" means the same as that term is defined:
- 132 (a) as it relates to a municipality, in Section 10-8-41.6; and
- 133 (b) as it relates to a county, in Section 17-50-333.
- 134 [~~(21)~~] (22) "Shisha" means any product that:
- 135 (a) contains tobacco or nicotine; and
- 136 (b) is smoked or intended to be smoked in a hookah or water pipe.
- 137 [~~(22)~~] (23) "Smoking" means:
- 138 (a) the possession of any lighted or heated tobacco product in any form;
- 139 (b) inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or
- 140 hookah that contains:
- 141 (i) tobacco or any plant product intended for inhalation;
- 142 (ii) shisha or non-tobacco shisha;
- 143 (iii) nicotine;
- 144 (iv) a natural or synthetic tobacco substitute; or
- 145 (v) a natural or synthetic flavored tobacco product;
- 146 (c) using an electronic cigarette; or
- 147 (d) using an oral smoking device intended to circumvent the prohibition of smoking in
- 148 this part.
- 149 [~~(23)~~] (24) "Tax commission license" means a license issued by the State Tax Commission
- 150 under:
- 151 (a) Section 59-14-201 to sell a cigarette at retail;
- 152 (b) Section 59-14-301 to sell a tobacco product at retail; or
- 153 (c) Section 59-14-803 to sell an electronic cigarette product or a nicotine product.
- 154 [~~(24)~~] (25) "Tobacco product" means:
- 155 (a) a tobacco product as defined in Section 76-10-101; or
- 156 (b) tobacco paraphernalia as defined in Section 76-10-101.
- 157 [~~(25)~~] (26) "Tobacco retailer" means a person that is required to obtain a tax commission
- 158 license.
- 159 Section 2. Section **26B-7-523** is enacted to read:
- 160 **26B-7-523 . Non-nicotine inhalation product -- Penalty.**
- 161 (1) A non-nicotine inhalation product that is not contained in the registry described in
- 162 Section 59-14-810 may not be sold in the state.
- 163 (2)(a) The department or a local health department may issue a fine to a person that
- 164 sells, offers to sell, or otherwise distributes a non-nicotine inhalation product in

- 165 violation of Subsection (1) and in accordance with Subsection (2)(b).
- 166 (b) A fine described in Subsection (2)(a) shall be assessed as follows:
- 167 (i) for a first violation, \$1,000;
- 168 (ii) for a second violation, \$1,500;
- 169 (iii) for a third violation, \$2,000; and
- 170 (iv) for a fourth violation, \$5,000.
- 171 (c) The department or a local health department shall enforce this section under the
- 172 procedures of Title 63G, Chapter 4, Administrative Procedures Act, as an informal
- 173 adjudicative proceeding, including:
- 174 (i) notifying a retailer of alleged violations;
- 175 (ii) conducting hearings;
- 176 (iii) determining violations; and
- 177 (iv) imposing civil administrative penalties.
- 178 (3)(a) A county or municipality may suspend a person's business license for violations of
- 179 Subsection (1) and in accordance with Subsection (3)(b).
- 180 (b) A suspension of a business license described in Subsection (3)(a) shall be imposed as
- 181 follows:
- 182 (i) for a second violation, a 30-day suspension;
- 183 (ii) for a third violation, a 90-day suspension; and
- 184 (iii) for a fourth violation, a one year suspension.
- 185 (c) A county or municipality shall use the process a county or municipality uses to
- 186 impose business license suspensions in other contexts to impose a violation under
- 187 Subsection (3)(b).
- 188 (4) At a civil hearing for enforcement under Subsection (2) or (3), evidence of the final
- 189 criminal conviction of a person for violation of Section 76-10-117 is prima facie
- 190 evidence of a violation of this section.

