

Representative Paul Ray proposes the following substitute bill:

**ELECTRONIC CIGARETTE AND OTHER NICOTINE
PRODUCT AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill enacts and amends provisions relating to electronic cigarette products, alternative nicotine products, and nontherapeutic nicotine products.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ imposes civil penalties for the sale of an alternative nicotine product or a nontherapeutic nicotine product;
- ▶ requires certain products that contain synthetic nicotine to have a statement on the exterior package that the product contains synthetic nicotine;
- ▶ imposes licensing requirements on a person that sells or distributes an alternative nicotine product or a nontherapeutic nicotine product;
- ▶ imposes an excise tax on the sale of an electronic cigarette substance, an alternative nicotine product, and a nontherapeutic nicotine device substance in the state;
- ▶ provides for the remittance of the tax collected;
- ▶ creates the Electronic Cigarette Substance and Other Nicotine Product Tax Restricted Account;



- 26 ▶ addresses use of revenue from the taxation of an electronic cigarette substance, an
- 27 alternative nicotine product, and a nontherapeutic nicotine device substance;
- 28 ▶ provides criminal penalties for a sale or purchase of an electronic cigarette product,
- 29 an alternative nicotine product, or a nontherapeutic nicotine product, in violation of
- 30 law; and
- 31 ▶ makes technical and conforming changes.

32 Money Appropriated in this Bill:

33 None

34 Other Special Clauses:

35 This bill provides a special effective date.

36 Utah Code Sections Affected:

37 **AMENDS:**

- 38 **26-42-101**, as enacted by Laws of Utah 1998, Chapter 319
- 39 **26-42-102**, as last amended by Laws of Utah 2015, Chapter 132
- 40 **26-42-103**, as last amended by Laws of Utah 2015, Chapter 132
- 41 **26-42-106**, as enacted by Laws of Utah 1998, Chapter 319
- 42 **26-42-107**, as last amended by Laws of Utah 2015, Chapter 132
- 43 **26-57-101**, as enacted by Laws of Utah 2015, Chapter 132
- 44 **26-57-102**, as enacted by Laws of Utah 2015, Chapter 132
- 45 **59-14-102**, as last amended by Laws of Utah 2013, Chapter 148
- 46 **59-14-201**, as last amended by Laws of Utah 2013, Chapter 148
- 47 **59-14-203.5**, as last amended by Laws of Utah 2011, Chapter 96
- 48 **59-14-801**, as enacted by Laws of Utah 2015, Chapter 132
- 49 **59-14-802**, as enacted by Laws of Utah 2015, Chapter 132
- 50 **59-14-803**, as enacted by Laws of Utah 2015, Chapter 132
- 51 **76-10-101**, as last amended by Laws of Utah 2015, Chapters 66, 132 and last amended
- 52 by Coordination Clause, Laws of Utah 2015, Chapter 132
- 53 **76-10-104**, as last amended by Laws of Utah 2010, Chapter 114
- 54 **76-10-104.1**, as last amended by Laws of Utah 2013, Chapter 278
- 55 **76-10-105**, as last amended by Laws of Utah 2017, Chapter 330
- 56 **76-10-105.1**, as last amended by Laws of Utah 2015, Chapters 66 and 132

57 ENACTS:

58 [26-57-104](#), Utah Code Annotated 1953

59 [59-14-804](#), Utah Code Annotated 1953

60 [59-14-805](#), Utah Code Annotated 1953

61 [59-14-806](#), Utah Code Annotated 1953

62 [59-14-807](#), Utah Code Annotated 1953



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

65 Section 1. Section **26-42-101** is amended to read:

66 **CHAPTER 42. CIVIL PENALTIES FOR TOBACCO, ELECTRONIC CIGARETTE,**
67 **AND OTHER NICOTINE PRODUCT SALES TO UNDERAGE PERSONS**

68 **26-42-101. Title.**

69 This chapter is known as "Civil Penalties for Tobacco, Electronic Cigarette, and Other
70 Nicotine Product Sales to Underage Persons."

