

Non-nicotine Inhalation Product Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jason E. Thompson

Senate Sponsor: Brady Brammer

LONG TITLE

General Description:

This bill addresses non-nicotine inhalation products.

Highlighted Provisions:

This bill:

- requires a non-nicotine inhalation product and a non-nicotine inhalation substance to be registered;
- establishes civil penalties for selling an unregistered non-nicotine inhalation product or non-nicotine inhalation substance;
- creates the criminal offense of illegal distribution of a cannabinoid inhalation product or a cannabinoid inhalation substance;
- clarifies that a cannabinoid product does not include an electronic cigarette;
- defines terms;
- includes a clause coordinating this bill and H.B. 385, Specialized Product Sales Amendments; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

4-41-102, as last amended by Laws of Utah 2025, Chapter 114

4-41-402, as last amended by Laws of Utah 2023, Chapters 146, 327

28 **26B-7-501**, as last amended by Laws of Utah 2025, Chapter 173
 29 **26B-7-505**, as last amended by Laws of Utah 2025, Chapter 173
 30 **59-14-802**, as last amended by Laws of Utah 2020, Chapter 347
 31 **59-14-803**, as last amended by Laws of Utah 2020, Chapter 347
 32 **59-14-804**, as last amended by Laws of Utah 2023, Chapter 300
 33 **59-14-805**, as enacted by Laws of Utah 2020, Chapter 347
 34 **59-14-806**, as enacted by Laws of Utah 2020, Chapter 347
 35 **59-14-809**, as enacted by Laws of Utah 2023, Chapter 531 and last amended by
 36 Coordination Clause, Laws of Utah 2023, Chapter 531
 37 **59-14-810**, as last amended by Laws of Utah 2025, Chapter 173
 38 **76-9-1101**, as renumbered and amended by Laws of Utah 2025, Chapter 173

39 ENACTS:

40 **26B-7-523**, Utah Code Annotated 1953
 41 **76-9-1120**, Utah Code Annotated 1953

42 **Utah Code Sections affected by Coordination Clause:**

43 **4-45a-101**, as enacted by H.B. 385

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

46 Section 1. Section **4-41-102** is amended to read:

47 **4-41-102 . Definitions.**

48 As used in this chapter:

49 (1) "Adulterant" means any poisonous or deleterious substance in a quantity that may be
 50 injurious to human health, including:

- 51 (a) pesticides;
- 52 (b) heavy metals;
- 53 (c) solvents;
- 54 (d) microbial life;
- 55 (e) artificially derived cannabinoids;
- 56 (f) toxins; or
- 57 (g) foreign matter.

58 (2)(a) "Artificially derived cannabinoid" means a chemical substance that is created by a
 59 chemical reaction that changes the molecular structure of any chemical substances
 60 derived from the cannabis plant.

61 (b) "Artificially derived cannabinoid" does not include:

- 62 (i) a naturally occurring chemical substance that is separated from the cannabis plant
63 by a chemical or mechanical extraction process; or
64 (ii) cannabinoids that are produced by decarboxylation from a naturally occurring
65 cannabinoid acid without the use of a chemical catalyst.
- 66 (3) "Cannabidiol" or "CBD" means the cannabinoid identified as CAS# 13956-29-1.
- 67 (4) "Cannabidiolic acid" or "CBDA" means the cannabinoid identified as CAS# 1244-58-2.
- 68 (5) "Cannabinoid processor license" means a license that the department issues to a person
69 for the purpose of processing a cannabinoid product.
- 70 (6) "Cannabinoid product" means a product that:
- 71 (a) contains or is represented to contain one or more naturally occurring cannabinoids;
72 (b) contains less than the cannabinoid product THC level, by dry weight;
73 (c) contains a combined amount of total THC and any THC analog that does not exceed
74 10% of the total cannabinoid content;
75 (d) does not exceed a total of THC and any THC analog that is greater than:
76 (i) 5 milligrams per serving; and
77 (ii) 150 milligrams per package;~~and~~
78 (e) unless the product is in an oil based suspension, has a serving size that:
79 (i) is an integer; and
80 (ii) is a discrete unit of the cannabinoid product~~[-]~~ ;
81 (f) is not an electronic cigarette as that term is defined in Section 76-9-1101; and
82 (g) is not a cannabinoid substance that is intended for use in an electronic cigarette.
- 83 (7) "Cannabinoid product class" means a group of cannabinoid products that:
84 (a) have all ingredients in common; and
85 (b) are produced by or for the same company.
- 86 (8) "Cannabinoid product THC level" means a combined concentration of total THC and
87 any THC analog of less than 0.3% on a dry weight basis if laboratory testing confirms a
88 result within a measurement of uncertainty that includes the combined concentration of
89 0.3%.
- 90 (9) "Cannabis" means the same as that term is defined in Section 26B-4-201.
- 91 (10) "Delta-9-tetrahydrocannabinol" or "delta-9-THC" means the cannabinoid identified as
92 CAS# 1972-08-3, the primary psychotropic cannabinoid in cannabis.
- 93 (11) "Industrial hemp" means any part of a cannabis plant, whether growing or not, with a
94 concentration of less than 0.3% tetrahydrocannabinol by dry weight.
- 95 (12) "Industrial hemp producer registration" means a registration that the department issues

96 to a person for the purpose of processing industrial hemp or an industrial hemp product.

97 (13)(a) "Industrial hemp product" means a product made by processing industrial hemp
98 plants or industrial hemp parts.

99 (b) "Industrial hemp product" does not include cannabinoid material or a cannabinoid
100 product.

101 (14) "Industrial hemp retailer permit" means a permit that the department issues to a retailer
102 who sells any viable industrial hemp seed or cannabinoid product.

103 (15) "Key participant" means any of the following:

104 (a) a licensee;

105 (b) an operation manager;

106 (c) a site manager; or

107 (d) an employee who has access to any industrial hemp material with a THC
108 concentration above 0.3%.

109 (16) "Licensee" means a person possessing a cannabinoid processor license that the
110 department issues under this chapter.

111 (17) "Newly identified cannabinoid" means a cannabinoid that:

112 (a) is not expressly identified by chemical name or CAS number in this chapter; and

113 (b) is identified by the department under Section 4-41-405.

114 (18) "Non-compliant material" means:

115 (a) a hemp plant that does not comply with this chapter, including a cannabis plant with
116 a concentration of 0.3% tetrahydrocannabinol or greater by dry weight;

117 (b) a cannabinoid product, chemical, or compound with a concentration that exceeds the
118 cannabinoid product THC level; and

119 (c) a cannabinoid product containing any of the following:

120 (i) delta-9-tetrahydrocannabinol (THCP), the cannabinoid identified as CAS#
121 54763-99-4;

122 (ii) delta-8-tetrahydrocannabinol (THCP), the cannabinoid identified as CAS#
123 51768-60-6;

124 (iii) delta-9-tetrahydrocannabinol (THC) acetate, the cannabinoid identified as CAS#
125 23132-17-4;

126 (iv) delta-8-tetrahydrocannabinol (THC) acetate, the cannabinoid identified as CAS#
127 23050-54-6;

128 (v) 9(s)-hexahydrocannabinol (HHC), the cannabinoid identified as CAS#
129 36403-91-5; or