191 Section 3. Section **59-14-802** is amended to read:

192 **59-14-802 . Definitions.**

193 As used in this part:

- 194 (1) "Licensee" means a person that holds a valid license to sell an electronic cigarette
- 195 product or a nicotine product.
- 196 (2)(a) "Manufacturer's sales price" means the amount that the manufacturer of an
- 197 electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine
- 198 product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic

- 199 nicotine device charges after subtracting a discount.
- 200 (b) "Manufacturer's sales price" includes an original Utah destination freight charge,
201 regardless of:
- 202 (i) whether the electronic cigarette substance, prefilled electronic cigarette,
203 alternative nicotine product, nontherapeutic nicotine device substance, or prefilled
204 nontherapeutic nicotine device is shipped f.o.b. origin or f.o.b. destination; or
205 (ii) who pays the original Utah destination freight charge.
- 206 (3) "Non-nicotine inhalation product" means the same as that term is defined in Section
207 76-10-101.
- 208 (4) "Premarket authorized or pending electronic cigarette product" means the same as that
209 term is defined in Section 76-10-101.
- 210 Section 4. Section **59-14-810** is amended to read:
211 **59-14-810 . Electronic cigarette product registry.**
- 212 (1) Beginning on August 1, 2024, every manufacturer of an electronic cigarette product that
213 is sold in this state, whether directly or through a distributor, wholesaler, retailer, or
214 similar intermediary or intermediaries, shall certify under penalty of perjury on a form
215 and in the manner prescribed by the commission, that:
- 216 (a) the manufacturer agrees to comply with this section; and
217 (b) [~~the electronic cigarette product is a premarket authorized or pending electronic~~
218 ~~cigarette product as defined in Section 76-10-101 and will not be illegal to be sold in~~
219 ~~the state as of January 1, 2025.]~~ meets the following requirements:
- 220 (i) for an electronic cigarette product that contains nicotine, that the product is a
221 premarket authorized or pending electronic cigarette product; or
222 (ii) for an electronic cigarette product that is a non-nicotine inhalation product, the
223 product is approved for sale in interstate commerce by the United States Food and
224 Drug Administration.
- 225 (2) When submitting the certification a manufacturer shall submit a form that separately
226 lists each electronic cigarette product that is sold in this state.
- 227 (3)(a) Each certification form shall include:
- 228 (i) the name of the electronic cigarette product, nicotine content level by percentage,
229 and any flavors contained in the product;
- 230 (ii) for an electronic cigarette product that contains nicotine:
- 231 (A) a copy of the order granting a premarket tobacco product application of the
232 electronic cigarette product by the United States Food and Drug

- 233 Administration under 21 U.S.C. Sec. 387j(c)(1)(A)(i); or
- 234 (B) evidence that the premarket tobacco product application for the electronic
- 235 cigarette product or nicotine product was submitted to the United States Food
- 236 and Drug Administration before September 9, 2020, and a final authorization
- 237 or order has not yet taken effect;
- 238 (iii) for an electronic cigarette product that is a non-nicotine inhalation product,
- 239 evidence that the product is approved for sale in interstate commerce by the
- 240 United States Food and Drug Administration;
- 241 [~~(iii)~~] (iv) a nonrefundable \$1,000 fee for an electronic cigarette product that is being
- 242 added to the registry in the first instance; and
- 243 [~~(iv)~~] (v) information described in Subsection (10) if applicable.
- 244 (b) The commission shall make the materials submitted under Subsection (3)(a)
- 245 available to the Department of Health and Human Services for review and approval.
- 246 (c) A manufacturer required to submit a certification form under this section shall notify
- 247 the commission and the Department of Health and Human Services in a manner
- 248 prescribed by the commission within 30 days of any material change making the
- 249 certification form no longer accurate, including:
- 250 (i) the issuance or denial of a marketing authorization or other order by the United
- 251 States Food and Drug Administration under 21 U.S.C. Sec. 387j; or
- 252 (ii) any other order or action by the United States Food and Drug Administration or
- 253 any court that affects the ability of the electronic cigarette product to be
- 254 introduced or delivered into interstate commerce for commercial distribution in
- 255 the United States.
- 256 (d) On or before January 31 of each year and in a manner prescribed by the commission,
- 257 a manufacturer shall:
- 258 (i) recertify that the information contained in the certification is correct and accurate;
- 259 (ii) correct or amend information if necessary; and
- 260 (iii) pay a \$250 nonrefundable fee for each electronic cigarette product on the registry
- 261 that is manufactured by the manufacturer.
- 262 (e) A manufacturer may amend a certification, including to add additional electronic
- 263 cigarette products to the registry, if all requirements of this section are met.
- 264 (f) The commission shall:
- 265 (i) provide an electronic notification to a manufacturer that has not submitted a
- 266 recertification under Subsection (3)(d); and