71 Section 2. Section **26-42-102** is amended to read:

72 **26-42-102. Definitions.**

73 As used in this chapter:

74 (1) "Alternative nicotine product" means the same as that term is defined in Section
75 [59-14-102](#).

76 ~~(1)~~ (2) "Commission" means the [Utah] State Tax Commission.

77 (3) "Electronic cigarette product" means the same as that term is defined in Section
78 [59-14-102](#).

79 ~~(2)~~ (4) "Employee" means an employee of a licensee.

80 ~~(3)~~ (5) "Enforcing agency" means the state Department of Health, or any local health
81 department, enforcing the provisions of this chapter.

82 ~~(4)~~ (6) "Licensee" means a person licensed:

83 (a) under Section [59-14-201](#) to sell cigarettes at retail;

84 (b) under Section [59-14-301](#) to sell tobacco products at retail; or

85 (c) under Section [59-14-803](#) to sell an electronic cigarette product, an alternative
86 nicotine product, or a nontherapeutic nicotine product.

87 ~~(5)~~ (7) "License to sell [~~tobacco~~]" or "license" means a license issued:

- 88 (a) under Section 59-14-201 to sell cigarettes at retail;
- 89 (b) under Section 59-14-301 to sell tobacco products at retail; or
- 90 (c) under Section 59-14-803 to sell an electronic cigarette product, an alternative
- 91 nicotine product, or a nontherapeutic nicotine product.

92 (8) "Nontherapeutic nicotine product" means the same as that term is defined in

93 Section 59-14-102.

94 [~~(6)~~] (9) "Tobacco" means [~~:(a)~~] a cigarette or a tobacco product, as defined in Section

95 59-14-102 [~~;~~ ~~or~~].

96 [~~(b)~~] ~~an electronic cigarette product, as defined in Section 59-14-802.~~

97 Section 3. Section 26-42-103 is amended to read:

98 **26-42-103. Violations and penalties -- Imposition by enforcing agency and tax**

99 **commission.**

100 (1) If, following an investigation or issuance of a citation or information under Section

101 77-39-101, an enforcing agency determines under Section 26-42-104 that a licensee or any

102 employee has sold tobacco, an electronic cigarette product, an alternative nicotine product, or a

103 nontherapeutic nicotine product to a person younger than 19 years of age, as prohibited by

104 Section 76-10-104, the enforcing agency may impose upon the licensee the following

105 administrative penalties:

- 106 (a) upon the first violation, a penalty of not more than \$300;
- 107 (b) upon a second violation at the same retail location [~~;~~] and within 12 months of the
- 108 first violation, a penalty of not more than \$750; and
- 109 (c) upon a third or subsequent violation at the same retail location and within 12
- 110 months of the first violation, a penalty of not more than \$1,000.

111 (2) The enforcing agency shall notify the commission in writing of any order or order

112 of default finding a violation of Subsection (1) [~~which~~] that is a third or fourth violation.

113 (3) (a) [~~The commission, upon~~] Upon receipt of the written notification under

114 Subsection (2), the commission shall take action under Section 59-14-203.5 [~~or~~], 59-14-301.5,

115 or 59-14-803 against the license to sell [~~tobacco:~~] in accordance with Subsection (3)(b).

116 [~~(a)~~] (b) (i) [~~by suspending~~] Upon receipt of written notification of a third offense

117 under Subsection (1)(c), the commission shall suspend the licensee's license to sell tobacco, an

118 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine

119 product at that location for not more than 30 days~~[- upon receipt of notification of a third~~
 120 ~~violation under Subsection (1)(c); and].~~

121 ~~[(b)]~~ (ii) ~~[by revoking]~~ Upon receipt of written notification of a fourth violation under
 122 Subsection (1)(c), the commission shall revoke the license to sell ~~[tobacco at that location]~~ held
 123 by the licensee, including any license under suspension~~[- upon receipt of notification of a fourth~~
 124 ~~violation under Subsection (1)(c)]~~ at that location.

