

HB0265S01 compared with HB0265S02

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 This bill provides a special effective date.

23 This bill provides a coordination clause.

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **4-41-102** , as last amended by Laws of Utah 2025, Chapter 114

27 **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
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.**

As used in this chapter:

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- (1) "Adulterant" means any poisonous or deleterious substance in a quantity that may be injurious to human health, including:
- 37 (a) pesticides;
 - 38 (b) heavy metals;
 - 39 (c) solvents;
 - 40 (d) microbial life;
 - 41 (e) artificially derived cannabinoids;
 - 42 (f) toxins; or
 - 43 (g) foreign matter.
- 44 (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.
 - 47 (b) "Artificially derived cannabinoid" does not include:
 - 48 (i) a naturally occurring chemical substance that is separated from the cannabis plant by a chemical or mechanical extraction process; or
 - 50 (ii) cannabinoids that are produced by decarboxylation from a naturally occurring cannabinoid acid without the use of a chemical catalyst.
 - 52 (3) "Cannabidiol" or "CBD" means the cannabinoid identified as CAS# 13956-29-1.
 - 53 (4) "Cannabidiolic acid" or "CBDA" means the cannabinoid identified as CAS# 1244-58-2.
 - 54 (5) "Cannabinoid processor license" means a license that the department issues to a person for the purpose of processing a cannabinoid product.
 - 56 (6) "Cannabinoid product" means a product that:
 - 57 (a) contains or is represented to contain one or more naturally occurring cannabinoids;
 - 58 (b) contains less than the cannabinoid product THC level, by dry weight;
 - 59 (c) contains a combined amount of total THC and any THC analog that does not exceed 10% of the total cannabinoid content;
 - 61 (d) does not exceed a total of THC and any THC analog that is greater than:
 - 62 (i) 5 milligrams per serving; and
 - 63 (ii) 150 milligrams per package; [~~and~~]
 - 64 (e) unless the product is in an oil based suspension, has a serving size that:
 - 65 (i) is an integer; and

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- 66 (ii) is a discrete unit of the cannabinoid product[-] ; {and}
67 (f) is not an electronic cigarette as that term is defined in Section 76-9-1101{.} ; and
68 {~~7~~} 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:
69 (a) have all ingredients in common; and
70 (b) are produced by or for the same company.
71 (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%.
75 (9) "Cannabis" means the same as that term is defined in Section 26B-4-201.
76 (10) "Delta-9-tetrahydrocannabinol" or "delta-9-THC" means the cannabinoid identified as CAS#
1972-08-3, the primary psychotropic cannabinoid in cannabis.
78 (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.
80 (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.
82 (13)
(a) "Industrial hemp product" means a product made by processing industrial hemp plants or industrial
hemp parts.
84 (b) "Industrial hemp product" does not include cannabinoid material or a cannabinoid product.
86 (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.
88 (15) "Key participant" means any of the following:
89 (a) a licensee;
90 (b) an operation manager;
91 (c) a site manager; or
92 (d) an employee who has access to any industrial hemp material with a THC concentration above 0.3%.
94 (16) "Licensee" means a person possessing a cannabinoid processor license that the department issues
under this chapter.
96 (17) "Newly identified cannabinoid" means a cannabinoid that:
97 (a) is not expressly identified by chemical name or CAS number in this chapter; and

