

**ELECTRONIC CIGARETTE PRODUCTS, NICOTINE
INHALERS, AND RELATED REVENUE AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to the regulation and taxation of electronic cigarette products and nicotine inhalers and how related revenues are to be spent.

Highlighted Provisions:

This bill:

- ▶ creates the Rural Health Care Access Restricted Account funded primarily from revenues from the taxation of electronic cigarette products and nicotine inhalers;
- ▶ creates a pilot project funded from the Rural Health Care Access Restricted Account;
- ▶ modifies definition provisions;
- ▶ modifies invoice requirements;
- ▶ addresses licensing issues;
- ▶ imposes a tax on certain electronic cigarette products and nicotine inhalers;
- ▶ creates the Electronic Cigarette Product and Nicotine Inhaler Restricted Account;
- ▶ addresses deposit and use of revenues from the taxation of electronic cigarette products and substances and nicotine inhalers;
- ▶ includes electronic cigarette products as tobacco paraphernalia;
- ▶ provides a repeal date for the Rural Health Care Access Restricted Account and pilot project; and



28 ▶ makes technical changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill provides a special effective date.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **59-14-102**, as last amended by Laws of Utah 2013, Chapter 148

36 **59-14-403**, as renumbered and amended by Laws of Utah 1987, Chapters 2 and 3

37 **59-14-801**, as enacted by Laws of Utah 2015, Chapter 132

38 **59-14-802**, as enacted by Laws of Utah 2015, Chapter 132

39 **59-14-803**, as enacted by Laws of Utah 2015, Chapter 132

40 **63I-2-226**, as last amended by Laws of Utah 2009, Chapter 334

41 **76-10-104.1**, as last amended by Laws of Utah 2013, Chapter 278

42 ENACTS:

43 **26-9-6**, Utah Code Annotated 1953

44 **59-14-804**, Utah Code Annotated 1953



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

47 Section 1. Section **26-9-6** is enacted to read:

48 **26-9-6. Rural Health Care Access Restricted Account -- Pilot project.**

49 (1) As used in this section:

50 (a) "Public school" means:

51 (i) a school, including a charter school, that:

52 (A) is directly funded at public expense; and

53 (B) provides education to qualifying children for any grade from grade 1 through grade

54 12; or

55 (ii) a school, including a charter school, that provides:

56 (A) preschool or kindergarten to qualifying children, regardless of whether the

57 preschool or kindergarten is funded at public expense; and

58 (B) education to qualifying children for any grade from grade 1 through grade 12, if

59 each grade, from grade 1 to grade 12, that is provided at the school, is directly funded at public
60 expense.

61 (b) "Restricted account" means the Rural Health Care Access Restricted Account
62 created in Subsection (2).

63 (2) There is created a restricted account within the General Fund known as the "Rural
64 Health Care Access Restricted Account."

65 (3) (a) The restricted account shall be funded by:

66 (i) deposits into the restricted account made under Section [59-14-804](#);

67 (ii) appropriations of the Legislature; and

68 (iii) other contributions to the restricted account.

69 (b) Interest earned on the restricted account shall be deposited into the General Fund.

70 (4) From money appropriated by the Legislature, the department shall administer the
71 restricted account to fund the pilot project created under Subsection (5).

72 (5) (a) The department shall administer a pilot project that shall begin July 1, 2016, and
73 end June 30, 2019.

74 (b) Under the pilot project, the department shall expend money from the restricted
75 account to fund the cost, at schools designated by the State Board of Education as being located
76 in rural areas where access to health care is limited, of at least three school nurses or athletic
77 trainers who:

78 (i) are licensed under:

79 (A) Title 58, Chapter 31b, Nurse Practice Act; or

80 (B) Title 58, Chapter 40a, Athletic Trainer Licensing Act;

81 (ii) are employed at a public school; or

82 (iii) provide physical and mental health services to students at the public school and to
83 the community, including veterans, through face-to-face contact or telehealth services provided
84 through the Utah Education and Telehealth Network, created in Section [53B-17-105](#).