125 (4) When the commission revokes a license under Subsection (3)(b)(ii), the
 126 commission may not issue to the licensee, or to the business entity using the license that is
 127 revoked, a license under Section 59-14-202, 59-14-301, or 59-14-803 ~~[to sell tobacco]~~ at the
 128 location for which the license was issued for one year after:

- 129 (a) the day on which the time for filing an appeal of the revocation ends; or
 130 (b) if the revocation is appealed, the day on which the decision to uphold the
 131 revocation becomes final.

132 (5) This section does not prevent any bona fide purchaser of the business, who is not a
 133 sole proprietor, director, corporate officer, or partner or other holder of significant interest in
 134 the entity selling the business, from immediately applying for and obtaining a license to sell
 135 ~~[tobacco]~~.

136 Section 4. Section **26-42-106** is amended to read:

137 **26-42-106. Recognition of licensee's training program.**

138 (1) In determining the amount of the monetary penalty to ~~[be imposed]~~ impose for an
 139 employee's violation of Section 26-42-103, the hearing officer shall reduce the penalty by at
 140 least 50% if ~~[he]~~ the hearing officer determines:

- 141 (a) the licensee has implemented a documented employee training program; and
 142 (b) the employee has completed that training program within 30 days of commencing
 143 duties of selling tobacco products, electronic cigarette products, alternative nicotine products,
 144 or nontherapeutic nicotine products.

145 (2) (a) ~~[If]~~ The hearing officer may suspend all or a portion of the monetary penalty for
 146 a first offense at a location if:

- 147 (i) the hearing officer determines under Subsection (1)~~[- regarding a first offense at a~~
 148 ~~location,]~~ that the licensee has not implemented a documented training program with a written
 149 curriculum for employees at that location regarding compliance with this chapter~~[- the hearing~~

150 officer may suspend all or a portion of the monetary penalty, contingent upon the licensee's
151 initiating]; and

152 (ii) the licensee agrees to initiate a training program for employees at that location
153 within 30 days after the hearing date.

154 (b) If the hearing officer determines at a subsequent hearing that the licensee has not
155 implemented the training program within the time period required under Subsection (2)(a), the
156 hearing officer shall promptly impose the suspended monetary penalty [~~shall be promptly~~
157 ~~imposed~~], unless the licensee demonstrates good cause for granting an extension of time for
158 implementation of the training program.

159 Section 5. Section **26-42-107** is amended to read:

160 **26-42-107. Allocation of civil penalties.**

161 Civil monetary penalties collected under this chapter shall be allocated as follows:

162 (1) if a local health department conducts an adjudicative proceeding under Section
163 **26-42-104**, the penalty shall be paid to the treasurer of the county in which the violation was
164 committed[;] and transferred to:

165 (a) the local health department if [~~it~~] the local health department conducts a civil
166 hearing under Section **26-42-104** alone; or

167 (b) in equal portions to the local health department and the other agencies that
168 participated in the hearing process;

169 (2) if the state Department of Health conducts a civil hearing under Section **26-42-104**,
170 the penalty shall be deposited in the state's General Fund[;] and may be appropriated by the
171 Legislature to the state Department of Health for use in enforcement of this chapter; and

172 (3) if the civil penalty involves suspension or revocation of a license to sell [~~tobacco~~]
173 under Section **59-14-203.5**, **59-14-301.5**, or **59-14-803**, half of the penalty shall be paid to the
174 commission[;] and the other half shall be allocated under Subsection (1) or (2)[;] as
175 appropriate.

176 Section 6. Section **26-57-101** is amended to read:

177 **CHAPTER 57. ELECTRONIC CIGARETTE AND OTHER NICOTINE PRODUCT**
178 **REGULATION ACT**

179 **26-57-101. Title.**

180 This chapter is known as the "Electronic Cigarette and Other Nicotine Product

181 Regulation Act."

182 Section 7. Section **26-57-102** is amended to read:

183 **26-57-102. Definitions.**

184 As used in this chapter:

185 (1) "Alternative nicotine product" means the same as that term is defined in Section
186 59-14-102.