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- 98 (b) is identified by the department under Section 4-41-405.
- 99 (18) "Non-compliant material" means:
- 100 (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;
- 102 (b) a cannabinoid product, chemical, or compound with a concentration that exceeds the cannabinoid
product THC level; and
- 104 (c) a cannabinoid product containing any of the following:
- 105 (i) delta-9-tetrahydrocannabiphorol (THCP), the cannabinoid identified as CAS# 54763-99-4;
- 107 (ii) delta-8-tetrahydrocannabiphorol (THCP), the cannabinoid identified as CAS# 51768-60-6;
- 109 (iii) delta-9-tetrahydrocannabinol (THC) acetate, the cannabinoid identified as CAS# 23132-17-4;
- 111 (iv) delta-8-tetrahydrocannabinol (THC) acetate, the cannabinoid identified as CAS# 23050-54-6;
- 113 (v) 9(s)-hexahydrocannabinol (HHC), the cannabinoid identified as CAS# 36403-91-5; or
- 115 (vi) 9(r)-hexahydrocannabinol (HHC), the cannabinoid identified as CAS# 36403-90-4.
- 117 (19) "Permittee" means a person possessing a permit that the department issues under this chapter.
- 119 (20) "Person" means:
- 120 (a) an individual, partnership, association, firm, trust, limited liability company, or corporation; and
- 122 (b) an agent or employee of an individual, partnership, association, firm, trust, limited liability
company, or corporation.
- 124 (21) "Retailer permittee" means a person possessing an industrial hemp retailer permit that the
department issues under this chapter.
- 126 (22) "Tetrahydrocannabinol" or "THC" means a delta-9-tetrahydrocannabinol, the cannabinoid
identified as CAS# 1972-08-3.
- 128 (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.
- 130 (b) "THC analog" does not include the following substances or the naturally occurring acid forms of the
following substances:
- 132 (i) cannabichromene (CBC), the cannabinoid identified as CAS# 20675-51-8;
- 133 (ii) cannabicyclol (CBL), the cannabinoid identified as CAS# 21366-63-2;
- 134 (iii) cannabidiol (CBD), the cannabinoid identified as CAS# 13956-29-1;
- 135 (iv) cannabidivanol (CBDV), the cannabinoid identified as CAS# 24274-48-4;

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- 136 (v) cannabielsoin (CBE), the cannabinoid identified as CAS# 52025-76-0;
- 137 (vi) cannabigerol (CBG), the cannabinoid identified as CAS# 25654-31-3;
- 138 (vii) cannabigerovarin (CBGV), the cannabinoid identified as CAS# 55824-11-8;
- 139 (viii) cannabinal (CBN), the cannabinoid identified as CAS# 521-35-7;
- 140 (ix) cannabivarin (CBV), the cannabinoid identified as CAS# 33745-21-0; or
- 141 (x) delta-9-tetrahydrocannabivarin (THCV), the cannabinoid identified as CAS# 31262-37-0.
- 143 (24) "Total cannabidiol" or "total CBD" means the combined amounts of cannabidiol and cannabidiolic acid, calculated as "total CBD = CBD + (CBDA x 0.877)".
- 145 (25) "Total tetrahydrocannabinol" or "total THC" means the sum of the determined amounts of delta-9-THC, tetrahydrocannabinolic acid, calculated as "total THC = delta-9-THC + (THCA x 0.877)".
- 148 (26) "Transportable industrial hemp concentrate" means any amount of a natural cannabinoid in a purified state that:
- 150 (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;
- 152 (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;
- 156 (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
- 158 (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 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 cannabinoid products described in Subsection (2).

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(b) An individual may use cannabidiol or a cannabidiol product that is not in the list of 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 Substances Act.

188 (4) Any marketing for a cannabinoid product shall include a notice to consumers that the product is hemp or CBD and is not cannabis or medical cannabis, as those terms are defined in Section 26B-4-201.

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

As used in this part:

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

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

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

165 (2) "Electronic cigarette" means the same as that term is defined in Section 76-9-1101.

166 (3) "Electronic cigarette product" means the same as that term is defined in Section 76-9-1101.

168 (4) "Electronic cigarette substance" means the same as that term is defined in Section 76-9-1101.

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

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

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

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

176 (9) "Manufacture" includes:

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

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

179 (10) "Manufacturer sealed electronic cigarette product" means:

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

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

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

- 185 (a) is prefilled by the electronic cigarette substance manufacturer; and
186 (b) the electronic cigarette manufacturer does not intend for a consumer to open.

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

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

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

191 (12) "Nicotine" means the same as that term is defined in Section 76-9-1101.

192 (13) "Nicotine product" means the same as that term is defined in Section 76-9-1101.

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

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

197 ~~[(14)]~~ (16) "Non-tobacco shisha" means any product that:

- 198 (a) does not contain tobacco or nicotine; and
199 (b) is smoked or intended to be smoked in a hookah or water pipe.

200 ~~[(15)]~~ (17) "Owner" means a person holding a 20% ownership interest in the business that is required to obtain a permit under this part.

