# HB0265S01 compared with HB0265

~~{Omitted text}~~ shows text that was in HB0265 but was omitted in HB0265S01
inserted text shows text that was not in HB0265 but was inserted into HB0265S01

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## 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{~~, and a cannabinoid electronic cigarette~~ } to be registered;
- establishes civil penalties for selling an unregistered non-nicotine inhalation product{~~,~~} or non-nicotine inhalation substance{~~, or cannabinoid electronic cigarette~~} ;
- creates the criminal offense of illegal distribution of a {~~non-nicotine~~ } cannabinoid inhalation product{~~, non-nicotine inhalation substance, or cannabinoid electronic cigarette; and~~} ;
- **clarifies that a cannabinoid product does not include an electronic cigarette; and**
- defines terms.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

HB0265

None

**Utah Code Sections Affected:**

AMENDS:

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

**26B-7-501** , as last amended by Laws of Utah 2025, Chapter 173

**26B-7-505** , as last amended by Laws of Utah 2025, Chapter 173

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

**59-14-810** , as last amended by Laws of Utah 2025, Chapter 173

**76-9-1101** , as renumbered and amended by Laws of Utah 2025, Chapter 173

~~{76-9-1115 , as enacted by Laws of Utah 2025, Chapter 173}~~

ENACTS:

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

**76-9-1120 , Utah Code Annotated 1953**

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

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

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

As used in this chapter:

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

(a) pesticides;

(b) heavy metals;

(c) solvents;

(d) microbial life;

(e) artificially derived cannabinoids;

(f) toxins; or

(g) foreign matter.

(2)

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

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

(i) a naturally occurring chemical substance that is separated from the cannabis plant by a chemical or mechanical extraction process; or

(ii) cannabinoids that are produced by decarboxylation from a naturally occurring cannabinoid acid without the use of a chemical catalyst.

(3) "Cannabidiol" or "CBD" means the cannabinoid identified as CAS# 13956-29-1.

(4) "Cannabidiolic acid" or "CBDA" means the cannabinoid identified as CAS# 1244-58-2.

(5) "Cannabinoid processor license" means a license that the department issues to a person for the purpose of processing a cannabinoid product.

(6) "Cannabinoid product" means a product that:

(a) contains or is represented to contain one or more naturally occurring cannabinoids;

(b) contains less than the cannabinoid product THC level, by dry weight;

(c) contains a combined amount of total THC and any THC analog that does not exceed 10% of the total cannabinoid content;

(d) does not exceed a total of THC and any THC analog that is greater than:

(i) 5 milligrams per serving; and

(ii) 150 milligrams per package;[ ~~and~~]

(e) unless the product is in an oil based suspension, has a serving size that:

(i) is an integer; and

(ii) is a discrete unit of the cannabinoid product[ ~~.~~] ; and

(f) is not an electronic cigarette as that term is defined in Section 76-9-1101.

(7) "Cannabinoid product class" means a group of cannabinoid products that:

(a) have all ingredients in common; and

(b) are produced by or for the same company.

(8) "Cannabinoid product THC level" means a combined concentration of total THC and any THC analog of less than 0.3% on a dry weight basis if laboratory testing confirms a result within a measurement of uncertainty that includes the combined concentration of 0.3%.

(9) "Cannabis" means the same as that term is defined in Section 26B-4-201.

(10) "Delta-9-tetrahydrocannabinol" or "delta-9-THC" means the cannabinoid identified as CAS# 1972-08-3, the primary psychotropic cannabinoid in cannabis.

(11) "Industrial hemp" means any part of a cannabis plant, whether growing or not, with a concentration of less than 0.3% tetrahydrocannabinol by dry weight.

(12) "Industrial hemp producer registration" means a registration that the department issues to a person for the purpose of processing industrial hemp or an industrial hemp product.

(13)

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

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

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

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

(a) a licensee;

(b) an operation manager;

(c) a site manager; or

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

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

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

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

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

(18) "Non-compliant material" means:

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

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

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

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

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

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

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

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

(vi) 9(r)-hexahyrdocannabinol (HHC), the cannabinoid identified as CAS# 36403-90-4.

(19) "Permittee" means a person possessing a permit that the department issues under this chapter.