- 267 (ii) remove a manufacturer or an electronic cigarette product that is not recertified
268 from the registry by March 15.
- 269 (4)(a) The Department of Health and Human Services shall review materials described
270 in Subsection (3)(a) and notify the commission regarding whether an electronic
271 cigarette product should be included in the registry.
- 272 (b) On or before October 1, 2024, the commission shall make publicly available on the
273 commission's website a registry that lists each electronic cigarette product
274 manufacturer and each electronic cigarette product for which certification forms have
275 been approved by the Department of Health and Human Services.
- 276 (c) An electronic cigarette product may not be listed on the registry unless the
277 Department of Health and Human Services determines the requirements of
278 Subsection (3)(a) are met.
- 279 (5)(a) If the Department of Health and Human Services obtains information that an
280 electronic cigarette product should not be listed in the registry, the Department of
281 Health and Human Services shall provide the manufacturer notice and an opportunity
282 to cure deficiencies before notifying the commission to remove the manufacturer or
283 products from the registry.
- 284 (b) Except as provided in Subsection (5)(c), the Department of Health and Human
285 Services shall comply with Title 63G, Chapter 4, Administrative Procedures Act,
286 before notifying the commission to remove an electronic cigarette product or
287 manufacturer from the registry.
- 288 (c) Subsection (5)(b) does not apply to a manufacturer failing:
289 (i) to decertify an electronic cigarette product;
290 (ii) to provide fees and documentation described in Subsection (3)(a) or (3)(d); or
291 (iii) to comply with Subsection (10).
- 292 (6)(a) If a product is removed from the registry, each retailer, distributor, and wholesaler
293 shall have 30 days from the day on which the product is removed from the registry to
294 remove the product from any inventory and return the product to the manufacturer for
295 disposal.
- 296 (b) After the period described in Subsection (6)(a), any electronic cigarette product of a
297 manufacturer identified in the notice of removal are contraband and are subject to
298 penalties under Subsection (8) and seizure, forfeiture, and destruction under Section
299 26A-1-131.
- 300 (7)(a) Beginning on January 1, 2025, a person may not sell or offer for retail sale an

- 301 electronic cigarette product in this state that is not included in the registry.
- 302 (b) A manufacturer may not sell, either directly or through a distributor, wholesaler,
303 retailer, or similar intermediary or intermediaries, an electronic cigarette product in
304 this state that is not included in the registry.
- 305 (8)(a) A wholesaler, distributor, or retailer who sells or offers for retail sale an electronic
306 cigarette product in this state that is not included in the registry shall be subject to a
307 civil penalty of:
- 308 (i) \$1,000 for each product offered for sale in violation of this section; and
309 (ii) \$100 per day until the offending product is removed from the market or until the
310 offending product is properly listed on the registry.
- 311 (b) The commission shall suspend the person's license issued under Section 59-14-803
312 for a violation of Subsection (8)(a) as follows:
- 313 (i) for a second violation within a 12-month period, at least 14 days;
314 (ii) for a third violation within a 12-month period, at least 60 days; or
315 (iii) for a fourth violation within a 12-month period, at least one year.
- 316 (c) A manufacturer whose electronic cigarette products are not listed in the registry and
317 are sold in this state, whether directly or through a distributor, wholesaler, retailer, or
318 similar intermediary or intermediaries, is subject to a civil penalty of:
- 319 (i) \$1,000 for each product offered for retail sale in violation of this section; and
320 (ii) \$100 per day until the offending product is removed from the market or until the
321 offending product is properly listed on the registry.
- 322 (d) A manufacturer that falsely represents any information required by a certification
323 form described in this section shall be guilty of a class C misdemeanor for each false
324 representation.
- 325 (e) A repeated violation of this section shall constitute a deceptive act or practice as
326 provided in Sections 13-11-4 and 13-11a-3 and shall be subject to any remedies or
327 penalties available for a violation of those sections.
- 328 (9)(a) To assist in ensuring compliance and enforcement of this section and Section
329 26A-1-131, the commission shall disclose to the following entities, upon request, any
330 information obtained under this section:
- 331 (i) the Department of Health and Human Services;
332 (ii) a local health department; or
333 (iii) the attorney general.
- 334 (b) The commission and attorney general shall share with each other information