202 ~~[(16)]~~ (18) "Permit" means a tobacco retail permit issued under Section 26B-7-507.

203 ~~[(17)]~~ (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:

- 208 (a) buildings, offices, shops, elevators, or restrooms;
209 (b) means of transportation or common carrier waiting rooms;
210 (c) restaurants, cafes, or cafeterias;
211 (d) taverns as defined in Section 32B-1-102, or cabarets;
212 (e) shopping malls, retail stores, grocery stores, or arcades;
213 (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical sites, auditoriums, or arenas;
215 (g) barber shops, hair salons, or laundromats;
216 (h) sports or fitness facilities;

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- 217 (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;
- 221 (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
- 224 (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;
- 227 (k) public or private elementary or secondary school buildings and educational facilities or the property
on which those facilities are located;
- 229 (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;
- 232 (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;
- 235 (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;
- 237 (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
- 239 (p) a holder of a bar establishment license, as defined in Section 32B-1-102.
- 240 ~~[(18)]~~ (20)
- (a) "Proof of age" means:
- 241 (i) a valid identification card issued under Title 53, Chapter 3, Part 8, Identification Card Act;
- 243 (ii) a valid identification that:
- 244 (A) is substantially similar to an identification card issued under Title 53, Chapter 3, Part 8,
Identification Card Act;
- 246 (B) is issued in accordance with the laws of a state other than Utah in which the identification is issued;
- 248 (C) includes date of birth; and
- 249 (D) has a picture affixed;
- 250

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(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;

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

254 (A) includes date of birth; and

255 (B) has a picture affixed; or

256 (v) a valid passport.

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

259 [~~(19)~~] (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.

263 [~~(20)~~] (22) "Retail tobacco specialty business" means the same as that term is defined:

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

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

266 [~~(21)~~] (23) "Shisha" means any product that:

267 (a) contains tobacco or nicotine; and

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

269 [~~(22)~~] (24) "Smoking" means:

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

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

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

274 (ii) shisha or non-tobacco shisha;

275 (iii) nicotine;

276 (iv) a natural or synthetic tobacco substitute; or

277 (v) a natural or synthetic flavored tobacco product;

278 (c) using an electronic cigarette; or

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

281 [~~(23)~~] (25) "Tax commission license" means a license issued by the State Tax Commission under:

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- 283 (a) Section 59-14-201 to sell a cigarette at retail;
284 (b) Section 59-14-301 to sell a tobacco product at retail; or
285 (c) Section 59-14-803 to sell an electronic cigarette product or a nicotine product.
- 286 [(24)] (26) "Tobacco product" means:
287 (a) a tobacco product as defined in Section 76-9-1101; or
288 (b) tobacco paraphernalia as defined in Section 76-9-1101.
- 289 [(25)] (27) "Tobacco retailer" means a person that is required to obtain a tax commission license.
- 325 Section 4. Section **26B-7-505** is amended to read:
326 **26B-7-505. Electronic cigarette products -- Labeling -- Requirements to sell -- Advertising --**
Labeling of nicotine products containing nicotine.
- 294 (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:
- 298 (a) labeling;
299 (b) nicotine content;
300 (c) packaging; and
301 (d) product quality.
- 302 (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:
- 306 (a) labeling;
307 (b) nicotine content;
308 (c) packaging; and
309 (d) product quality.
- 310 (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).

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- (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).
- 316 (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.
- 320 (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).
- 324 (b) Except as provided in Subsection (4)(c), a local health department may enact a rule or regulation regarding electronic cigarette substance manufacturing.
- 326 (c) A local health department may not enact a rule or regulation regarding a manufacturer sealed electronic cigarette product.
- 328 (5) A person may not advertise an electronic cigarette product as a tobacco cessation device.
- 329 (6)
- (a) Any nicotine product shall contain the statement described in Subsection (6)(b) if the nicotine product:
- 331 (i)
- (A) is not a tobacco product as defined in 21 U.S.C. Sec. 321 and related federal regulations; or
- 333 (B) is not otherwise required under federal or state law to contain a nicotine warning; and
- 335 (ii) contains nicotine.
- 336 (b) A statement shall appear on the exterior packaging of a nicotine product described in Subsection (6) (a) as follows:
- 338 "This product contains nicotine."
- 373 Section 5. Section 5 is enacted to read:
- 374 **26B-7-523. Non-nicotine inhalation product -- Penalty.**
- 341 (1) A person may not sell a non-nicotine inhalation product or a non-nicotine inhalation substance unless the product is contained in the registry described in Section 59-14-810.
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(2) The department {and} , a local health department , and the Department of Agriculture and Food shall enforce this section under the procedures of Title 63G, Chapter 4, Administrative Procedures Act, as an informal adjudicative proceeding, including:

346 (a) notifying a retailer of alleged violations;

347 (b) conducting hearings;

348 (c) determining violations; and

349 (d) imposing civil administrative penalties.

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

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

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

354 (c)

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

355 (ii) revoke the permit of the retailer.

356 (4)

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

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

359 (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).

362 (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.

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

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

367 (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.

370 (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.

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

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

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As used in this part:

- 376 (1) "Licensee" means a person that holds a valid license to sell an electronic cigarette product or a
nicotine product.
- 378 (2)
- (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.
- 382 (b) "Manufacturer's sales price" includes an original Utah destination freight charge, regardless of:
- 384 (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
- 387 (ii) who pays the original Utah destination freight charge.
- 388 (3) "Non-nicotine inhalation product" means the same as that term is defined in Section 76-9-1101.
- 390 (4) "Non-nicotine inhalation substance" means the same as that term is defined in Section 76-9-1101.
- 392 (5) "Premarket authorized or pending electronic cigarette product" means the same as that 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 nicotine product
in this state without first:
- 432 (a) except as provided in Subsection (2), obtaining a license from the commission under 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 that holds
a valid license to sell tobacco products under Section 59-14-301 may, without obtaining a separate
license in accordance with this section, sell, offer to sell, or 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 product to a
person that submits an application, on a form created by the commission, that includes:
- 442 (a) the person's name;
- 443

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- (b) the address of the facility where the person will sell an electronic cigarette product or 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 retailer that is responsible under this part for the collection of tax on an electronic cigarette [~~substance, a prefilled electronic cigarette~~] product, an alternative nicotine product, or a nontherapeutic nicotine [~~device substance, or a prefilled nontherapeutic nicotine device~~] product to post a bond.
- 456 (b) The manufacturer, jobber, distributor, wholesaler, or retailer may post the bond required by Subsection (5)(a) in combination with any bond required by Section 59-14-201 or 59-14-301.
- 459 (c) Subject to Subsection (5)(d), the commission shall determine the form and amount of 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 required by Subsection (5)(a) in combination with a bond required by either Section 59-14-201 or 59-14-301, \$1,000; or
- 466 (iii) if the manufacturer, jobber, distributor, wholesaler, or retailer posts the bond required by Subsection (5)(a) in combination with a bond required by both 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 Administrative Rulemaking Act, to establish the additional information described in Subsection (3)(c) that a person shall provide in the application described in Subsection (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.

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

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

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- 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 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 the manufacturer.
- 495 (ii) If the net weight of the alternative nicotine product is in a quantity that is a fractional part of one ounce, a proportionate amount of the tax described in 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 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), the tax described in Subsection (2) shall apply to the wholesale manufacturer's sale price of the entire packaged product.
- 504 (4)
- (a) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user shall pay the tax levied under Subsection (1) at the time that an electronic cigarette [~~substance, a prefilled electronic cigarette]~~ product, an alternative nicotine product, or a nontherapeutic nicotine [~~device substance, or a prefilled nontherapeutic nicotine device]~~ product is first received in the state.

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- 509 (b) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user may not resell an electronic cigarette [~~substance, a prefilled electronic cigarette~~] product, an alternative nicotine product, or a nontherapeutic nicotine [~~device substance, or a prefilled nontherapeutic nicotine device~~] product to another distributor, another 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 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 into the Electronic Cigarette Substance and Nicotine Product Proceeds Restricted 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 requirement--**
- Exception -- Penalty -- Overpayment.**
- 522 (1)
- (a) The manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user that collects the tax imposed on an electronic cigarette [~~substance, a prefilled electronic cigarette~~] product, an alternative nicotine product, or a nontherapeutic nicotine [~~device substance, or a prefilled nontherapeutic nicotine device~~] product shall remit to 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, October, and January.
- 531 (2)
- (a) A manufacturer, jobber, distributor, wholesaler, retailer, or any other person selling an electronic cigarette [~~substance, a prefilled electronic cigarette~~] product, an alternative nicotine product, or a nontherapeutic nicotine [~~device substance, or a prefilled nontherapeutic nicotine device~~] product to a person other than the ultimate consumer shall furnish the purchaser with an itemized invoice showing:
- 536 (i) the seller's name and address;