(20) "Person" means:

(a) an individual, partnership, association, firm, trust, limited liability company, or corporation; and

(b) an agent or employee of an individual, partnership, association, firm, trust, limited liability company, or corporation.

(21) "Retailer permittee" means a person possessing an industrial hemp retailer permit that the department issues under this chapter.

(22) "Tetrahydrocannabinol" or "THC" means a delta-9-tetrahydrocannabinol, the cannabinoid identified as CAS# 1972-08-3.

(23)

(a) "THC analog" means a substance that is structurally or pharmacologically substantially similar to, or is represented as being similar to, delta-9-THC.

(b) "THC analog" does not include the following substances or the naturally occurring acid forms of the following substances:

(i) cannabichromene (CBC), the cannabinoid identified as CAS# 20675-51-8;

(ii) cannabicyclol (CBL), the cannabinoid identified as CAS# 21366-63-2;

(iii) cannabidiol (CBD), the cannabinoid identified as CAS# 13956-29-1;

(iv) cannabidivarol (CBDV), the cannabinoid identified as CAS# 24274-48-4;

(v) cannabielsoin (CBE), the cannabinoid identified as CAS# 52025-76-0;

(vi) cannabigerol (CBG), the cannabinoid identified as CAS# 25654-31-3;

(vii) cannabigerovarin (CBGV), the cannabinoid identified as CAS# 55824-11-8;

(viii) cannabinol (CBN), the cannabinoid identified as CAS# 521-35-7;

(ix) cannabivarin (CBV), the cannabinoid identified as CAS# 33745-21-0; or

(x) delta-9-tetrahydrocannabivarin (THCV), the cannabinoid identified as CAS# 31262-37-0.

(24) "Total cannabidiol" or "total CBD" means the combined amounts of cannabidiol and cannabidiolic acid, calculated as "total CBD = CBD + (CBDA x 0.877)".

(25) "Total tetrahydrocannabinol" or "total THC" means the sum of the determined amounts of delta-9-THC, tertrahydrocannabinolic acid, calculated as "total THC = delta-9-THC + (THCA x 0.877)".

(26) "Transportable industrial hemp concentrate" means any amount of a natural cannabinoid in a purified state that:

(a) is the product of any chemical or physical process applied to naturally occurring biomass that concentrates or isolates the cannabinoids contained in the biomass;

(b) is derived from a cannabis plant that, based on sampling that was collected no more than 30 days before the day on which the cannabis plant was harvested, contains a combined concentration of total THC and any THC analog of less than 0.3% on a dry weight basis;

(c) has a THC and THC analog concentration total that is less than 20% when concentrated from the cannabis plant to the purified state; and

(d) is intended to be processed into a cannabinoid product.

Section 2. Section **26B-7-501** is amended to read:

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

As used in this part:

(1) {~~"Cannabinoid electronic cigarette" means the same as that term is defined in Section 76-9-1101.~~

{~~(2)~~} "Community location" means the same as that term is defined:

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

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

{~~[~~(2){~~]~~} {~~(3)~~} } "Electronic cigarette" means the same as that term is defined in Section 76-9-1101.

{~~[~~(3){~~]~~} {~~(4)~~} } "Electronic cigarette product" means the same as that term is defined in Section 76-9-1101.

{~~[~~(4){~~]~~} {~~(5)~~} } "Electronic cigarette substance" means the same as that term is defined in Section 76-9-1101.

{~~[~~(5){~~]~~} {~~(6)~~} } "Employee" means an employee of a tobacco retailer.

{~~[~~(6){~~]~~} {~~(7)~~} } "Enforcing agency" means the department, or any local health department enforcing the provisions of this part.

{~~[~~(7){~~]~~} {~~(8)~~} } "General tobacco retailer" means a tobacco retailer that is not a retail tobacco specialty business.

{~~[~~(8){~~]~~} {~~(9)~~} } "Local health department" means the same as that term is defined in Section 26A-1-102.

{~~[~~(9){~~]~~} {~~(10)~~} } "Manufacture" includes:

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

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

(11){(10)} "Manufacturer sealed electronic cigarette product" means:

(a) an electronic cigarette substance or container that the electronic cigarette manufacturer does not intend for a consumer to open or refill; or

(b) a prefilled electronic cigarette as that term is defined in Section 76-9-1101.