- 130 (vi) 9(r)-hexahydrocannabinol (HHC), the cannabinoid identified as CAS#
131 36403-90-4.
- 132 (19) "Permittee" means a person possessing a permit that the department issues under this
133 chapter.
- 134 (20) "Person" means:
- 135 (a) an individual, partnership, association, firm, trust, limited liability company, or
136 corporation; and
- 137 (b) an agent or employee of an individual, partnership, association, firm, trust, limited
138 liability company, or corporation.
- 139 (21) "Retailer permittee" means a person possessing an industrial hemp retailer permit that
140 the department issues under this chapter.
- 141 (22) "Tetrahydrocannabinol" or "THC" means a delta-9-tetrahydrocannabinol, the
142 cannabinoid identified as CAS# 1972-08-3.
- 143 (23)(a) "THC analog" means a substance that is structurally or pharmacologically
144 substantially similar to, or is represented as being similar to, delta-9-THC.
- 145 (b) "THC analog" does not include the following substances or the naturally occurring
146 acid forms of the following substances:
- 147 (i) cannabichromene (CBC), the cannabinoid identified as CAS# 20675-51-8;
- 148 (ii) cannabicyclol (CBL), the cannabinoid identified as CAS# 21366-63-2;
- 149 (iii) cannabidiol (CBD), the cannabinoid identified as CAS# 13956-29-1;
- 150 (iv) cannabidivanol (CBDV), the cannabinoid identified as CAS# 24274-48-4;
- 151 (v) cannabielsoin (CBE), the cannabinoid identified as CAS# 52025-76-0;
- 152 (vi) cannabigerol (CBG), the cannabinoid identified as CAS# 25654-31-3;
- 153 (vii) cannabigerovarin (CBGV), the cannabinoid identified as CAS# 55824-11-8;
- 154 (viii) cannabinol (CBN), the cannabinoid identified as CAS# 521-35-7;
- 155 (ix) cannabivarin (CBV), the cannabinoid identified as CAS# 33745-21-0; or
- 156 (x) delta-9-tetrahydrocannabivarin (THCV), the cannabinoid identified as CAS#
157 31262-37-0.
- 158 (24) "Total cannabidiol" or "total CBD" means the combined amounts of cannabidiol and
159 cannabidiolic acid, calculated as "total CBD = CBD + (CBDA x 0.877)".
- 160 (25) "Total tetrahydrocannabinol" or "total THC" means the sum of the determined
161 amounts of delta-9-THC, tetrahydrocannabinolic acid, calculated as "total THC =
162 delta-9-THC + (THCA x 0.877)".
- 163 (26) "Transportable industrial hemp concentrate" means any amount of a natural

- 164 cannabinoid in a purified state that:
- 165 (a) is the product of any chemical or physical process applied to naturally occurring
- 166 biomass that concentrates or isolates the cannabinoids contained in the biomass;
- 167 (b) is derived from a cannabis plant that, based on sampling that was collected no more
- 168 than 30 days before the day on which the cannabis plant was harvested, contains a
- 169 combined concentration of total THC and any THC analog of less than 0.3% on a dry
- 170 weight basis;
- 171 (c) has a THC and THC analog concentration total that is less than 20% when
- 172 concentrated from the cannabis plant to the purified state; and
- 173 (d) is intended to be processed into a cannabinoid product.

174 Section 2. Section **4-41-402** is amended to read:

175 **4-41-402 . Cannabinoid sales and use authorized.**

- 176 (1) The sale or use of a cannabinoid product is prohibited:
- 177 (a) except as provided in this chapter; or
- 178 (b) unless the United States Food and Drug Administration approves the product.
- 179 (2) The department shall keep a list of registered cannabinoid products that the department
- 180 has determined, in accordance with Section 4-41-403, are safe for human consumption.
- 181 (3)(a) A person may sell or use a cannabinoid product that is in the list of registered
- 182 cannabinoid products described in Subsection (2).
- 183 (b) An individual may use cannabidiol or a cannabidiol product that is not in the list of
- 184 registered cannabinoid products described in Subsection (2) if:
- 185 (i) the individual purchased the product outside the state; and
- 186 (ii) the product's contents do not violate Title 58, Chapter 37, Utah Controlled
- 187 Substances Act.
- 188 (4) Any marketing for a cannabinoid product shall include a notice to consumers that the
- 189 product is hemp or CBD and is not cannabis or medical cannabis, as those terms are
- 190 defined in Section 26B-4-201.

191 [~~(5) A cannabinoid product that is designed to be inhaled shall include a warning on the~~

192 ~~label regarding the possible health effects of inhaling cannabinoid products.]~~

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

194 **26B-7-501 . Definitions.**

195 As used in this part:

- 196 (1) "Community location" means the same as that term is defined:
- 197 (a) as it relates to a municipality, in Section 10-8-41.6; and

- 198 (b) as it relates to a county, in Section 17-50-333.
- 199 (2) "Electronic cigarette" means the same as that term is defined in Section 76-9-1101.
- 200 (3) "Electronic cigarette product" means the same as that term is defined in Section
201 76-9-1101.
- 202 (4) "Electronic cigarette substance" means the same as that term is defined in Section
203 76-9-1101.
- 204 (5) "Employee" means an employee of a tobacco retailer.
- 205 (6) "Enforcing agency" means the department, or any local health department enforcing the
206 provisions of this part.
- 207 (7) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco specialty
208 business.
- 209 (8) "Local health department" means the same as that term is defined in Section 26A-1-102.
- 210 (9) "Manufacture" includes:
- 211 (a) to cast, construct, or make electronic cigarettes; or
212 (b) to blend, make, process, or prepare an electronic cigarette substance.
- 213 (10) "Manufacturer sealed electronic cigarette product" means:
- 214 (a) an electronic cigarette substance or container that the electronic cigarette
215 manufacturer does not intend for a consumer to open or refill; or
- 216 (b) a prefilled electronic cigarette as that term is defined in Section 76-9-1101.
- 217 ~~[(10)]~~ (11) "Manufacturer sealed electronic cigarette substance" means an electronic
218 cigarette substance that is sold in a container that:
- 219 (a) is prefilled by the electronic cigarette substance manufacturer; and
220 (b) the electronic cigarette manufacturer does not intend for a consumer to open.
- 221 ~~[(11) "Manufacturer sealed electronic cigarette product" means:]~~
- 222 ~~[(a) an electronic cigarette substance or container that the electronic cigarette~~
223 ~~manufacturer does not intend for a consumer to open or refill; or]~~
- 224 ~~[(b) a prefilled electronic cigarette as that term is defined in Section 76-9-1101.]~~
- 225 (12) "Nicotine" means the same as that term is defined in Section 76-9-1101.
- 226 (13) "Nicotine product" means the same as that term is defined in Section 76-9-1101.
- 227 (14) "Non-nicotine inhalation product" means the same as that term is defined in Section
228 76-9-1101.
- 229 (15) "Non-nicotine inhalation substance" means the same as that term is defined in Section
230 76-9-1101.
- 231 ~~[(14)]~~ (16) "Non-tobacco shisha" means any product that:

- 232 (a) does not contain tobacco or nicotine; and
233 (b) is smoked or intended to be smoked in a hookah or water pipe.
- 234 ~~[(15)]~~ (17) "Owner" means a person holding a 20% ownership interest in the business that is
235 required to obtain a permit under this part.
- 236 ~~[(16)]~~ (18) "Permit" means a tobacco retail permit issued under Section 26B-7-507.
- 237 ~~[(17)]~~ (19) "Place of public access" means any enclosed indoor place of business,
238 commerce, banking, financial service, or other service-related activity, whether publicly
239 or privately owned and whether operated for profit or not, to which persons not
240 employed at the place of public access have general and regular access or which the
241 public uses, including:
- 242 (a) buildings, offices, shops, elevators, or restrooms;
 - 243 (b) means of transportation or common carrier waiting rooms;
 - 244 (c) restaurants, cafes, or cafeterias;
 - 245 (d) taverns as defined in Section 32B-1-102, or cabarets;
 - 246 (e) shopping malls, retail stores, grocery stores, or arcades;
 - 247 (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical sites,
248 auditoriums, or arenas;
 - 249 (g) barber shops, hair salons, or laundromats;
 - 250 (h) sports or fitness facilities;
 - 251 (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and
252 breakfast" lodging facilities, and other similar lodging facilities, including the
253 lobbies, hallways, elevators, restaurants, cafeterias, other designated dining areas, and
254 restrooms of any of these;
 - 255 (j)(i) any child care facility or program subject to licensure or certification under this
256 title, including those operated in private homes, when any child cared for under
257 that license is present; and
 - 258 (ii) any child care, other than child care as defined in Section 26B-2-401, that is not
259 subject to licensure or certification under this title, when any child cared for by the
260 provider, other than the child of the provider, is present;
 - 261 (k) public or private elementary or secondary school buildings and educational facilities
262 or the property on which those facilities are located;
 - 263 (l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or
264 religious organization when used solely by the organization members or the
265 members' guests or families;

266 (m) any facility rented or leased for private functions from which the general public is
267 excluded and arrangements for the function are under the control of the function
268 sponsor;

269 (n) any workplace that is not a place of public access or a publicly owned building or
270 office but has one or more employees who are not owner-operators of the business;

271 (o) any area where the proprietor or manager of the area has posted a conspicuous sign
272 stating "no smoking", "thank you for not smoking", or similar statement; and

273 (p) a holder of a bar establishment license, as defined in Section 32B-1-102.

274 [(18)] (20)(a) "Proof of age" means:

275 (i) a valid identification card issued under Title 53, Chapter 3, Part 8, Identification
276 Card Act;

277 (ii) a valid identification that:

278 (A) is substantially similar to an identification card issued under Title 53, Chapter
279 3, Part 8, Identification Card Act;

280 (B) is issued in accordance with the laws of a state other than Utah in which the
281 identification is issued;

282 (C) includes date of birth; and

283 (D) has a picture affixed;

284 (iii) a valid driver license certificate that is issued under Title 53, Chapter 3, Uniform
285 Driver License Act, or in accordance with the laws of the state in which the valid
286 driver license is issued;

287 (iv) a valid United States military identification card that:

288 (A) includes date of birth; and

289 (B) has a picture affixed; or

290 (v) a valid passport.

291 (b) "Proof of age" does not include a valid driving privilege card issued in accordance
292 with Section 53-3-207.

293 [(19)] (21) "Publicly owned building or office" means any enclosed indoor place or portion
294 of a place owned, leased, or rented by any state, county, or municipal government, or by
295 any agency supported by appropriation of, or by contracts or grants from, funds derived
296 from the collection of federal, state, county, or municipal taxes.

297 [(20)] (22) "Retail tobacco specialty business" means the same as that term is defined:

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

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

300 [(21)] (23) "Shisha" means any product that:

- 301 (a) contains tobacco or nicotine; and
 302 (b) is smoked or intended to be smoked in a hookah or water pipe.

303 [(22)] (24) "Smoking" means:

- 304 (a) the possession of any lighted or heated tobacco product in any form;
 305 (b) inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or
 306 hookah that contains:
 307 (i) tobacco or any plant product intended for inhalation;
 308 (ii) shisha or non-tobacco shisha;
 309 (iii) nicotine;
 310 (iv) a natural or synthetic tobacco substitute; or
 311 (v) a natural or synthetic flavored tobacco product;
 312 (c) using an electronic cigarette; or
 313 (d) using an oral smoking device intended to circumvent the prohibition of smoking in
 314 this part.

315 [(23)] (25) "Tax commission license" means a license issued by the State Tax Commission
 316 under:

- 317 (a) Section 59-14-201 to sell a cigarette at retail;
 318 (b) Section 59-14-301 to sell a tobacco product at retail; or
 319 (c) Section 59-14-803 to sell an electronic cigarette product or a nicotine product.

320 [(24)] (26) "Tobacco product" means:

- 321 (a) a tobacco product as defined in Section 76-9-1101; or
 322 (b) tobacco paraphernalia as defined in Section 76-9-1101.

323 [(25)] (27) "Tobacco retailer" means a person that is required to obtain a tax commission
 324 license.

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

326 **26B-7-505 . Electronic cigarette products -- Labeling -- Requirements to sell --**
 327 **Advertising -- Labeling of nicotine products containing nicotine.**

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

- 332 (a) labeling;
 333 (b) nicotine content;

- 334 (c) packaging; and
335 (d) product quality.
- 336 (2) On or before January 1, 2021, the department shall, in consultation with a local health
337 department and with input from members of the public, establish by rule made in
338 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
339 requirements to sell a manufacturer sealed electronic cigarette product regarding:
- 340 (a) labeling;
341 (b) nicotine content;
342 (c) packaging; and
343 (d) product quality.
- 344 (3)(a) A person may not sell an electronic cigarette substance unless the electronic
345 cigarette substance complies with the requirements established by the department
346 under Subsection (1).
- 347 (b) Beginning on July 1, 2021, a person may not sell a manufacturer sealed electronic
348 cigarette product unless the manufacturer sealed electronic cigarette product complies
349 with the requirements established by the department under Subsection (2).
- 350 (c) Notwithstanding Subsections (3)(a) and (3)(b), beginning on January 1, 2025, a
351 person may not sell an electronic cigarette product that is not [~~a premarket authorized~~
352 ~~or pending electronic cigarette product as that term is defined in Section 76-9-1101.~~]
353 on the electronic cigarette product registry created in Section 59-14-810.
- 354 (4)(a) A local health department may not enact a rule or regulation regarding electronic
355 cigarette substance labeling, nicotine content, packaging, or product quality that is
356 not identical to the requirements established by the department under Subsections (1)
357 and (2).
- 358 (b) Except as provided in Subsection (4)(c), a local health department may enact a rule
359 or regulation regarding electronic cigarette substance manufacturing.
- 360 (c) A local health department may not enact a rule or regulation regarding a
361 manufacturer sealed electronic cigarette product.
- 362 (5) A person may not advertise an electronic cigarette product as a tobacco cessation device.
- 363 (6)(a) Any nicotine product shall contain the statement described in Subsection (6)(b) if
364 the nicotine product:
- 365 (i)(A) is not a tobacco product as defined in 21 U.S.C. Sec. 321 and related federal
366 regulations; or
367 (B) is not otherwise required under federal or state law to contain a nicotine

368 warning; and

369 (ii) contains nicotine.

370 (b) A statement shall appear on the exterior packaging of a nicotine product described in
371 Subsection (6)(a) as follows:

372 "This product contains nicotine."

373 Section 5. Section **26B-7-523** is enacted to read:

374 **26B-7-523 . Non-nicotine inhalation product -- Penalty.**

375 (1) A person may not sell a non-nicotine inhalation product or a non-nicotine inhalation
376 substance unless the product is contained in the registry described in Section 59-14-810.

377 (2) The department, a local health department, and the Department of Agriculture and Food
378 shall enforce this section under the procedures of Title 63G, Chapter 4, Administrative
379 Procedures Act, as an informal adjudicative proceeding, including:

380 (a) notifying a retailer of alleged violations;

381 (b) conducting hearings;

382 (c) determining violations; and

383 (d) imposing civil administrative penalties.