187 [~~(1)~~] (2) "Cigarette" means the same as that term is defined in Section 59-14-102.

188 [~~(2)~~] (3) "Electronic cigarette" means the same as that term is defined in Section
189 [~~59-14-802~~] 59-14-102.

190 [~~(3)~~] (4) "Electronic cigarette product" means an electronic cigarette or an electronic
191 cigarette substance.

192 [~~(4)~~] (5) "Electronic cigarette substance" means the same as that term is defined in
193 Section [~~59-14-802~~] 59-14-102.

194 (6) "Local health department" means the same as that term is defined in Section
195 26A-1-102.

196 [~~(5)~~] (7) "Manufacture" includes:

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

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

199 [~~(6)~~] (8) "Manufacturer sealed electronic cigarette substance" means an electronic
200 cigarette substance that is sold in a container that:

201 (a) is [~~pre-filled~~] prefilled by the electronic cigarette substance manufacturer; and

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

203 (9) "Nontherapeutic nicotine device" means the same as that term is defined in Section
204 59-14-102.

205 (10) "Nontherapeutic nicotine device substance" means the same as that term is defined
206 in Section 59-14-102.

207 (11) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device or a
208 nontherapeutic nicotine device substance.

209 Section 8. Section **26-57-104** is enacted to read:

210 **26-57-104. Labeling of products containing synthetic nicotine.**

211 Any nontherapeutic nicotine device or alternative nicotine product containing synthetic

212 nicotine that is not otherwise required to contain a nicotine warning and that is sold in this state
213 shall contain the following statement on the exterior packaging of the product:

214 "This product contains synthetic nicotine."

215 Section 9. Section **59-14-102** is amended to read:

216 **59-14-102. Definitions.**

217 As used in this chapter:

218 (1) (a) Except as provided in Subsection (1)(c), "alternative nicotine product" means a
219 product, other than a cigarette, a counterfeit cigarette, an electronic cigarette product, a
220 nontherapeutic nicotine product, or a tobacco product, that:

221 (i) contains nicotine;

222 (ii) is intended for human consumption;

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

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

226 (b) "Alternative nicotine product" includes:

227 (i) pure nicotine;

228 (ii) snortable nicotine;

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

230 (iv) nicotine-laced food and beverage.

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

233 ~~[(+)]~~ (2) "Cigarette" means a roll for smoking made wholly or in part of tobacco:

234 (a) regardless of:

235 (i) the size of the roll;

236 (ii) the shape of the roll; or

237 (iii) whether the tobacco is ~~[(A)]~~ flavored~~[(B)]~~, adulterated~~[(C)]~~, or ~~[(C)]~~ mixed with
238 any other ingredient; and

239 (b) if the wrapper or cover of the roll is made of paper or any other substance or
240 material except tobacco.

241 ~~[(2)]~~ (3) "Cigarette rolling machine" means a device or machine that has the capability
242 to produce at least 150 cigarettes in less than 30 minutes.