- 335 received under this section, or corresponding laws of other states.
- 336 (10)(a)~~(f)~~ The commission may not list a nonresident manufacturer of an electronic
 337 cigarette product in the registry unless:
- 338 ~~(A)~~ (i) the nonresident manufacturer has registered to do business in the state as a
 339 foreign corporation or business entity; or
- 340 ~~(B)~~ (ii) the nonresident manufacturer appoints and maintains without interruption
 341 the services of an agent in this state to receive any service of process on behalf of
 342 the manufacturer.
- 343 (b) The nonresident manufacturer shall provide the name, address, and telephone
 344 number of the agent to the commission.
- 345 (c)(i) A nonresident manufacturer shall provide notice to the commission 30 days
 346 before the termination of the authority of an agent and shall further provide proof
 347 to the satisfaction of the commission of the appointment of a new agent no less
 348 than five calendar days prior to the termination of an existing agent appointment.
- 349 (ii) In the event an agent terminates an agency appointment, the manufacturer shall
 350 notify the commission of the termination within five calendar days and shall
 351 include proof to the satisfaction of the commission of the appointment of a new
 352 agent.
- 353 (11) Before May 31 of each year, the commission and the Department of Health and
 354 Human Services shall provide a report to the Revenue and Taxation Interim Committee
 355 and the Health and Human Services Interim Committee regarding:
- 356 (a) the status of the registry;
- 357 (b) manufacturers and products included in the registry;
- 358 (c) revenue and expenditures related to administration of this section; and
- 359 (d) enforcement activities undertaken under this section and Section 26A-1-131.
- 360 (12) All fees and penalties collected under this section shall be used for administration and
 361 enforcement of this section and Section 26A-1-131.
- 362 (13) The commission, in consultation with the Department of Health and Human Services,
 363 may make rules in accordance with Title 63G, Chapter 3, Utah Administrative
 364 Rulemaking Act, to implement this section.
- 365 Section 5. Section **76-10-101** is amended to read:
- 366 **76-10-101 . Definitions.**
- 367 As used in this part:
- 368 (1)(a) "Alternative nicotine product" means a product, other than a cigarette, a

- 369 counterfeit cigarette, an electronic cigarette product, a nontherapeutic nicotine
370 product, or a tobacco product, that:
- 371 (i) contains nicotine;
 - 372 (ii) is intended for human consumption;
 - 373 (iii) is not purchased with a prescription from a licensed physician; and
 - 374 (iv) is not approved by the United States Food and Drug Administration as nicotine
375 replacement therapy.
- 376 (b) "Alternative nicotine product" includes:
- 377 (i) pure nicotine;
 - 378 (ii) snortable nicotine;
 - 379 (iii) dissolvable salts, orbs, pellets, sticks, or strips; and
 - 380 (iv) nicotine-laced food and beverage.
- 381 (c) "Alternative nicotine product" does not include a fruit, a vegetable, or a tea that
382 contains naturally occurring nicotine.
- 383 (2) "Cigar" means a product that contains nicotine, is intended to be burned under ordinary
384 conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in any
385 substance containing tobacco, other than any roll of tobacco that is a cigarette.
- 386 (3) "Cigarette" means a product that contains nicotine, is intended to be heated or burned
387 under ordinary conditions of use, and consists of:
- 388 (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or
 - 389 (b) any roll of tobacco wrapped in any substance containing tobacco which, because of
390 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is
391 likely to be offered to, or purchased by, consumers as a cigarette described in
392 Subsection (3)(a).
- 393 (4)(a) "Electronic cigarette" means:
- 394 (i) any electronic oral device:
 - 395 (A) that provides an aerosol or a vapor of nicotine or other substance; and
 - 396 (B) which simulates smoking through the use or inhalation of the device;
 - 397 (ii) a component of the device described in Subsection (4)(a)(i); or
 - 398 (iii) an accessory sold in the same package as the device described in Subsection
399 (4)(a)(i).
- 400 (b) "Electronic cigarette" includes an oral device that is:
- 401 (i) composed of a heating element, battery, or electronic circuit; and
 - 402 (ii) marketed, manufactured, distributed, or sold as:

- 403 (A) an e-cigarette;
- 404 (B) an e-cigar;
- 405 (C) an e-pipe; or
- 406 (D) any other product name or descriptor, if the function of the product meets the
- 407 definition of Subsection (4)(a).
- 408 (c) "Electronic cigarette" does not mean a medical cannabis device, as that term is
- 409 defined in Section 26B-4-201.
- 410 (5)(a) "Electronic cigarette product" means an electronic cigarette, an electronic
- 411 cigarette substance, or a prefilled electronic cigarette.
- 412 (b) "Electronic cigarette product" includes a non-nicotine inhalation product.
- 413 (6) "Electronic cigarette substance" means any substance, including liquid containing
- 414 nicotine, used or intended for use in an electronic cigarette.
- 415 (7)(a) "Flavored electronic cigarette product" means an electronic cigarette product that
- 416 has a taste or smell that is distinguishable by an ordinary consumer either before or
- 417 during use or consumption of the electronic cigarette product.
- 418 (b) "Flavored electronic cigarette product" includes an electronic cigarette product that is
- 419 labeled as, or has a taste or smell of any fruit, chocolate, vanilla, honey, candy,
- 420 cocoa, dessert, alcoholic beverage, herb, spice, or mint.
- 421 (c) "Flavored electronic cigarette product" does not include an electronic cigarette
- 422 product that has a taste or smell of only tobacco or menthol.
- 423 (8) "Nicotine" means a poisonous, nitrogen containing chemical that is made synthetically
- 424 or derived from tobacco or other plants.
- 425 (9) "Nicotine product" means an alternative nicotine product or a nontherapeutic nicotine
- 426 product.
- 427 (10)(a) "Non-nicotine inhalation product" means a product that:
- 428 (i) is a manufacturer sealed prefilled cartridge that the manufacturer does not intend
- 429 for a consumer to open;
- 430 (ii) contains a vitamin, a mineral, a dietary supplement, or except as provided in
- 431 Subsection (10)(a)(iv) an alkaloid;
- 432 (iii) is designed specifically to be used with an electronic cigarette to produce an
- 433 aerosol or vapor of the substance described in Subsection (10)(a)(iv);
- 434 (iv) does not contain nicotine; and
- 435 (v) does not contain a cannabinoid.
- 436 (b) "Non-nicotine inhalation product" does not include a product that is designed,

437 marketed, sold, and intended solely for aromatherapy.

438 [~~(10)~~] (11)(a) "Nontherapeutic nicotine device" means a device that:

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

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

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

444 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or a
445 nontherapeutic nicotine nasal spray.

446 [~~(11)~~] (12) "Nontherapeutic nicotine device substance" means a substance that:

447 (a) contains nicotine;

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

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

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

452 [~~(12)~~] (13) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device, a
453 nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device.