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- 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 available for inspection at the request of the commission or the commission's agent for a period of three years following the sale.
- 545 (3)
- (a) A consumer that purchases an untaxed electronic cigarette [~~substance, prefilled electronic cigarette~~] product, alternative nicotine product, or a nontherapeutic nicotine [~~device substance, or prefilled nontherapeutic nicotine device~~] product for use or other consumption shall:
- 549 (i) file with the commission, on forms prescribed by the commission, a statement 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 tax due on or before the last day of the month immediately following the month during which the consumer purchased an untaxed electronic cigarette [~~substance, prefilled electronic cigarette~~] product, alternative nicotine device [~~substance~~] product, 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 consumer is liable to pay under this part for a period of three years following the date on which the statement required by this section was filed.
- 560 (4) A tourist who imports an untaxed electronic cigarette [~~substance, a prefilled electronic cigarette~~] product, an alternative nicotine product, or a nontherapeutic nicotine [~~device substance, or a prefilled nontherapeutic nicotine device~~] product into the state does not need to file the statement described in Subsection (3) or pay the tax if the item is for the 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 Section 59-1-401, plus interest at the rate and in the manner prescribed in Section 59-1-402, if a person subject to this section fails to:

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- 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 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 and nicotine products.**

- 576 (1) When an electronic cigarette [~~substance, a prefilled electronic cigarette~~] product, an alternative nicotine product, or a nontherapeutic nicotine [~~device substance, or a prefilled nontherapeutic nicotine device~~] product taxed under this chapter is sold and shipped to a regular dealer in those articles in another state, the seller in this state shall be entitled to a refund of the actual amount of the taxes paid, upon condition that the seller in this state:
- 582 (a) is a licensed dealer;
- 583 (b) signs an affidavit that the electronic cigarette [~~substance, the prefilled electronic cigarette~~] product, the alternative nicotine product, or the nontherapeutic nicotine [~~device substance, or the prefilled nontherapeutic nicotine device~~] product was sold and shipped to a regular dealer in those articles in another state;
- 587 (c) furnishes, from the purchaser, a written acknowledgment that the purchaser has received the electronic cigarette [~~substance, the prefilled electronic cigarette~~] product, the alternative nicotine product, or the nontherapeutic nicotine [~~device substance, or the prefilled nontherapeutic nicotine device~~] product; and
- 591 (d) reports the name and address of the purchaser.
- 592 (2) A wholesaler or distributor in this state that exports an electronic cigarette [~~substance, a prefilled electronic cigarette~~] product, an alternative nicotine product, or a nontherapeutic nicotine [~~device substance, or a prefilled nontherapeutic nicotine device~~] product to a regular dealer in those articles in another state shall be exempt from the payment of any tax under this chapter upon furnishing proof of the sale and exportation as the commission may require.

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

599 **59-14-809. Commission study on enforcement and collection of tax.**

- 600 (1) The commission shall:

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

- 396 (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:
401 ~~[(a) the manufacturer agrees to comply with this section; and]~~
402 ~~[(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.]~~
405 (a) for an electronic cigarette product that contains nicotine, that the product is a premarket authorized
or pending electronic cigarette product;
407 (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
410

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- (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.
- 412 (2) When submitting the certification a manufacturer shall submit a form that separately lists each
electronic cigarette product that is sold in this state.
- 414 (3)
- (a) Each certification form shall include:
- 415 (i) the name of the electronic cigarette product, nicotine content level by percentage, and any
flavors contained in the product;
- 417 (ii) for an electronic cigarette product that contains nicotine:
- 418 (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
- 421 (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;
- 425 (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;
- 428 (iv) for an electronic cigarette product that is a non-nicotine inhalation substance:
- 429 (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
- 432 (B) evidence that the premarket tobacco product application for the electronic cigarette 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;
- 436 [~~(iii)~~] (v) a nonrefundable \$1,000 fee for an electronic cigarette product that is being added to the
registry in the first instance; and
- 438 [~~(iv)~~] (vi) information described in Subsection (10) if applicable.
- 439 (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.
- 441