- 243 [~~(3)~~] (4) "Cigarette rolling machine operator" means a person [~~who~~] that:
- 244 (a) (i) controls, leases, owns, possesses, or otherwise has available for use a cigarette
- 245 rolling machine; and
- 246 (ii) makes the cigarette rolling machine available for use by another person to produce
- 247 a cigarette; or
- 248 (b) offers for sale, at retail, a cigarette produced from the cigarette rolling machine.
- 249 [~~(4)~~] (5) "Consumer" means a person that is not required:
- 250 (a) under Section [59-14-201](#) to obtain a license under Section [59-14-202](#); [~~or~~]
- 251 (b) under Section [59-14-301](#) to obtain a license under Section [59-14-202](#)~~[-]~~; or
- 252 (c) under Section [59-14-803](#) to obtain a license.
- 253 [~~(5)~~] (6) "Counterfeit cigarette" means:
- 254 (a) a cigarette that has a false manufacturing label; or
- 255 (b) a package of cigarettes bearing a counterfeit tax stamp.
- 256 (7) (a) "Electronic cigarette" means:
- 257 (i) an electronic device used to deliver or capable of delivering vapor containing
- 258 nicotine to an individual's respiratory system;
- 259 (ii) a component of the device described in Subsection (7)(a)(i); or
- 260 (iii) an accessory sold in the same package as the device described in Subsection
- 261 (7)(a)(i).
- 262 (b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section
- 263 [26-38-2](#).
- 264 (8) "Electronic cigarette product" means an electronic cigarette or an electronic
- 265 cigarette substance.
- 266 (9) "Electronic cigarette substance" means any substance, including liquid containing
- 267 nicotine, used or intended for use in an electronic cigarette.
- 268 [~~(6)~~] (10) "Importer" means a person [~~who~~] that imports into the United States, either
- 269 directly or indirectly, a finished cigarette for sale or distribution.
- 270 [~~(7)~~] (11) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity,
- 271 or any other person doing business as a distributor or retailer of cigarettes on tribal lands
- 272 located in the state.
- 273 [~~(8)~~] (12) "Little cigar" means a roll for smoking that:

274 (a) is made wholly or in part of tobacco;

275 (b) [~~that~~] uses an integrated cellulose acetate filter or other similar filter; and

276 (c) [~~that~~] is wrapped in a substance:

277 (i) containing tobacco; and

278 (ii) that is not exclusively natural leaf tobacco.

279 [~~(9)~~] (13) (a) Except as provided in Subsection [~~(9)~~] (13)(b), "manufacturer" means a

280 person [~~who~~] that:

281 (i) manufactures, fabricates, assembles, processes, or labels a finished cigarette; or

282 (ii) makes, modifies, mixes, manufactures, fabricates, assembles, processes, labels,

283 repackages, relabels, or imports an electronic cigarette product, an alternative nicotine product,

284 or a nontherapeutic nicotine product.

285 (b) "Manufacturer" does not include a cigarette rolling machine operator.

286 [~~(10)~~] (14) "Moist snuff" means tobacco that:

287 (a) is finely~~[-(i)]~~ cut~~[-(ii)]~~, ground~~[-(iii)]~~, or ~~[(iii)]~~ powdered;

288 (b) has at least 45% moisture content, as determined by the commission by rule made

289 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

290 (c) is not intended to be:

291 (i) smoked; or

292 (ii) placed in the nasal cavity; and

293 (d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or

294 distributed in single-use units, including:

295 (i) tablets;

296 (ii) lozenges;

297 (iii) strips;

298 (iv) sticks; or

299 (v) packages containing multiple single-use units.

300 (15) "Nicotine" means a poisonous, nitrogen containing chemical that is made

301 synthetically or derived from tobacco or other plants.

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

303 (i) has a pressurized canister that is used to administer nicotine to the user through

304 inhalation or intranasally;

305 (ii) is not purchased with a prescription from a licensed physician; and
 306 (iii) is not approved by the United States Food and Drug Administration as nicotine
 307 replacement therapy.

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

310 (17) "Nontherapeutic nicotine device substance" means a cartridge that:

- 311 (a) contains nicotine;
- 312 (b) is used or intended to be used in a nontherapeutic nicotine device;
- 313 (c) is not purchased with a prescription from a licensed physician; and
- 314 (d) is not approved by the United States Food and Drug Administration as nicotine
 315 replacement therapy.

316 (18) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device or a
 317 nontherapeutic nicotine device substance.