[~~(10)~~] (12){(11)} "Manufacturer sealed electronic cigarette substance" means an electronic cigarette substance that is sold in a container that:

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

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

[~~(11) "Manufacturer sealed electronic cigarette product" means:~~]

[~~(a) an electronic cigarette substance or container that the electronic cigarette manufacturer does not intend for a consumer to open or refill; or~~]

[~~(b) a prefilled electronic cigarette as that term is defined in Section 76-9-1101.~~]

{[(12){]} {~~(13)~~} } "Nicotine" means the same as that term is defined in Section 76-9-1101.

{[(13){]} {~~(14)~~} } "Nicotine product" means the same as that term is defined in Section 76-9-1101.

(15){(14)} "Non-nicotine inhalation product" means the same as that term is defined in Section 76-9-1101.

(16){(15)} "Non-nicotine inhalation substance" means the same as that term is defined in Section 76-9-1101.

[~~(14)~~] (17){(16)} "Non-tobacco shisha" means any product that:

(a) does not contain tobacco or nicotine; and

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

[~~(15)~~] (18){(17)} "Owner" means a person holding a 20% ownership interest in the business that is required to obtain a permit under this part.

[~~(16)~~] (19){(18)} "Permit" means a tobacco retail permit issued under Section 26B-7-507.

[~~(17)~~] (20){(19)} "Place of public access" means any enclosed indoor place of business, commerce, banking, financial service, or other service-related activity, whether publicly or privately owned and whether operated for profit or not, to which persons not employed at the place of public access have general and regular access or which the public uses, including:

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

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

(c) restaurants, cafes, or cafeterias;

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

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

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

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

(h) sports or fitness facilities;

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

(j)

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

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

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

(l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or religious organization when used solely by the organization members or the members' guests or families;

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

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

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

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

[~~(18)~~] (21){(20)}

(a) "Proof of age" means:

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

(ii) a valid identification that:

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

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

(C) includes date of birth; and

(D) has a picture affixed;

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

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

(A) includes date of birth; and

(B) has a picture affixed; or

(v) a valid passport.

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

[~~(19)~~] (22){(21)} "Publicly owned building or office" means any enclosed indoor place or portion of a place owned, leased, or rented by any state, county, or municipal government, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of federal, state, county, or municipal taxes.

[~~(20)~~] (23){(22)} "Retail tobacco specialty business" means the same as that term is defined:

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

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

[~~(21)~~] (24){(23)} "Shisha" means any product that:

(a) contains tobacco or nicotine; and

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

[~~(22)~~] (25){(24)} "Smoking" means:

(a) the possession of any lighted or heated tobacco product in any form;

(b) inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or hookah that contains:

(i) tobacco or any plant product intended for inhalation;

(ii) shisha or non-tobacco shisha;

(iii) nicotine;

(iv) a natural or synthetic tobacco substitute; or

(v) a natural or synthetic flavored tobacco product;

(c) using an electronic cigarette; or

(d) using an oral smoking device intended to circumvent the prohibition of smoking in this part.

[~~(23)~~] (26){(25)} "Tax commission license" means a license issued by the State Tax Commission under:

(a) Section 59-14-201 to sell a cigarette at retail;

(b) Section 59-14-301 to sell a tobacco product at retail; or

(c) Section 59-14-803 to sell an electronic cigarette product or a nicotine product.

[~~(24)~~] (27){(26)} "Tobacco product" means:

(a) a tobacco product as defined in Section 76-9-1101; or

(b) tobacco paraphernalia as defined in Section 76-9-1101.

[~~(25)~~] (28){(27)} "Tobacco retailer" means a person that is required to obtain a tax commission license.

Section 3. Section **26B-7-505** is amended to read:

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

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

(a) labeling;

(b) nicotine content;

(c) packaging; and

(d) product quality.

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

(a) labeling;

(b) nicotine content;

(c) packaging; and

(d) product quality.

(3)

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

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

(c) Notwithstanding Subsections (3)(a) and (3)(b), beginning on January 1, 2025, a person may not sell an electronic cigarette product that is not [~~a premarket authorized or pending electronic cigarette product as that term is defined in Section 76-9-1101.~~] on the electronic cigarette product registry created in Section 59-14-810.