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- (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:
- 445 (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
- 447 (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.
- 451 (d) On or before January 31 of each year and in a manner prescribed by the commission, a manufacturer
shall:
- 453 (i) recertify that the information contained in the certification is correct and accurate;
- 454 (ii) correct or amend information if necessary; and
- 455 (iii) pay a \$250 nonrefundable fee for each electronic cigarette product on the registry that is
manufactured by the manufacturer.
- 457 (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.
- 459 (f) The commission shall:
- 460 (i) provide an electronic notification to a manufacturer that has not submitted a recertification under
Subsection (3)(d); and
- 462 (ii) remove a manufacturer or an electronic cigarette product that is not recertified from the registry by
March 15.
- 464 (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.
- 467 (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.

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(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.

702 (d) An electronic cigarette product that contains a cannabinoid may not be listed on the registry.

474 (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.

479 (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.

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

484 (i) to decertify an electronic cigarette product;

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

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

487 (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.

491 (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.

495 (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.

497 (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.

500 (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:

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- 503 (i) \$1,000 for each product offered for sale in violation of this section; and
504 (ii) \$100 per day until the offending product is removed from the market or until the offending
product is properly listed on the registry.
- 506 (b) The commission shall suspend the person's license issued under Section 59-14-803 for a violation of
Subsection (8)(a) as follows:
- 508 (i) for a second violation within a 12-month period, at least 14 days;
509 (ii) for a third violation within a 12-month period, at least 60 days; or
510 (iii) for a fourth violation within a 12-month period, at least one year.
- 511 (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:
- 514 (i) \$1,000 for each product offered for retail sale in violation of this section; and
515 (ii) \$100 per day until the offending product is removed from the market or until the offending product
is properly listed on the registry.
- 517 (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.
- 520 (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.
- 523 (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:
- 526 (i) the Department of Health and Human Services;
527 (ii) a local health department; or
528 (iii) the attorney general.
- 529 (b) The commission and attorney general shall share with each other information received under this
section, or corresponding laws of other states.
- 531 (10)
- (a)

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

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

535 [(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.

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

540 (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.

544 (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.

548 (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:

551 (a) the status of the registry;

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

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

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

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

557 (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.

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

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

As used in this part:

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- 563 (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:
- 566 (i) contains nicotine;
- 567 (ii) is intended for human consumption;
- 568 (iii) is not purchased with a prescription from a licensed physician; and
- 569 (iv) is not approved by the United States Food and Drug Administration as nicotine replacement therapy.
- 571 (b) "Alternative nicotine product" includes:
- 572 (i) pure nicotine;
- 573 (ii) snortable nicotine;
- 574 (iii) dissolvable salts, orbs, pellets, sticks, or strips; and
- 575 (iv) nicotine-laced food and beverage.
- 576 (c) "Alternative nicotine product" does not include a fruit, a vegetable, or a tea that contains naturally occurring nicotine.
- 578 (2) "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.
- 581 (3) "Cigarette" means a product that contains nicotine, is intended to be heated or burned under ordinary conditions of use, and consists of:
- 583 (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or
- 584 (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).
- 588 (4)
- (a) "Electronic cigarette" means:
- 589 (i) an electronic oral device:
- 590 (A) that provides an aerosol or a vapor of nicotine or other substance; and
- 591 (B) that simulates smoking through the use or inhalation of the device;
- 592 (ii) a component of the device described in Subsection (4)(a)(i); or
- 593 (iii) an accessory sold in the same package as the device described in Subsection (4)(a)(i).