85 Section 2. Section **59-14-102** is amended to read:

86 **59-14-102. Definitions.**

87 As used in this chapter:

88 (1) "Cigarette" means a roll for smoking made wholly or in part of tobacco:

89 (a) regardless of:

- 90 (i) the size of the roll;
- 91 (ii) the shape of the roll; or
- 92 (iii) whether the tobacco is:
 - 93 (A) flavored;
 - 94 (B) adulterated; or
 - 95 (C) mixed with any other ingredient; and
- 96 (b) if the wrapper or cover of the roll is made of paper or any other substance or
- 97 material except tobacco.
- 98 (2) "Cigarette rolling machine" means a device or machine that has the capability to
- 99 produce at least 150 cigarettes in less than 30 minutes.
- 100 (3) "Cigarette rolling machine operator" means a person who:
 - 101 (a) (i) controls, leases, owns, possesses, or otherwise has available for use a cigarette
 - 102 rolling machine; and
 - 103 (ii) makes the cigarette rolling machine available for use by another person to produce
 - 104 a cigarette; or
 - 105 (b) offers for sale, at retail, a cigarette produced from the cigarette rolling machine.
- 106 (4) "Consumer" means a person that is not required:
 - 107 (a) under Section [59-14-201](#) to obtain a license under Section [59-14-202](#); or
 - 108 (b) under Section [59-14-301](#) to obtain a license under Section [59-14-202](#).
- 109 (5) "Counterfeit cigarette" means:
 - 110 (a) a cigarette that has a false manufacturing label; or
 - 111 (b) a package of cigarettes bearing a counterfeit tax stamp.
- 112 (6) "Importer" means a person who imports into the United States, either directly or
- 113 indirectly, a finished cigarette for sale or distribution.
- 114 (7) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity, or any
- 115 other person doing business as a distributor or retailer of cigarettes on tribal lands located in the
- 116 state.
- 117 (8) "Little cigar" means a roll for smoking:
 - 118 (a) made wholly or in part of tobacco;
 - 119 (b) that uses an integrated cellulose acetate filter or other similar filter; and
 - 120 (c) that is wrapped in a substance:

- 121 (i) containing tobacco; and
- 122 (ii) that is not exclusively natural leaf tobacco.
- 123 (9) (a) Except as provided in Subsection (9)(b), "manufacturer" means a person who
- 124 manufactures, fabricates, assembles, processes, or labels a finished cigarette.
- 125 (b) "Manufacturer" does not include a cigarette rolling machine operator.
- 126 (10) "Moist snuff" means tobacco that:
- 127 (a) is finely:
- 128 (i) cut;
- 129 (ii) ground; or
- 130 (iii) powdered;
- 131 (b) has at least 45% moisture content, as determined by the commission by rule made
- 132 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 133 (c) is not intended to be:
- 134 (i) smoked; or
- 135 (ii) placed in the nasal cavity; and
- 136 (d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or
- 137 distributed in single-use units, including:
- 138 (i) tablets;
- 139 (ii) lozenges;
- 140 (iii) strips;
- 141 (iv) sticks; or
- 142 (v) packages containing multiple single-use units.
- 143 (11) "Nicotine" means a poisonous volatile alkaloid derived from tobacco.
- 144 (12) "Nontherapeutic nicotine inhaler" means a nicotine inhaler that is not approved for
- 145 nicotine replacement therapy by the United States Food and Drug Administration.
- 146 [~~(11)~~] (13) "Retailer" means a person that:
- 147 (a) sells or distributes a cigarette to a consumer in the state; or
- 148 (b) intends to sell or distribute a cigarette to a consumer in the state.
- 149 [~~(12)~~] (14) "Stamp" means the indicia required to be placed on a cigarette package that
- 150 evidences payment of the tax on cigarettes required by Section 59-14-205.
- 151 [~~(13)~~] (15) (a) "Tobacco product" means a product made of, or containing, tobacco.