(4)

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

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

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

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

(6)

(a) Any nicotine product shall contain the statement described in Subsection (6)(b) if the nicotine product:

(i)

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

(B) is not otherwise required under federal or state law to contain a nicotine warning; and

(ii) contains nicotine.

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

"This product contains nicotine."

Section 4. Section **4** is enacted to read:

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

(1) A person may not sell a non-nicotine inhalation product{~~,~~} or a non-nicotine inhalation substance{~~, or cannabinoid electronic cigarette~~ } unless the product is contained in the registry described in Section 59-14-810.

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

(a) notifying a retailer of alleged violations;

(b) conducting hearings;

(c) determining violations; and

(d) imposing civil administrative penalties.

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

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

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

(c)

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

(ii) revoke the permit of the retailer.

(4)

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

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

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

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

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

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

(b) the new proprietor provides documentation to the local health department that the new proprietor is acquiring the tobacco retailer in an arm's length transaction from the previous proprietor.

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

Section 5. Section **59-14-802** is amended to read:

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

As used in this part:

(1) {~~"Cannabinoid electronic cigarette" means the same as that term is defined in Section 76-9-1101.~~

{~~(2)~~} "Licensee" means a person that holds a valid license to sell an electronic cigarette product or a nicotine product.

{{~~[~~(2){~~]~~}} {~~(3)~~ }

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

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

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

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

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

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

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

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

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

(1) Beginning on August 1, 2024, every manufacturer of an electronic cigarette product that is sold in this state, whether directly or through a distributor, wholesaler, retailer, or similar intermediary or intermediaries, shall certify under penalty of perjury on a form and in the manner prescribed by the commission, that[~~:~~] the manufacturer agrees to comply with this section and:

[~~(a) the manufacturer agrees to comply with this section; and~~]

[~~(b) the electronic cigarette product is a premarket authorized or pending electronic cigarette product as defined in Section 76-9-1101 and will not be illegal to be sold in the state as of January 1, 2025.~~]

(a) for an electronic cigarette product that contains nicotine, that the product is a premarket authorized or pending electronic cigarette product;

(b) for an electronic cigarette product that is a non-nicotine inhalation product, that the product is approved for sale in interstate commerce by the United States Food and Drug Administration;or

(c) for an electronic cigarette product that is a non-nicotine inhalation substance, that the product is a premarket authorized or pending electronic cigarette product{~~; or~~} .

(2) {~~for an electronic cigarette product that is a cannabinoid electronic cigarette, that the product is registered with the Utah Department of Agriculture and Food in accordance with Section 4-41-104 and not subject to the premarket tobacco authorization process overseen by the United States Food and Drug Administration under 21 U.S.C. Sec. 387j(c)(1)(A)(i).~~}

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

(3)

(a) Each certification form shall include:

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

(ii) for an electronic cigarette product that contains nicotine:

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

(B) evidence that the premarket tobacco product application for the electronic cigarette product or nicotine product was submitted to the United States Food and Drug Administration before September 9, 2020, and a final authorization or order has not yet taken effect;

(iii) for an electronic cigarette product that is a non-nicotine inhalation product, evidence that the product is approved for sale in interstate commerce by the United States Food and Drug Administration;

(iv) for an electronic cigarette product that is a non-nicotine inhalation substance:

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

(B) evidence that the premarket tobacco product application for the electronic cigarette product {~~or nicotine product~~ } was submitted to the United States Food and Drug Administration before September 9, 2020, and a final authorization or order has not yet taken effect;

[~~(iii)~~] (v) {~~for an electronic cigarette that is a cannabinoid electronic cigarette, evidence that the product is registered with the Utah Department of Agriculture and Food in accordance with under Section 4-41-104;~~}

[~~(iii)~~] (vi) a nonrefundable $1,000 fee for an electronic cigarette product that is being added to the registry in the first instance; and

[~~(iv)~~] (vii){(vi)} information described in Subsection (10) if applicable.

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

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

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

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

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

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

(ii) correct or amend information if necessary; and

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

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

(f) The commission shall:

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

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

(4)

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

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

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

(5)

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

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

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

(i) to decertify an electronic cigarette product;

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

(iii) to comply with Subsection (10).