384 (3) If a violation is found in an investigation by an enforcing agency or law enforcement,
385 the enforcing agency shall:

386 (a) on a first violation, impose a penalty of \$1,500;

387 (b) on a second violation, impose a penalty of \$5,000; and

388 (c)(i) on a third violation, impose a penalty of \$6,000; and

389 (ii) revoke the permit of the retailer.

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

392 (i) a retailer for whom a permit is revoked under Subsection (3); or

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

396 (b) A person whose permit is revoked under this section may not apply for a new permit
397 for a period of 24 months after the day on which an enforcing agency revokes the
398 permit.

399 (5) Violations of this section shall stay on the record for the retailer unless:

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

401 (b) the new proprietor provides documentation to the local health department that the

402 new proprietor is acquiring the tobacco retailer in an arm's length transaction from
403 the previous proprietor.

404 (6) At a civil hearing for enforcement under Subsection (2) or (3), evidence of the final
405 criminal conviction of a person for violating Section 76-9-1115 is prima facie evidence
406 of a violation of this section.

407 Section 6. Section **59-14-802** is amended to read:

408 **59-14-802 . Definitions.**

409 As used in this part:

410 (1) "Licensee" means a person that holds a valid license to sell an electronic cigarette
411 product or a nicotine product.

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

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

418 (i) whether the electronic cigarette substance, prefilled electronic cigarette,
419 alternative nicotine product, nontherapeutic nicotine device substance, or prefilled
420 nontherapeutic nicotine device is shipped f.o.b. origin or f.o.b. destination; or

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

422 (3) "Non-nicotine inhalation product" means the same as that term is defined in Section
423 76-9-1101.

424 (4) "Non-nicotine inhalation substance" means the same as that term is defined in Section
425 76-9-1101.

426 (5) "Premarket authorized or pending electronic cigarette product" means the same as that
427 term is defined in Section 76-9-1101.

428 Section 7. Section **59-14-803** is amended to read:

429 **59-14-803 . License to sell electronic cigarette product or nicotine product.**

430 (1) A person may not sell, offer to sell, or distribute an electronic cigarette product or a
431 nicotine product in this state without first:

432 (a) except as provided in Subsection (2), obtaining a license from the commission under
433 this section to sell an electronic cigarette product or a nicotine product; and

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

435 (2) A person that holds a valid license to sell cigarettes under Section 59-14-201 or a person

- 436 that holds a valid license to sell tobacco products under Section 59-14-301 may, without
437 obtaining a separate license in accordance with this section, sell, offer to sell, or
438 distribute an electronic cigarette product or a nicotine product in this state.
- 439 (3) The commission shall issue a license to sell an electronic cigarette product or a nicotine
440 product to a person that submits an application, on a form created by the commission,
441 that includes:
- 442 (a) the person's name;
 - 443 (b) the address of the facility where the person will sell an electronic cigarette product or
444 a nicotine product; and
 - 445 (c) any other information the commission requires to implement this chapter.
- 446 (4) A license described in Subsection (3) is:
- 447 (a) valid only at one fixed business address;
 - 448 (b) valid for three years;
 - 449 (c) valid only for a physical location; and
 - 450 (d) renewable if a licensee meets the criteria for licensing described in Subsection (3).
- 451 (5)(a) The commission shall require a manufacturer, jobber, distributor, wholesaler, or
452 retailer that is responsible under this part for the collection of tax on an electronic
453 cigarette [~~substance, a prefilled electronic cigarette~~] product, an alternative nicotine
454 product, or a nontherapeutic nicotine [~~device substance, or a prefilled nontherapeutic~~
455 ~~nicotine device~~] product to post a bond.
- 456 (b) The manufacturer, jobber, distributor, wholesaler, or retailer may post the bond
457 required by Subsection (5)(a) in combination with any bond required by Section
458 59-14-201 or 59-14-301.
 - 459 (c) Subject to Subsection (5)(d), the commission shall determine the form and amount of
460 the bond.
 - 461 (d) The minimum amount of the bond shall be:
 - 462 (i) except as provided in Subsection (5)(d)(ii) or (iii), \$500;
 - 463 (ii) if the manufacturer, jobber, distributor, wholesaler, or retailer posts the bond
464 required by Subsection (5)(a) in combination with a bond required by either
465 Section 59-14-201 or 59-14-301, \$1,000; or
 - 466 (iii) if the manufacturer, jobber, distributor, wholesaler, or retailer posts the bond
467 required by Subsection (5)(a) in combination with a bond required by both
468 Sections 59-14-201 and 59-14-301, \$1,500.
- 469 (6) The commission may make rules in accordance with Title 63G, Chapter 3, Utah

470 Administrative Rulemaking Act, to establish the additional information described in
471 Subsection (3)(c) that a person shall provide in the application described in Subsection
472 (3).

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

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

475 Section 8. Section **59-14-804** is amended to read:

476 **59-14-804 . Taxation of electronic cigarette product, alternative nicotine product,**
477 **nontherapeutic nicotine product.**

478 (1) A tax is imposed upon:

479 (a) an electronic cigarette product;

480 (b) a nontherapeutic nicotine product; and

481 (c) an alternative nicotine product.

482 [~~(a) Beginning on July 1, 2020, a tax is imposed upon the following:]~~

483 [~~(i) an electronic cigarette substance; and]~~

484 [~~(ii) a prefilled electronic cigarette.]~~

485 [~~(b) Beginning on July 1, 2021, a tax is imposed upon the following:]~~

486 [~~(i) a nontherapeutic nicotine device substance; and]~~

487 [~~(ii) a prefilled nontherapeutic nicotine device.]~~

488 [~~(c) Beginning on July 1, 2021, a tax is imposed upon an alternative nicotine product.]~~

489 (2)(a) The amount of tax imposed under Subsections (1)(a) and (b) is .56 multiplied by
490 the manufacturer's sales price.

491 (b)(i) The tax under Subsection (1)(c) on an alternative nicotine product is imposed:

492 (A) at a rate of \$1.83 per ounce; and

493 (B) on the basis of the net weight of the alternative nicotine product as listed by
494 the manufacturer.

495 (ii) If the net weight of the alternative nicotine product is in a quantity that is a
496 fractional part of one ounce, a proportionate amount of the tax described in
497 Subsection (2)(b)(i)(A) is imposed:

498 (A) on that fractional part of one ounce; and

499 (B) in accordance with rules made by the commission in accordance with Title
500 63G, Chapter 3, Utah Administrative Rulemaking Act.

501 (3) If a product is sold in the same package as a product that is taxed under Subsection (1),
502 the tax described in Subsection (2) shall apply to the wholesale manufacturer's sale price
503 of the entire packaged product.

504 (4)(a) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user shall
 505 pay the tax levied under Subsection (1) at the time that an electronic cigarette [
 506 ~~substance, a prefilled electronic cigarette~~] product, an alternative nicotine product, or
 507 a nontherapeutic nicotine [~~device substance, or a prefilled nontherapeutic nicotine~~
 508 ~~device~~] product is first received in the state.

509 (b) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user may not
 510 resell an electronic cigarette [~~substance, a prefilled electronic cigarette~~] product, an
 511 alternative nicotine product, or a nontherapeutic nicotine [~~device substance, or a~~
 512 ~~prefilled nontherapeutic nicotine device~~] product to another distributor, another
 513 retailer, or a consumer before paying the tax levied under Subsection (1).