- 152 (b) "Tobacco product" includes:
- 153 (i) a cigarette produced from a cigarette rolling machine;
- 154 (ii) a little cigar; or
- 155 (iii) moist snuff.
- 156 (c) "Tobacco product" does not include a cigarette.

157 ~~[(14)]~~ (16) "Tribal lands" means land held by the United States in trust for a federally
158 recognized Indian tribe.

159 Section 3. Section **59-14-403** is amended to read:

160 **59-14-403. Duplicate invoice requirements -- Failure to comply -- Penalties.**

161 ~~[All persons]~~ A person dealing in taxable cigarettes ~~[or]~~, tobacco products, electronic
162 cigarette products as defined in Section 59-14-802, or nontherapeutic nicotine inhalers who
163 ~~[purchase or receive]~~ purchases or receives these commodities from outside the state, whether
164 the product is delivered through a wholesaler or distributor in this state, or by drop shipment or
165 otherwise, shall mail or deliver a duplicate invoice of all those purchases or receipts to the
166 commission within 10 days after receipt of the commodities if requested by the commission.
167 Failure to furnish duplicate invoices or receipts as requested is subject to the penalties provided
168 under Section 59-1-401.

169 Section 4. Section **59-14-801** is amended to read:

170 **Part 8. Electronic Cigarette Products and Nicotine Inhaler Licensing and Taxation Act**

171 **59-14-801. Title.**

172 This part is known as the "Electronic Cigarette Products and Nicotine Inhaler Licensing
173 and Taxation Act."

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

175 **59-14-802. Definitions.**

176 As used in this part:

- 177 (1) "Cigarette" means the same as that term is defined in Section 59-14-102.
- 178 (2) (a) "Electronic cigarette" means:
 - 179 (i) an electronic device used to deliver or capable of delivering vapor containing
180 nicotine to an individual's respiratory system;
 - 181 (ii) a component of the device described in Subsection (2)(a)(i); or
 - 182 (iii) an accessory sold in the same package as the device described in Subsection

183 (2)(a)(i).

184 (b) "Electronic cigarette" includes an e-cigarette as defined in Section [26-38-2](#).

185 (c) "Electronic cigarette" does not include a battery or battery charger that is sold
 186 separately from the electronic cigarette.

187 (3) "Electronic cigarette product" means an electronic cigarette or an electronic
 188 cigarette substance.

189 (4) "Electronic cigarette substance" means any substance, including liquid containing
 190 nicotine, used or intended for use in an electronic cigarette.

191 (5) "Enforcing agency" means the Department of Health, a county health department,
 192 or a local health department, when enforcing:

193 (a) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; or

194 (b) Title 26, Chapter 57, Electronic Cigarette Regulation Act.

195 (6) "Licensee" means a person that holds a valid license to sell electronic cigarette
 196 products.

197 (7) "License to sell an electronic cigarette product" means a license issued by the
 198 commission under [~~Subsection [59-14-803](#)(3)~~] [Section 59-14-803](#).

199 Section 6. Section **59-14-803** is amended to read:

200 **59-14-803. License to sell an electronic cigarette product or nicotine inhaler.**

201 [~~(1) Except as provided in Subsection (2), a person may not sell, offer to sell, or~~
 202 ~~distribute an electronic cigarette product in Utah without first obtaining a license to sell an~~
 203 ~~electronic cigarette product from the commission under this section.]~~

204 [~~(2) A person that holds a valid license to sell cigarettes under Section [59-14-201](#), or a~~
 205 ~~person that holds a valid license to sell tobacco products under Section [59-14-301](#), may,~~
 206 ~~without obtaining a separate license to sell an electronic cigarette product under this part, sell,~~
 207 ~~offer to sell, or distribute an electronic cigarette product in Utah in accordance with this part.]~~

208 [~~(3) Except as provided in Subsection (6), the commission shall issue a license to sell~~
 209 ~~an electronic cigarette product to a person that:]~~