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- 595 (b) "Electronic cigarette" includes an oral device that is:
- 596 (i) composed of a heating element, battery, or electronic circuit; and
- 597 (ii) marketed, manufactured, distributed, or sold as:
- 598 (A) an e-cigarette;
- 599 (B) an e-cigar;
- 600 (C) an e-pipe; or
- 601 (D) any other product name or descriptor, if the function of the product meets the definition of
Subsection (4)(a).
- 603 (c) "Electronic cigarette" does not mean a medical cannabis device, as that term is defined in Section
26B-4-201.
- 605 (5)
- 607 (a) "Electronic cigarette product" means an electronic cigarette, an electronic cigarette substance, or a
prefilled electronic cigarette.
- 609 (b) "Electronic cigarette product" includes a non-nicotine inhalation product and a non-nicotine
inhalation substance.
- 611 (6) "Electronic cigarette substance" means any substance~~[-, including liquid containing nicotine,]~~
containing nicotine that is ~~containing nicotine that is~~ used or intended for use in an electronic
cigarette.
- 614 (7)
- 617 (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.
- 619 (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.
- 850 (c) "Flavored electronic cigarette product" does not include an electronic cigarette product that has a
taste or smell of only tobacco or menthol.
- 852 (8) "Nicotine" means:
(a) [-] a poisonous, nitrogen containing chemical that is made synthetically or derived from tobacco or
other plants[-]; or
(b) a nicotine analog.

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- 621 (9) "Nicotine product" means an alternative nicotine product or a nontherapeutic nicotine product.
623 (10)
- (a) "Non-nicotine inhalation product" means a product that:
- 624 (i) is a manufacturer sealed prefilled electronic cigarette that the manufacturer does not intend for a
consumer to open;
- 626 (ii) contains a substance other than nicotine;
- 627 (iii) is designed specifically to be used with an electronic cigarette to produce an aerosol or vapor of
the substance described in Subsection (10)(a)(ii);
- 629 (iv) does not contain a cannabinoid; and
- 630 (v) does not contain nicotine.
- 631 (b) "Non-nicotine inhalation product" includes a product that contains a vitamin, mineral, dietary
supplement, or an alkaloid.
- 633 (c) "Non-nicotine inhalation product" does not include:
- 634 (i) a product that the manufacturer did not design to be placed directly on an individual's mouth to
simulate smoking; or
- 636 (ii) a medical cannabis device, as that term is defined in Section 26B-4-201.
- 637 (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.
- 639 [~~(10)~~] (12)
- (a) "Nontherapeutic nicotine device" means a device that:
- 640 (i) has a pressurized canister that is used to administer nicotine to the user through inhalation or
intranasally;
- 642 (ii) is not purchased with a prescription from a licensed physician; and
- 643 (iii) is not approved by the United States Food and Drug Administration as nicotine replacement
therapy.
- 645 (b) "Nontherapeutic nicotine device" includes a nontherapeutic nicotine inhaler or a nontherapeutic
nicotine nasal spray.
- 647 [~~(11)~~] (13) "Nontherapeutic nicotine device substance" means a substance that:
- 648 (a) contains nicotine;
- 649 (b) is sold in a cartridge for use in a nontherapeutic nicotine device;
- 650 (c) is not purchased with a prescription from a licensed physician; and

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651 (d) is not approved by the United States Food and Drug Administration as nicotine replacement therapy.
653 ~~[(12)]~~ (14) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device, a nontherapeutic
nicotine device substance, or a prefilled nontherapeutic nicotine device.

655 ~~[(13)]~~ (15) "Place of business" includes:

656 (a) a shop;

657 (b) a store;

658 (c) a factory;

659 (d) a public garage;

660 (e) an office;

661 (f) a theater;

662 (g) a recreation hall;

663 (h) a dance hall;

664 (i) a poolroom;

665 (j) a cafe;

666 (k) a cafeteria;

667 (l) a cabaret;

668 (m) a restaurant;

669 (n) a hotel;

670 (o) a lodging house;

671 (p) a streetcar;

672 (q) a bus;

673 (r) an interurban or railway passenger coach;

674 (s) a waiting room; and

675 (t) any other place of business.

676 ~~[(14)]~~ (16) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled with an
electronic cigarette substance.

678 ~~[(15)]~~ (17) "Prefilled nontherapeutic nicotine device" means a nontherapeutic nicotine device that is
sold prefilled with a nontherapeutic nicotine device substance.