318 ~~[(11)]~~ (19) "Retailer" means a person that:

- 319 (a) sells or distributes a cigarette, an electronic cigarette product, an alternative nicotine
 320 product, or a nontherapeutic nicotine product to a consumer in the state; or
- 321 (b) intends to sell or distribute a cigarette, an electronic cigarette product, an alternative
 322 nicotine product, or a nontherapeutic nicotine product to a consumer in the state.

323 ~~[(12)]~~ (20) "Stamp" means the indicia required to be placed on a cigarette package that
 324 evidences payment of the tax on cigarettes required by Section 59-14-205.

325 ~~[(13)]~~ (21) (a) "Tobacco product" means a product made of, or containing, tobacco.

- 326 (b) "Tobacco product" includes:
- 327 (i) a cigarette produced from a cigarette rolling machine;
- 328 (ii) a little cigar; or
- 329 (iii) moist snuff.
- 330 (c) "Tobacco product" does not include a cigarette.

331 ~~[(14)]~~ (22) "Tribal lands" means land held by the United States in trust for a federally
 332 recognized Indian tribe.

333 Section 10. Section **59-14-201** is amended to read:

334 **59-14-201. License -- Application of part -- Fee -- Bond -- Exceptions.**

335 (1) It is unlawful for any person in this state to manufacture, import, distribute, barter,

336 sell, exchange, or offer cigarettes for sale without first having obtained a license issued by the
337 commission under Section 59-14-202.

338 (2) Except for the tax rates described in Subsection 59-14-204(2), this part does not
339 apply to a cigarette produced from a cigarette rolling machine.

340 (3) (a) A license may not be issued for the sale of cigarettes until the applicant has paid
341 a license fee of \$30 or a license renewal fee of \$20, as appropriate.

342 (b) The fee for reinstatement of a license that has been revoked, suspended, or allowed
343 to expire is \$30.

344 (4) (a) (i) [~~A license~~] The commission may not [~~be issued~~] issue a license until the
345 applicant files a bond with the commission.

346 (ii) The commission shall determine the form and the amount of the bond, the
347 minimum amount of which shall be \$500.

348 (iii) The bond shall be executed by the applicant as principal, with a corporate surety,
349 payable to the state and conditioned upon the faithful performance of all the requirements of
350 this chapter, including the payment of all taxes, penalties, and other obligations.

351 (b) An applicant is not required to post a bond if the applicant:

352 (i) purchases₂ during the license year₂ only products that have the proper state stamp
353 affixed as required by this chapter; and

354 (ii) files an affidavit with the applicant's application attesting to this fact.

355 Section 11. Section 59-14-203.5 is amended to read:

356 **59-14-203.5. Commission action to suspend or revoke license.**

357 (1) (a) The commission shall suspend or revoke licenses to sell tobacco, as required
358 under Section 26-42-103 regarding suspension or revocation of a license due to the sale of
359 cigarettes to a person younger than 19 years of age, upon receipt of notice of an enforcing
360 agency's finding of a violation of Section 26-42-103.

361 (b) The commission shall provide written notice of the suspension or revocation to the
362 licensee.

363 (2) It is the duty of the enforcing agency to advise the commission of any finding of a
364 violation of Section 26-42-103 for which suspension or revocation of the license is a penalty.

365 (3) When the commission revokes a licensee's license under this section₂ the
366 commission may not issue to the licensee, or to the business entity using the license that is

367 revoked, a license to sell cigarettes under Section 59-14-202 [~~or~~], a license to sell tobacco
 368 under Section 59-14-301 [~~to sell tobacco~~], or a license to sell an electronic cigarette product, an
 369 alternative nicotine product, or a nontherapeutic nicotine product under Section 59-14-803 at
 370 the location for which the license was issued for one year after:

- 371 (a) the day on which the time for filing an appeal of the revocation ends; or
 372 (b) if the revocation is appealed, the day on which the decision to uphold the
 373 revocation becomes final.