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

516 (b) The commission shall deposit revenues generated by the tax imposed by this section
 517 into the Electronic Cigarette Substance and Nicotine Product Proceeds Restricted
 518 Account created in Section 59-14-807.

519 Section 9. Section **59-14-805** is amended to read:

520 **59-14-805 . Remittance of tax -- Returns -- Invoice required -- Filing**
 521 **requirement-- Exception -- Penalty -- Overpayment.**

522 (1)(a) The manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user that
 523 collects the tax imposed on an electronic cigarette [~~substance, a prefilled electronic~~
 524 ~~cigarette~~] product, an alternative nicotine product, or a nontherapeutic nicotine [
 525 ~~device substance, or a prefilled nontherapeutic nicotine device~~] product shall remit to
 526 the commission, in an electronic format approved by the commission:

- 527 (i) the tax collected in the previous calendar quarter; and
- 528 (ii) the quarterly tax return.

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

531 (2)(a) A manufacturer, jobber, distributor, wholesaler, retailer, or any other person
 532 selling an electronic cigarette [~~substance, a prefilled electronic cigarette~~] product, an
 533 alternative nicotine product, or a nontherapeutic nicotine [~~device substance, or a~~
 534 ~~prefilled nontherapeutic nicotine device~~] product to a person other than the ultimate
 535 consumer shall furnish the purchaser with an itemized invoice showing:

- 536 (i) the seller's name and address;
- 537 (ii) the name and address of the purchaser;

- 538 (iii) the date of sale;
- 539 (iv) the name and price of the product; and
- 540 (v) the discount, if any.
- 541 (b) The invoice shall show whether the price includes the tax.
- 542 (c) The seller and the purchaser shall retain copies of the invoice and make the invoice
- 543 available for inspection at the request of the commission or the commission's agent
- 544 for a period of three years following the sale.
- 545 (3)(a) A consumer that purchases an untaxed electronic cigarette [~~substance, prefilled~~
- 546 ~~electronic cigarette~~] product, alternative nicotine product, or a nontherapeutic nicotine [~~device substance, or prefilled nontherapeutic nicotine device~~] product for use or other
- 547 consumption shall:
- 548
- 549 (i) file with the commission, on forms prescribed by the commission, a statement
- 550 showing the quantity and description of the item subject to tax under this part; and
- 551 (ii) pay the tax imposed by this part on that item.
- 552 (b) The consumer shall file the statement described in Subsection (3)(a)(i) and pay the
- 553 tax due on or before the last day of the month immediately following the month
- 554 during which the consumer purchased an untaxed electronic cigarette [~~substance,~~
- 555 ~~prefilled electronic cigarette~~] product, alternative nicotine [~~device substance~~] product,
- 556 or a nontherapeutic nicotine product [~~, or prefilled nontherapeutic nicotine device~~].
- 557 (c) A consumer shall maintain records necessary to determine the amount of tax the
- 558 consumer is liable to pay under this part for a period of three years following the date
- 559 on which the statement required by this section was filed.
- 560 (4) A tourist who imports an untaxed electronic cigarette [~~substance, a prefilled electronic~~
- 561 ~~cigarette~~] product, an alternative nicotine product, or a nontherapeutic nicotine [~~device~~
- 562 ~~substance, or a prefilled nontherapeutic nicotine device~~] product into the state does not
- 563 need to file the statement described in Subsection (3) or pay the tax if the item is for the
- 564 tourist's own use or consumption while in this state.
- 565 (5) In addition to the tax required by this part, a person shall pay a penalty as provided in
- 566 Section 59-1-401, plus interest at the rate and in the manner prescribed in Section
- 567 59-1-402, if a person subject to this section fails to:
- 568 (a) pay the tax prescribed by this part;
- 569 (b) pay the tax on time; or
- 570 (c) file a return required by this part.
- 571 (6) An overpayment of a tax imposed by this part shall accrue interest at the rate and in the

572 manner prescribed in Section 59-1-402.

573 Section 10. Section **59-14-806** is amended to read:

574 **59-14-806 . Refund of taxes paid -- Exemption for exported electronic cigarettes**
 575 **and nicotine products.**

576 (1) When an electronic cigarette [~~substance, a prefilled electronic cigarette~~] product, an
 577 alternative nicotine product, or a nontherapeutic nicotine [~~device substance, or a~~
 578 ~~prefilled nontherapeutic nicotine device~~] product taxed under this chapter is sold and
 579 shipped to a regular dealer in those articles in another state, the seller in this state shall
 580 be entitled to a refund of the actual amount of the taxes paid, upon condition that the
 581 seller in this state:

582 (a) is a licensed dealer;

583 (b) signs an affidavit that the electronic cigarette [~~substance, the prefilled electronic~~
 584 ~~cigarette~~] product, the alternative nicotine product, or the nontherapeutic nicotine [~~device substance, or the prefilled nontherapeutic nicotine device~~] product was sold
 585 and shipped to a regular dealer in those articles in another state;

586 (c) furnishes, from the purchaser, a written acknowledgment that the purchaser has
 587 received the electronic cigarette [~~substance, the prefilled electronic cigarette~~] product,
 588 the alternative nicotine product, or the nontherapeutic nicotine [~~device substance, or~~
 589 ~~the prefilled nontherapeutic nicotine device~~] product; and

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

591 (2) A wholesaler or distributor in this state that exports an electronic cigarette [~~substance, a~~
 592 ~~prefilled electronic cigarette~~] product, an alternative nicotine product, or a nontherapeutic
 593 nicotine [~~device substance, or a prefilled nontherapeutic nicotine device~~] product to a
 594 regular dealer in those articles in another state shall be exempt from the payment of any
 595 tax under this chapter upon furnishing proof of the sale and exportation as the
 596 commission may require.

597 Section 11. Section **59-14-809** is amended to read:

598 **59-14-809 . Commission study on enforcement and collection of tax.**

599 (1) The commission shall:

600 (a) implement increased enforcement of the tax imposed by this part; and

601 (b) study issues related to increased enforcement and compliance with the requirements
 602 of this part.

603 (2) The study shall include a review of:

604 (a) the impact of increased enforcement on collections of the tax imposed by this part;

605

- 606 (b) options for long-term funding of increased enforcement of the tax imposed by this
607 part;
- 608 (c) the sufficiency of collections of the tax imposed by this part to fund distributions
609 from the Electronic Cigarette Substance and Nicotine Product Proceeds Restricted
610 Account under Section 59-14-807;
- 611 (d) impacts of a lack of federal regulation of electronic cigarettes on enforcement and
612 compliance efforts; and
- 613 (e) potential impacts on compliance of changing the incidence of taxation to a tax
614 imposed on the retail sale of an electronic cigarette [~~substance or prefilled electronic~~
615 ~~cigarette~~] product.
- 616 (3) The commission shall annually report the commission's findings and recommendations
617 on the study items described in Subsections (2)(a) through ~~[(d)]~~ (e) to the Revenue and
618 Taxation Interim Committee on or before the September interim meeting.
- 619 ~~[(4) The commission shall report the commission's findings and recommendations on the~~
620 ~~study item described in Subsection (2)(e) to the Revenue and Taxation Interim~~
621 ~~Committee on or before the September 2023 interim meeting.]~~

622 Section 12. Section **59-14-810** is amended to read:

623 **59-14-810 . Electronic cigarette product registry.**

- 624 (1) Beginning on August 1, 2024, every manufacturer of an electronic cigarette product that
625 is sold in this state, whether directly or through a distributor, wholesaler, retailer, or
626 similar intermediary or intermediaries, shall certify under penalty of perjury on a form
627 and in the manner prescribed by the commission, that~~[-]~~ the manufacturer agrees to
628 comply with this section and:
- 629 ~~[(a) the manufacturer agrees to comply with this section; and]~~
- 630 ~~[(b) the electronic cigarette product is a premarket authorized or pending electronic~~
631 ~~cigarette product as defined in Section 76-9-1101 and will not be illegal to be sold in~~
632 ~~the state as of January 1, 2025.]~~
- 633 (a) for an electronic cigarette product that contains nicotine, that the product is a
634 premarket authorized or pending electronic cigarette product;
- 635 (b) for an electronic cigarette product that is a non-nicotine inhalation product, that the
636 product is approved for sale in interstate commerce by the United States Food and
637 Drug Administration; or
- 638 (c) for an electronic cigarette product that is a non-nicotine inhalation substance, that the
639 product is a premarket authorized or pending electronic cigarette product.