210 [~~(a) submits an application, on a form created by the commission, that includes:]~~

211 [~~(i) the person's name;]~~

212 [~~(ii) the address of the facility where the person will sell an electronic cigarette~~
 213 ~~product; and]~~

214 ~~[(iii) any other information the commission requires to implement this chapter; and]~~
 215 ~~[(b) pays a fee:]~~
 216 ~~[(i) in the amount of \$30; or]~~
 217 ~~[(ii) if renewing the person's license, in the amount of \$20.]~~
 218 ~~[(4) A license described in Subsection (3) is:]~~
 219 ~~[(a) valid only at one fixed business address;]~~
 220 ~~[(b) valid for three years;]~~
 221 ~~[(c) valid only for a physical location; and]~~
 222 ~~[(d) renewable if a licensee meets the criteria for licensing described in Subsection (3).]~~
 223 (1) A manufacturer or distributor of an electronic cigarette product or nontherapeutic
 224 inhaler, who is responsible for the collection of tax on an electronic cigarette product or
 225 nontherapeutic inhaler under this chapter, and a retailer of an electronic cigarette product or
 226 nontherapeutic inhaler:
 227 (a) shall register with the commission;
 228 (b) shall be licensed by the commission under Part 2, Cigarettes; and
 229 (c) is subject to the requirements, procedures, and penalties described in Part 2,
 230 Cigarettes.
 231 (2) A fee may not be charged for registration and licensing of a manufacturer, jobber,
 232 distributor, or retailer of an electronic cigarette product or nontherapeutic inhaler in addition to
 233 the cigarette license if such a license is required.
 234 (3) The commission shall require any manufacturer, wholesaler, retailer, or any other
 235 person subject to this section, and who is responsible for the collection of tax on an electronic
 236 cigarette product or nontherapeutic inhaler under this chapter, to post a bond as a prerequisite
 237 to registering. The bond shall be in a form and an amount determined by the commission. If
 238 the bond is required under Section 59-14-201, the bond may be a combination, the minimum
 239 amount of which shall be \$1,000.
 240 ~~[(5)] (4) The commission shall, after notifying a licensee, revoke a license described in~~
 241 ~~Subsection [(3)] (1) if an enforcing agency determines the licensee has violated a provision of:~~
 242 (a) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underage Persons; or
 243 (b) Title 26, Chapter 57, Electronic Cigarette Regulation Act.
 244 ~~[(6)] (5) If the commission revokes a person's license to sell an electronic cigarette~~

245 product or nontherapeutic nicotine inhaler under Subsection ~~[(5)]~~ (4), the commission may not
 246 issue a license to sell an electronic cigarette product or nontherapeutic nicotine inhaler, a
 247 license to sell cigarettes under Section 59-14-201, or a license to sell tobacco under Section
 248 59-14-301 to the person until one year after:

249 (a) the day on which the time for filing an appeal of the revocation ends, as determined
 250 by the enforcing agency; or

251 (b) if the person appeals the enforcing agency's decision to revoke the license to sell an
 252 electronic cigarette product, the day on which the enforcing agency's decision to uphold the
 253 revocation is final.

254 ~~[(7)]~~ (6) If the commission revokes a person's license under Subsection ~~[(5)]~~ (4), the
 255 commission shall also revoke the person's license to sell cigarettes under Section 59-14-201, if
 256 any, and the person's license to sell tobacco under Section 59-14-301, if any.

257 ~~[(8) The commission may make rules in accordance with Title 63G, Chapter 3, Utah~~
 258 ~~Administrative Rulemaking Act, to establish the additional information described in~~
 259 ~~Subsection (3)(a)(iii) that a person must provide in the application described in Subsection~~
 260 ~~(3)(a).]~~

261 ~~[(9)]~~ (7) It is a class B misdemeanor for a person to violate Subsection (1).