454 [~~(13)~~] (14) "Place of business" includes:

455 (a) a shop;

456 (b) a store;

457 (c) a factory;

458 (d) a public garage;

459 (e) an office;

460 (f) a theater;

461 (g) a recreation hall;

462 (h) a dance hall;

463 (i) a poolroom;

464 (j) a cafe;

465 (k) a cafeteria;

466 (l) a cabaret;

467 (m) a restaurant;

468 (n) a hotel;

469 (o) a lodging house;

470 (p) a streetcar;

- 471 (q) a bus;
- 472 (r) an interurban or railway passenger coach;
- 473 (s) a waiting room; and
- 474 (t) any other place of business.
- 475 ~~[(14)]~~ (15) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled
- 476 with an electronic cigarette substance.
- 477 ~~[(15)]~~ (16) "Prefilled nontherapeutic nicotine device" means a nontherapeutic nicotine
- 478 device that is sold prefilled with a nontherapeutic nicotine device substance.
- 479 ~~[(16)]~~ (17) "Premarket authorized or pending electronic cigarette product" means an
- 480 electronic cigarette product that:
- 481 (a)(i) has been approved by an order granting a premarket tobacco product
- 482 application of the electronic cigarette product by the United States Food and Drug
- 483 Administration under 21 U.S.C. Sec. 387j(c)(1)(A)(i); or
- 484 (ii)(A) was marketed in the United States on or before August 8, 2016;
- 485 (B) the manufacturer submitted a premarket tobacco product application for the
- 486 electronic cigarette product to the United States Food and Drug Administration
- 487 under 21 U.S.C. Sec. 387j on or before September 9, 2020; and
- 488 (C) has an application described in Subsection ~~[(16)(a)(ii)]~~ (17)(a)(ii) that either
- 489 remains under review by the United States Food and Drug Administration or a
- 490 final decision on the application has not taken effect; and
- 491 (b) does not exceed:
- 492 (i) 4.0% nicotine by weight per container; or
- 493 (ii) a nicotine concentration of 40 milligrams per milliliter.
- 494 ~~[(17)]~~ (18) "Retail tobacco specialty business" means the same as that term is defined in
- 495 Section 26B-7-501.
- 496 ~~[(18)]~~ (19) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other
- 497 lighted smoking equipment.
- 498 ~~[(19)]~~ (20)(a) "Tobacco paraphernalia" means equipment, product, or material of any
- 499 kind that is used, intended for use, or designed for use to package, repackage, store,
- 500 contain, conceal, ingest, inhale, or otherwise introduce a tobacco product, an
- 501 electronic cigarette substance, or a nontherapeutic nicotine device substance into the
- 502 human body.
- 503 (b) "Tobacco paraphernalia" includes:
- 504 (i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without

- 505 screens, permanent screens, hashish heads, or punctured metal bowls;
- 506 (ii) water pipes;
- 507 (iii) carburetion tubes and devices;
- 508 (iv) smoking and carburetion masks;
- 509 (v) roach clips, meaning objects used to hold burning material, such as a cigarette,
- 510 that has become too small or too short to be held in the hand;
- 511 (vi) chamber pipes;
- 512 (vii) carburetor pipes;
- 513 (viii) electric pipes;
- 514 (ix) air-driven pipes;
- 515 (x) chillums;
- 516 (xi) bongs; and
- 517 (xii) ice pipes or chillers.

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

519 [~~20~~] (21) "Tobacco product" means:

- 520 (a) a cigar;
- 521 (b) a cigarette; or
- 522 (c) tobacco in any form, including:
- 523 (i) chewing tobacco; and
- 524 (ii) any substitute for tobacco, including flavoring or additives to tobacco.

525 [~~21~~] (22) "Tobacco retailer" means:

- 526 (a) a general tobacco retailer, as that term is defined in Section 26B-7-501; or
- 527 (b) a retail tobacco specialty business.

528 Section 6. Section **76-10-117** is enacted to read:

529 **76-10-117 . Illegal distribution of a non-nicotine inhalation product.**

- 530 (1) Terms defined in Sections 76-1-101.5 and 76-10-101 apply to this section.
- 531 (2) An actor commits illegal distribution of a non-nicotine inhalation product if the actor
- 532 gives, distributes, sells, offers for sale, or furnishes to any person a non-nicotine
- 533 inhalation product that is not listed on the registry described in Section 59-14-810.
- 534 (3) A violation of Subsection (2) is:
- 535 (a) a class C misdemeanor on the first offense; or
- 536 (b) a class B misdemeanor on a subsequent offense.

537 Section 7. **Effective Date.**

538 This bill takes effect on May 7, 2025.