- 640 (2) When submitting the certification a manufacturer shall submit a form that separately
641 lists each electronic cigarette product that is sold in this state.
- 642 (3)(a) Each certification form shall include:
- 643 (i) the name of the electronic cigarette product, nicotine content level by percentage,
644 and any flavors contained in the product;
- 645 (ii) for an electronic cigarette product that contains nicotine:
- 646 (A) a copy of the order granting a premarket tobacco product application of the
647 electronic cigarette product by the United States Food and Drug
648 Administration under 21 U.S.C. Sec. 387j(c)(1)(A)(i); or
- 649 (B) evidence that the premarket tobacco product application for the electronic
650 cigarette product or nicotine product was submitted to the United States Food
651 and Drug Administration before September 9, 2020, and a final authorization
652 or order has not yet taken effect;
- 653 (iii) for an electronic cigarette product that is a non-nicotine inhalation product,
654 evidence that the product is approved for sale in interstate commerce by the
655 United States Food and Drug Administration;
- 656 (iv) for an electronic cigarette product that is a non-nicotine inhalation substance:
- 657 (A) a copy of the order granting a premarket tobacco product application of the
658 electronic cigarette product by the United States Food and Drug
659 Administration under 21 U.S.C. Sec. 387j(c)(1)(A)(i); or
- 660 (B) evidence that the premarket tobacco product application for the electronic
661 cigarette product was submitted to the United States Food and Drug
662 Administration before September 9, 2020, and a final authorization or order
663 has not yet taken effect;
- 664 [(iii)] (v) a nonrefundable \$1,000 fee for an electronic cigarette product that is being
665 added to the registry in the first instance; and
- 666 [(iv)] (vi) information described in Subsection (10) if applicable.
- 667 (b) The commission shall make the materials submitted under Subsection (3)(a)
668 available to the Department of Health and Human Services for review and approval.
- 669 (c) A manufacturer required to submit a certification form under this section shall notify
670 the commission and the Department of Health and Human Services in a manner
671 prescribed by the commission within 30 days of any material change making the
672 certification form no longer accurate, including:
- 673 (i) the issuance or denial of a marketing authorization or other order by the United

- 674 States Food and Drug Administration under 21 U.S.C. Sec. 387j; or
- 675 (ii) any other order or action by the United States Food and Drug Administration or
- 676 any court that affects the ability of the electronic cigarette product to be
- 677 introduced or delivered into interstate commerce for commercial distribution in
- 678 the United States.
- 679 (d) On or before January 31 of each year and in a manner prescribed by the commission,
- 680 a manufacturer shall:
- 681 (i) recertify that the information contained in the certification is correct and accurate;
- 682 (ii) correct or amend information if necessary; and
- 683 (iii) pay a \$250 nonrefundable fee for each electronic cigarette product on the registry
- 684 that is manufactured by the manufacturer.
- 685 (e) A manufacturer may amend a certification, including to add additional electronic
- 686 cigarette products to the registry, if all requirements of this section are met.
- 687 (f) The commission shall:
- 688 (i) provide an electronic notification to a manufacturer that has not submitted a
- 689 recertification under Subsection (3)(d); and
- 690 (ii) remove a manufacturer or an electronic cigarette product that is not recertified
- 691 from the registry by March 15.
- 692 (4)(a) The Department of Health and Human Services shall review materials described
- 693 in Subsection (3)(a) and notify the commission regarding whether an electronic
- 694 cigarette product should be included in the registry.
- 695 (b) On or before October 1, 2024, the commission shall make publicly available on the
- 696 commission's website a registry that lists each electronic cigarette product
- 697 manufacturer and each electronic cigarette product for which certification forms have
- 698 been approved by the Department of Health and Human Services.
- 699 (c) An electronic cigarette product may not be listed on the registry unless the
- 700 Department of Health and Human Services determines the requirements of
- 701 Subsection (3)(a) are met.
- 702 (d) An electronic cigarette product that contains a cannabinoid may not be listed on the
- 703 registry.
- 704 (5)(a) If the Department of Health and Human Services obtains information that an
- 705 electronic cigarette product should not be listed in the registry, the Department of
- 706 Health and Human Services shall provide the manufacturer notice and an opportunity
- 707 to cure deficiencies before notifying the commission to remove the manufacturer or

- 708 products from the registry.
- 709 (b) Except as provided in Subsection (5)(c), the Department of Health and Human
710 Services shall comply with Title 63G, Chapter 4, Administrative Procedures Act,
711 before notifying the commission to remove an electronic cigarette product or
712 manufacturer from the registry.
- 713 (c) Subsection (5)(b) does not apply to a manufacturer failing:
714 (i) to decertify an electronic cigarette product;
715 (ii) to provide fees and documentation described in Subsection (3)(a) or (3)(d); or
716 (iii) to comply with Subsection (10).
- 717 (6)(a) If a product is removed from the registry, each retailer, distributor, and wholesaler
718 shall have 30 days from the day on which the product is removed from the registry to
719 remove the product from any inventory and return the product to the manufacturer for
720 disposal.
- 721 (b) After the period described in Subsection (6)(a), any electronic cigarette product of a
722 manufacturer identified in the notice of removal are contraband and are subject to
723 penalties under Subsection (8) and seizure, forfeiture, and destruction under Section
724 26A-1-131.
- 725 (7)(a) Beginning on January 1, 2025, a person may not sell or offer for retail sale an
726 electronic cigarette product in this state that is not included in the registry.
- 727 (b) A manufacturer may not sell, either directly or through a distributor, wholesaler,
728 retailer, or similar intermediary or intermediaries, an electronic cigarette product in
729 this state that is not included in the registry.
- 730 (8)(a) A wholesaler, distributor, or retailer who sells or offers for retail sale an electronic
731 cigarette product in this state that is not included in the registry shall be subject to a
732 civil penalty of:
733 (i) \$1,000 for each product offered for sale in violation of this section; and
734 (ii) \$100 per day until the offending product is removed from the market or until the
735 offending product is properly listed on the registry.
- 736 (b) The commission shall suspend the person's license issued under Section 59-14-803
737 for a violation of Subsection (8)(a) as follows:
738 (i) for a second violation within a 12-month period, at least 14 days;
739 (ii) for a third violation within a 12-month period, at least 60 days; or
740 (iii) for a fourth violation within a 12-month period, at least one year.
- 741 (c) A manufacturer whose electronic cigarette products are not listed in the registry and