(6)

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

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

(7)

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

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

(8)

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

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

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

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

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

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

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

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

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

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

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

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

(9)

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

(i) the Department of Health and Human Services;

(ii) a local health department; or

(iii) the attorney general.

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

(10)

(a)

[~~(i)~~] The commission may not list a nonresident manufacturer of an electronic cigarette product in the registry unless:

[~~(A)~~] (i) the nonresident manufacturer has registered to do business in the state as a foreign corporation or business entity; or

[~~(B)~~] (ii) the nonresident manufacturer appoints and maintains without interruption the services of an agent in this state to receive any service of process on behalf of the manufacturer.

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

(c)

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

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

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

(a) the status of the registry;

(b) manufacturers and products included in the registry;

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

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

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

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

Section 7. Section **76-9-1101** is amended to read:

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

As used in this part:

(1)

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

(i) contains nicotine;

(ii) is intended for human consumption;

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

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

(b) "Alternative nicotine product" includes:

(i) pure nicotine;

(ii) snortable nicotine;

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

(iv) nicotine-laced food and beverage.

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

{~~(2) "Cannabinoid electronic cigarette" means an electronic cigarette product that:~~}

{~~(a) is also a cannabinoid product, as defined in Section 4-41-102; and~~}

{~~(b) does not contain nicotine.~~}

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

{[(3)]} {(4)} "Cigarette" means a product that contains nicotine, is intended to be heated or burned under ordinary conditions of use, and consists of:

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

(b) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in Subsection [(3)(a)] (4)(a).

{[(4)]} {(5)}

(a) "Electronic cigarette" means:

(i) an electronic oral device:

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

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

(ii) a component of the device described in Subsection {[(4)(a)(i)]} (5)(a)(i)}; or

(iii) an accessory sold in the same package as the device described in Subsection {[(4)(a)(i)]} (5)(a)(i)}.

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

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

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

(A) an e-cigarette;

(B) an e-cigar;

(C) an e-pipe; or

(D) any other product name or descriptor, if the function of the product meets the definition of Subsection {[(4)(a)]} (5)(a)}.

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

{[(5)]} {(6)}

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

(b) "Electronic cigarette product" includes a non-nicotine inhalation product{~~,~~} and a non-nicotine inhalation substance{~~, and a cannabinoid electronic cigarette~~} .

{~~[~~(6){~~]~~} {~~(7)~~} } "Electronic cigarette substance" means any substance[~~, including liquid containing nicotine, ~~] containing nicotine that is used or intended for use in an electronic cigarette.

{~~[~~(7){~~]~~} {~~(8)~~} }

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

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

(c) "Flavored electronic cigarette product" does not include an electronic cigarette product that has a taste or smell of only tobacco or menthol.

{~~[~~(8){~~]~~} {~~(9)~~} } "Nicotine" means a poisonous, nitrogen containing chemical that is made synthetically or derived from tobacco or other plants.

{~~[~~(9){~~]~~} {~~(10)~~} } "Nicotine product" means an alternative nicotine product or a nontherapeutic nicotine product.

(11){(10)}

(a) "Non-nicotine inhalation product" means a product that:

(i) is a manufacturer sealed prefilled electronic cigarette that the manufacturer does not intend for a consumer to open;

(ii) contains a substance other than nicotine;

(iii) is designed specifically to be used with an electronic cigarette to produce an aerosol or vapor of the substance described in Subsection {~~(11)(a)(ii)~~} (10)(a)(ii);

(iv) does not contain a cannabinoid; and

(v) does not contain nicotine.

(b) "Non-nicotine inhalation product" includes a product that contains a vitamin, mineral, dietary supplement, or an alkaloid.

(c) "Non-nicotine inhalation product" does not include:

(i) a product that the manufacturer did not design to be placed directly on an individual's mouth to simulate smoking; or

(ii) a medical cannabis device, as that term is defined in Section 26B-4-201.

(12){(11)} "Non-nicotine inhalation substance" means any substance not containing nicotine or a cannabinoid that is used or intended for use in an electronic cigarette.