680 ~~[(16)]~~ (18) "Premarket authorized or pending electronic cigarette product" means an electronic cigarette
product that:

682 (a)

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- (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
- 685 (ii)
- (A) was marketed in the United States on or before August 8, 2016;
- 686 (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
- 689 (C) has an application described in Subsection [~~(16)(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
- 692 (b) does not exceed:
- 693 (i) 4.0% nicotine by weight per container; or
- 694 (ii) a nicotine concentration of 40 milligrams per milliliter.
- 695 [~~(17)~~] (19) "Retail tobacco specialty business" means the same as that term is defined in Section 26B-7-501.
- 697 [~~(18)~~] (20) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other lighted smoking equipment.
- 699 [~~(19)~~] (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.
- 704 (b) "Tobacco paraphernalia" includes:
- 705 (i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- 707 (ii) water pipes;
- 708 (iii) carburetion tubes and devices;
- 709 (iv) smoking and carburetion masks;
- 710 (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;

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- 712 (vi) chamber pipes;
713 (vii) carburetor pipes;
714 (viii) electric pipes;
715 (ix) air-driven pipes;
716 (x) chillums;
717 (xi) bongs; and
718 (xii) ice pipes or chillers.
719 (c) "Tobacco paraphernalia" does not include matches or lighters.

720 ~~[(20)]~~ (22) "Tobacco product" means:

- 721 (a) a cigar;
722 (b) a cigarette; or
723 (c) tobacco in any form, including:
724 (i) chewing tobacco; and
725 (ii) any substitute for tobacco, including flavoring or additives to tobacco.

726 ~~[(21)]~~ (23) "Tobacco retailer" means:

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

961 Section 14. Section 14 is enacted to read:

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

731 (1) As used in this section:

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

733a (b) ~~{ \hat{H} → {} }~~ ~~{(b)}~~ "Cannabinoid inhalation substance" means a substance containing a cannabinoid that is used or intended for use in an electronic cigarette.

734 (c) ~~{(b)}~~ ~~{(c)}~~ ~~{}~~ $\leftarrow \hat{H}$ } "Compensatory service" means service or unpaid work performed by an employee, in lieu of the payment of a fine or imprisonment.

736 (d) ~~{ \hat{H} → {} }~~ ~~{(c)}~~ ~~{(d)}~~ ~~{}~~ $\leftarrow \hat{H}$ } "Employee" means an employee or an owner of a retailer.

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

738 (a) is an employee; and

739

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

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

742 (a) on a first violation:

743 (i) a class C misdemeanor; and

744 (ii) subject to:

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

746 (B) compensatory service; or

747 (b) on a subsequent violation:

748 (i) a class B misdemeanor; and

749 (ii) subject to:

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

751 (B) compensatory service.

752 (4) {~~Nothing in this section prohibits~~} ~~This section does not prohibit~~ or {~~restricts~~} ~~restrict~~ 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.

992 Section 15. **Effective date.**

Effective Date.

This bill takes effect on {~~May 6,~~} July 1, 2026.

994 Section 16. **Coordinating H.B. 265 with H.B. 385.**

If H.B. 265, Non-nicotine Inhalation Product Amendments, and H.B. 385, Specialized Product Sales Amendments, both pass and become law, the Legislature intends that on July 1, 2026, Subsection 4-45a-101(9)(a) enacted in H.B. 385 be amended to read:

"(9)(a) "Specialized product" means any product intended to be ingested, inhaled, absorbed, or introduced into the human body that is:

(i) a cannabinoid product, as defined in Section 4-41-102;

(ii) a kratom product, as defined in Section 4-45-102;

(iii) a tobacco product that is not tobacco paraphernalia;

(iv) a nicotine product;

(v) an electronic cigarette substance, as defined in Section 76-9-1101;

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(vi) a prefilled electronic cigarette, as defined in Section 76-9-1101;

(vii) a product containing a substance:

_____ (A) not generally recognized as safe for use in a conventional food product under applicable federal food additive regulations; and

_____ (B) that is known or intended to have psychoactive, euphoric, analgesic, sedative, or intoxicating effects;

(viii) a non-nicotine inhalation product, as defined in Section 76-9-1101; or

(ix) a non-nicotine inhalation substance, as defined in Section 76-9-1101."

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