- 742 are sold in this state, whether directly or through a distributor, wholesaler, retailer, or
743 similar intermediary or intermediaries, is subject to a civil penalty of:
- 744 (i) \$1,000 for each product offered for retail sale in violation of this section; and
745 (ii) \$100 per day until the offending product is removed from the market or until the
746 offending product is properly listed on the registry.
- 747 (d) A manufacturer that falsely represents any information required by a certification
748 form described in this section shall be guilty of a class C misdemeanor for each false
749 representation.
- 750 (e) A repeated violation of this section shall constitute a deceptive act or practice as
751 provided in Sections 13-11-4 and 13-11a-3 and shall be subject to any remedies or
752 penalties available for a violation of those sections.
- 753 (9)(a) To assist in ensuring compliance and enforcement of this section and Section
754 26A-1-131, the commission shall disclose to the following entities, upon request, any
755 information obtained under this section:
- 756 (i) the Department of Health and Human Services;
757 (ii) a local health department; or
758 (iii) the attorney general.
- 759 (b) The commission and attorney general shall share with each other information
760 received under this section, or corresponding laws of other states.
- 761 (10)(a)[(†)] The commission may not list a nonresident manufacturer of an electronic
762 cigarette product in the registry unless:
- 763 [~~(A)~~] (i) the nonresident manufacturer has registered to do business in the state as a
764 foreign corporation or business entity; or
- 765 [~~(B)~~] (ii) the nonresident manufacturer appoints and maintains without interruption
766 the services of an agent in this state to receive any service of process on behalf of
767 the manufacturer.
- 768 (b) The nonresident manufacturer shall provide the name, address, and telephone
769 number of the agent to the commission.
- 770 (c)(i) A nonresident manufacturer shall provide notice to the commission 30 days
771 before the termination of the authority of an agent and shall further provide proof
772 to the satisfaction of the commission of the appointment of a new agent no less
773 than five calendar days prior to the termination of an existing agent appointment.
- 774 (ii) In the event an agent terminates an agency appointment, the manufacturer shall
775 notify the commission of the termination within five calendar days and shall

776 include proof to the satisfaction of the commission of the appointment of a new
777 agent.

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

- 781 (a) the status of the registry;
- 782 (b) manufacturers and products included in the registry;
- 783 (c) revenue and expenditures related to administration of this section; and
- 784 (d) enforcement activities undertaken under this section and Section 26A-1-131.

785 (12) All fees and penalties collected under this section shall be used for administration and
786 enforcement of this section and Section 26A-1-131.

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

790 Section 13. Section **76-9-1101** is amended to read:

791 **76-9-1101 . Definitions.**

792 As used in this part:

- 793 (1)(a) "Alternative nicotine product" means a product, other than a cigarette, a
794 counterfeit cigarette, an electronic cigarette product, a nontherapeutic nicotine
795 product, or a tobacco product, that:
 - 796 (i) contains nicotine;
 - 797 (ii) is intended for human consumption;
 - 798 (iii) is not purchased with a prescription from a licensed physician; and
 - 799 (iv) is not approved by the United States Food and Drug Administration as nicotine
800 replacement therapy.
- 801 (b) "Alternative nicotine product" includes:
 - 802 (i) pure nicotine;
 - 803 (ii) snortable nicotine;
 - 804 (iii) dissolvable salts, orbs, pellets, sticks, or strips; and
 - 805 (iv) nicotine-laced food and beverage.
- 806 (c) "Alternative nicotine product" does not include a fruit, a vegetable, or a tea that
807 contains naturally occurring nicotine.
- 808 (2) "Cigar" means a product that contains nicotine, is intended to be burned under ordinary
809 conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in any

- 810 substance containing tobacco, other than any roll of tobacco that is a cigarette.
- 811 (3) "Cigarette" means a product that contains nicotine, is intended to be heated or burned
812 under ordinary conditions of use, and consists of:
- 813 (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or
814 (b) any roll of tobacco wrapped in any substance containing tobacco which, because of
815 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is
816 likely to be offered to, or purchased by, consumers as a cigarette described in
817 Subsection [~~(3)(a)~~] (4)(a).
- 818 (4)(a) "Electronic cigarette" means:
- 819 (i) an electronic oral device:
- 820 (A) that provides an aerosol or a vapor of nicotine or other substance; and
821 (B) that simulates smoking through the use or inhalation of the device;
- 822 (ii) a component of the device described in Subsection (4)(a)(i); or
823 (iii) an accessory sold in the same package as the device described in Subsection
824 (4)(a)(i).
- 825 (b) "Electronic cigarette" includes an oral device that is:
- 826 (i) composed of a heating element, battery, or electronic circuit; and
827 (ii) marketed, manufactured, distributed, or sold as:
- 828 (A) an e-cigarette;
829 (B) an e-cigar;
830 (C) an e-pipe; or
831 (D) any other product name or descriptor, if the function of the product meets the
832 definition of Subsection (4)(a).
- 833 (c) "Electronic cigarette" does not mean a medical cannabis device, as that term is
834 defined in Section 26B-4-201.
- 835 (5)(a) "Electronic cigarette product" means an electronic cigarette, an electronic
836 cigarette substance, or a prefilled electronic cigarette.
- 837 (b) "Electronic cigarette product" includes a non-nicotine inhalation product and a
838 non-nicotine inhalation substance.
- 839 (6) "Electronic cigarette substance" means any substance~~[-, including liquid containing~~
840 ~~nicotine,]~~ containing nicotine that is used or intended for use in an electronic cigarette.
- 841 (7)(a) "Flavored electronic cigarette product" means an electronic cigarette product that
842 has a taste or smell that is distinguishable by an ordinary consumer either before or
843 during use or consumption of the electronic cigarette product.

- 844 (b) "Flavored electronic cigarette product" includes an electronic cigarette product that is
845 labeled as, or has a taste or smell of any fruit, chocolate, vanilla, honey, candy,
846 cocoa, dessert, alcoholic beverage, herb, spice, or mint.
- 847 (c) "Flavored electronic cigarette product" does not include an electronic cigarette
848 product that has a taste or smell of only tobacco or menthol.
- 849 (8) "Nicotine" means:
- 850 (a) [-]a poisonous, nitrogen containing chemical that is made synthetically or derived
851 from tobacco or other plants[-]; or
- 852 (b) a nicotine analog.
- 853 (9) "Nicotine product" means an alternative nicotine product or a nontherapeutic nicotine
854 product.
- 855 (10)(a) "Non-nicotine inhalation product" means a product that:
- 856 (i) is a manufacturer sealed prefilled electronic cigarette that the manufacturer does
857 not intend for a consumer to open;
- 858 (ii) contains a substance other than nicotine;
- 859 (iii) is designed specifically to be used with an electronic cigarette to produce an
860 aerosol or vapor of the substance described in Subsection (10)(a)(ii);
- 861 (iv) does not contain a cannabinoid; and
- 862 (v) does not contain nicotine.
- 863 (b) "Non-nicotine inhalation product" includes a product that contains a vitamin,
864 mineral, dietary supplement, or an alkaloid.
- 865 (c) "Non-nicotine inhalation product" does not include:
- 866 (i) a product that the manufacturer did not design to be placed directly on an
867 individual's mouth to simulate smoking; or
- 868 (ii) a medical cannabis device, as that term is defined in Section 26B-4-201.
- 869 (11) "Non-nicotine inhalation substance" means any substance not containing nicotine or a
870 cannabinoid that is used or intended for use in an electronic cigarette.
- 871 ~~(10)~~ (12)(a) "Nontherapeutic nicotine device" means a device that:
- 872 (i) has a pressurized canister that is used to administer nicotine to the user through
873 inhalation or intranasally;
- 874 (ii) is not purchased with a prescription from a licensed physician; and
- 875 (iii) is not approved by the United States Food and Drug Administration as nicotine
876 replacement therapy.
- 877 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or a

878 nontherapeutic nicotine nasal spray.