[~~(10)~~] (13){(12)}

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

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

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

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

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

[~~(11)~~] (14){(13)} "Nontherapeutic nicotine device substance" means a substance that:

(a) contains nicotine;

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

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

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

[~~(12)~~] (15){(14)} "Nontherapeutic nicotine product" means a nontherapeutic nicotine device, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device.

[~~(13)~~] (16){(15)} "Place of business" includes:

(a) a shop;

(b) a store;

(c) a factory;

(d) a public garage;

(e) an office;

(f) a theater;

(g) a recreation hall;

(h) a dance hall;

(i) a poolroom;

(j) a cafe;

(k) a cafeteria;

(l) a cabaret;

(m) a restaurant;

(n) a hotel;

(o) a lodging house;

(p) a streetcar;

(q) a bus;

(r) an interurban or railway passenger coach;

(s) a waiting room; and

(t) any other place of business.

[~~(14)~~] (17){(16)} "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled with an electronic cigarette substance.

[~~(15)~~] (18){(17)} "Prefilled nontherapeutic nicotine device" means a nontherapeutic nicotine device that is sold prefilled with a nontherapeutic nicotine device substance.

[~~(16)~~] (19){(18)} "Premarket authorized or pending electronic cigarette product" means an electronic cigarette product that:

(a)

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

(ii)

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

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

(C) has an application described in Subsection [~~(16)(a)(ii)~~] {~~(19)(a)(ii)~~} (18)(a)(ii) that either remains under review by the United States Food and Drug Administration or a final decision on the application has not taken effect; and

(b) does not exceed:

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

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

[~~(17)~~] (20){(19)} "Retail tobacco specialty business" means the same as that term is defined in Section 26B-7-501.

[~~(18)~~] (21){(20)} "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other lighted smoking equipment.

[~~(19)~~] (22){(21)}

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

(b) "Tobacco paraphernalia" includes:

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

(ii) water pipes;

(iii) carburetion tubes and devices;

(iv) smoking and carburetion masks;

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

(vi) chamber pipes;

(vii) carburetor pipes;

(viii) electric pipes;

(ix) air-driven pipes;

(x) chillums;

(xi) bongs; and

(xii) ice pipes or chillers.

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

[~~(20)~~] (23){(22)} "Tobacco product" means:

(a) a cigar;

(b) a cigarette; or

(c) tobacco in any form, including:

(i) chewing tobacco; and

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

[~~(21)~~] (24){(23)} "Tobacco retailer" means:

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

(b) a retail tobacco specialty business.

~~{Section 7. Section **76-9-1115** is amended to read: }~~

**76-9-1115. Illegal distribution of an electronic cigarette product without federal authorization.**

(1) Terms defined in Sections 76-1-101.5 and 76-9-1101 apply to this section.

(2) An actor commits illegal distribution of an electronic cigarette product without federal authorization if the actor gives, distributes, sells, offers for sale, or furnishes to any person an electronic cigarette product that is not [~~a premarket authorized or pending electronic cigarette product.~~] on the electronic cigarette product registry created in Section 59-14-810.

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

(a) a class C misdemeanor on the first offense; or

(b) a class B misdemeanor on a subsequent offense.

Section 8. Section **8** is enacted to read:

**76-9-1120. Unlawful sale of a cannabinoid inhalation product.**

(1) As used in this section:

(a) "Cannabinoid inhalation product" means an electronic cigarette that contains a cannabinoid.

(b) "Compensatory service" means service or unpaid work performed by an employee, in lieu of the payment of a fine or imprisonment.

(c) "Employee" means an employee or an owner of a retailer.

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

(a) is an employee; and

(b) intentionally or knowingly sells or gives a cannabinoid inhalation product in the course of business to an individual.

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

(a) on a first violation:

(i) a class C misdemeanor; and

(ii) subject to:

(A) a fine not exceeding $1,000; or

(B) compensatory service; or

(b) on a subsequent violation:

(i) a class B misdemeanor; and

(ii) subject to:

(A) a fine not exceeding $2,000; or

(B) compensatory service.

(4) Nothing in this section prohibits or restricts the sale of medical cannabis or a medical cannabis device if done in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, and with Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies.

Section 9. **Effective date.**

Effective Date.

This bill takes effect on May 6, 2026.

1-30-26 10:51 AM