262 Section 7. Section 59-14-804 is enacted to read:

263 **59-14-804. Taxation of electronic cigarette product and nicotine inhalers.**

264 (1) As used in this section:

265 (a) "Manufacturer's sales price" means the amount the manufacturer of an electronic
 266 cigarette product or nontherapeutic nicotine inhaler charges after subtracting a discount.

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

269 (i) whether the electronic cigarette product or nontherapeutic nicotine inhaler is
 270 shipped f.o.b. origin or f.o.b. destination; or

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

272 (2) There is levied a tax upon the sale, use, or storage of an electronic cigarette product
 273 or nontherapeutic nicotine inhaler in the state.

274 (3) The tax levied under Subsection (2) shall be paid by the manufacturer, jobber,
 275 distributor, wholesaler, retailer, user, or consumer.

276 (4) For an electronic cigarette product or nontherapeutic nicotine inhaler, the rate of the
277 tax under this section is .86 multiplied by the manufacturer's sales price.

278 (5) (a) There is created within the General Fund a restricted account known as the
279 "Electronic Cigarette Product and Nicotine Inhaler Tax Restricted Account."

280 (b) The Electronic Cigarette Product and Nicotine Inhaler Tax Restricted Account
281 consists of:

282 (i) the revenues collected from a tax under this section; and

283 (ii) any other appropriation the Legislature makes to the Electronic Cigarette Product
284 and Nicotine Inhaler Tax Restricted Account.

285 (c) For each fiscal year beginning with fiscal year 2016-17 and subject to appropriation
286 by the Legislature, the Division of Finance shall distribute money from the Electronic Cigarette
287 Product and Nicotine Inhaler Tax Restricted Account as follows:

288 (i) \$1,000,000 to the Department of Health to be distributed to local health departments
289 in accordance with Section [26A-1-116](#);

290 (ii) \$1,000,000 to the Rural Health Care Access Restricted Account created in Section
291 [26-9-6](#); and

292 (iii) the remainder of the money collected under this section to the Uniform School
293 Fund.

294 Section 8. Section **63I-2-226** is amended to read:

295 **63I-2-226. Repeal dates -- Title 26.**

296 (1) Section [26-9-6](#) is repealed July 1, 2019.

297 (2) Title 26, Chapter 46, Utah Health Care Workforce Financial Assistance Program, is
298 repealed July 1, 2017.

299 Section 9. Section **76-10-104.1** is amended to read:

300 **76-10-104.1. Providing tobacco paraphernalia to minors -- Penalties.**

301 (1) For purposes of this section:

302 (a) "Provides":

303 (i) includes selling, giving, furnishing, sending, or causing to be sent; and

304 (ii) does not include the acts of the United States Postal Service or other common
305 carrier when engaged in the business of transporting and delivering packages for others or the
306 acts of a person, whether compensated or not, who transports or delivers a package for another

307 person without any reason to know of the package's content.

308 (b) "Tobacco paraphernalia":

309 (i) means any equipment, product, or material of any kind which is used, intended for
310 use, or designed for use to package, repackage, store, contain, conceal, ingest, inhale, or
311 otherwise introduce a cigar, cigarette, electronic cigarette product as defined in Section
312 59-14-802, or tobacco in any form into the human body, including:

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

315 (B) water pipes;

316 (C) carburetion tubes and devices;

317 (D) smoking and carburetion masks;

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

320 (F) chamber pipes;

321 (G) carburetor pipes;

322 (H) electric pipes;

323 (I) air-driven pipes;

324 (J) chillums;

325 (K) bongs; and

326 (L) ice pipes or chillers; and

327 (ii) does not include matches or lighters.

328 (2) (a) It is unlawful for a person to knowingly, intentionally, recklessly, or with
329 criminal negligence provide any tobacco paraphernalia to any person under 19 years of age.

330 (b) A person who violates this section is guilty of a class C misdemeanor on the first
331 offense and a class B misdemeanor on subsequent offenses.

332 Section 10. **Effective date.**

333 This bill takes effect on July 1, 2016.