879 [(11)] (13) "Nontherapeutic nicotine device substance" means a substance that:

880 (a) contains nicotine;

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

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

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

885 [(12)] (14) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device, a
886 nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device.

887 [(13)] (15) "Place of business" includes:

888 (a) a shop;

889 (b) a store;

890 (c) a factory;

891 (d) a public garage;

892 (e) an office;

893 (f) a theater;

894 (g) a recreation hall;

895 (h) a dance hall;

896 (i) a poolroom;

897 (j) a cafe;

898 (k) a cafeteria;

899 (l) a cabaret;

900 (m) a restaurant;

901 (n) a hotel;

902 (o) a lodging house;

903 (p) a streetcar;

904 (q) a bus;

905 (r) an interurban or railway passenger coach;

906 (s) a waiting room; and

907 (t) any other place of business.

908 [(14)] (16) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled
909 with an electronic cigarette substance.

910 [(15)] (17) "Prefilled nontherapeutic nicotine device" means a nontherapeutic nicotine
911 device that is sold prefilled with a nontherapeutic nicotine device substance.

- 912 ~~[(16)]~~ (18) "Premarket authorized or pending electronic cigarette product" means an
913 electronic cigarette product that:
- 914 (a)(i) has been approved by an order granting a premarket tobacco product
915 application of the electronic cigarette product by the United States Food and Drug
916 Administration under 21 U.S.C. Sec. 387j(c)(1)(A)(i); or
917 (ii)(A) was marketed in the United States on or before August 8, 2016;
918 (B) the manufacturer submitted a premarket tobacco product application for the
919 electronic cigarette product to the United States Food and Drug Administration
920 under 21 U.S.C. Sec. 387j on or before September 9, 2020; and
921 (C) has an application described in Subsection ~~[(16)(a)(ii)]~~ (18)(a)(ii) that either
922 remains under review by the United States Food and Drug Administration or a
923 final decision on the application has not taken effect; and
- 924 (b) does not exceed:
- 925 (i) 4.0% nicotine by weight per container; or
926 (ii) a nicotine concentration of 40 milligrams per milliliter.
- 927 ~~[(17)]~~ (19) "Retail tobacco specialty business" means the same as that term is defined in
928 Section 26B-7-501.
- 929 ~~[(18)]~~ (20) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other
930 lighted smoking equipment.
- 931 ~~[(19)]~~ (21)(a) "Tobacco paraphernalia" means equipment, product, or material of any
932 kind that is used, intended for use, or designed for use to package, repackage, store,
933 contain, conceal, ingest, inhale, or otherwise introduce a tobacco product, an
934 electronic cigarette substance, or a nontherapeutic nicotine device substance into the
935 human body.
- 936 (b) "Tobacco paraphernalia" includes:
- 937 (i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without
938 screens, permanent screens, hashish heads, or punctured metal bowls;
939 (ii) water pipes;
940 (iii) carburetion tubes and devices;
941 (iv) smoking and carburetion masks;
942 (v) roach clips, meaning objects used to hold burning material, such as a cigarette,
943 that has become too small or too short to be held in the hand;
944 (vi) chamber pipes;
945 (vii) carburetor pipes;

- 946 (viii) electric pipes;
947 (ix) air-driven pipes;
948 (x) chillums;
949 (xi) bongs; and
950 (xii) ice pipes or chillers.
- 951 (c) "Tobacco paraphernalia" does not include matches or lighters.
- 952 [~~(20)~~] (22) "Tobacco product" means:
- 953 (a) a cigar;
954 (b) a cigarette; or
955 (c) tobacco in any form, including:
956 (i) chewing tobacco; and
957 (ii) any substitute for tobacco, including flavoring or additives to tobacco.

958 [~~(21)~~] (23) "Tobacco retailer" means:

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

961 Section 14. Section **76-9-1120** is enacted to read:

962 **76-9-1120 . Unlawful sale of a cannabinoid inhalation product or a cannabinoid**
963 **inhalation substance.**

964 (1) As used in this section:

- 965 (a) "Cannabinoid inhalation product" means an electronic cigarette that contains a
966 cannabinoid.
- 967 (b) "Cannabinoid inhalation substance" means a substance containing a cannabinoid that
968 is used or intended for use in an electronic cigarette.
- 969 (c) "Compensatory service" means service or unpaid work performed by an employee, in
970 lieu of the payment of a fine or imprisonment.
- 971 (d) "Employee" means an employee or an owner of a retailer.

972 (2) An actor commits unlawful sale of a cannabinoid inhalation product or a cannabinoid
973 inhalation substance if the actor:

- 974 (a) is an employee; and
975 (b) intentionally or knowingly sells or gives a cannabinoid inhalation product or a
976 cannabinoid inhalation substance in the course of business to an individual.

977 (3) A violation of Subsection (2) is:

- 978 (a) on a first violation:
979 (i) a class C misdemeanor; and

- 980 (ii) subject to:
- 981 (A) a fine not exceeding \$1,000; or
- 982 (B) compensatory service; or
- 983 (b) on a subsequent violation:
- 984 (i) a class B misdemeanor; and
- 985 (ii) subject to:
- 986 (A) a fine not exceeding \$2,000; or
- 987 (B) compensatory service.
- 988 (4) This section does not prohibit or restrict the sale of medical cannabis or a medical
- 989 cannabis device if done in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid
- 990 Research and Medical Cannabis, and with Title 4, Chapter 41a, Cannabis Production
- 991 Establishments and Pharmacies.
- 992 Section 15. **Effective Date.**
- 993 This bill takes effect on July 1, 2026.
- 994 Section 16. **Coordinating H.B. 265 with H.B. 385.**
- 995 If H.B. 265, Non-nicotine Inhalation Product Amendments, and H.B. 385, Specialized
- 996 Product Sales Amendments, both pass and become law, the Legislature intends that on July 1,
- 997 2026, Subsection 4-45a-101(9)(a) enacted in H.B. 385 be amended to read:
- 998 "(9)(a) "Specialized product" means any product intended to be ingested, inhaled, absorbed,
- 999 or introduced into the human body that is:
- 1000 (i) a cannabinoid product, as defined in Section 4-41-102;
- 1001 (ii) a kratom product, as defined in Section 4-45-102;
- 1002 (iii) a tobacco product that is not tobacco paraphernalia;
- 1003 (iv) a nicotine product;
- 1004 (v) an electronic cigarette substance, as defined in Section 76-9-1101;
- 1005 (vi) a prefilled electronic cigarette, as defined in Section 76-9-1101;
- 1006 (vii) a product containing a substance:
- 1007 (A) not generally recognized as safe for use in a conventional food product under
- 1008 applicable federal food additive regulations; and
- 1009 (B) that is known or intended to have psychoactive, euphoric, analgesic, sedative, or
- 1010 intoxicating effects;
- 1011 (viii) a non-nicotine inhalation product, as defined in Section 76-9-1101; or
- 1012 (ix) a non-nicotine inhalation substance, as defined in Section 76-9-1101."