374 Section 12. Section **59-14-801** is amended to read:

375 **Part 8. Electronic Cigarette and Other Nicotine Product Licensing and Taxation Act**
 376 **59-14-801. Title.**

377 This part is known as the "Electronic Cigarette and Other Nicotine Product Licensing
 378 and Taxation Act."

379 Section 13. Section **59-14-802** is amended to read:

380 **59-14-802. Definitions.**

381 As used in this part:

382 [~~(1) "Cigarette" means the same as that term is defined in Section 59-14-102.~~]

383 [~~(2)(a) "Electronic cigarette" means:~~]

384 [~~(i) an electronic device used to deliver or capable of delivering vapor containing~~
 385 ~~nicotine to an individual's respiratory system;~~]

386 [~~(ii) a component of the device described in Subsection (2)(a)(i); or~~]

387 [~~(iii) an accessory sold in the same package as the device described in Subsection~~
 388 ~~(2)(a)(i).~~]

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

390 [~~(3) "Electronic cigarette product" means an electronic cigarette or an electronic~~
 391 ~~cigarette substance.~~]

392 [~~(4) "Electronic cigarette substance" means any substance, including liquid containing~~
 393 ~~nicotine, used or intended for use in an electronic cigarette.~~]

394 [~~(5)~~] (1) "Enforcing agency" means the Department of Health, a county health
 395 department, or a local health department, when enforcing:

- 396 (a) Title 26, Chapter 42, Civil Penalties for Tobacco, Electronic Cigarette, and Other
 397 Nicotine Product Sales to Underage Persons; or

398 (b) Title 26, Chapter 57, Electronic Cigarette and Other Nicotine Product Regulation
399 Act.

400 ~~[(6)]~~ (2) "Licensee" means a person that holds a valid license to sell an electronic
401 cigarette [products] product, an alternative nicotine product, or a nontherapeutic nicotine
402 product.

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

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

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

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

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

415 (4) "Prefilled electronic cigarette" means an electronic cigarette that is sold prefilled
416 with an electronic cigarette substance.

417 (5) "Prefilled nontherapeutic nicotine device" means a nontherapeutic nicotine device
418 that is sold prefilled with a nontherapeutic nicotine device substance.

419 (6) "Youth electronic cigarette and other nicotine product cessation program" means a
420 program that helps individuals under the age of 19 to quit using tobacco, electronic cigarette
421 products, alternative nicotine products, and nontherapeutic nicotine products.

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

423 **59-14-803. License to sell an electronic cigarette product, an alternative nicotine**
424 **product, or a nontherapeutic nicotine product.**

425 (1) (a) ~~[Except as provided in Subsection (2), a]~~ A person may not sell, offer to sell, or
426 distribute an electronic cigarette product [in Utah], an alternative nicotine product, or a
427 nontherapeutic nicotine product in this state without first:

428 (i) except as provided in Subsection (1)(b), obtaining a license from the commission

429 under this section to sell an electronic cigarette product [~~from the commission under this~~
 430 ~~section.~~], an alternative nicotine product, or a nontherapeutic nicotine product; and

431 (ii) complying with any bonding requirement described in Subsection (4).

432 [~~(2)~~] (b) A person that holds a valid license to sell cigarettes under Section 59-14-201,
 433 or a person that holds a valid license to sell tobacco products under Section 59-14-301, may[;
 434 ~~without obtaining a separate license to sell an electronic cigarette product under this part,~~] sell,
 435 offer to sell, or distribute an electronic cigarette product [~~in Utah~~], an alternative nicotine
 436 product, or a nontherapeutic nicotine product in this state without obtaining a separate license
 437 to sell an electronic cigarette product, an alternative nicotine product, or a nontherapeutic
 438 nicotine product in accordance with this [~~part~~] section.

439 [~~(3)~~] (2) Except as provided in Subsection (6), the commission shall issue a license to
 440 sell an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine
 441 product to a person that:

442 (a) submits an application, on a form created by the commission, that includes:

443 (i) the person's name;

444 (ii) the address of the facility where the person will sell an electronic cigarette product,
 445 an alternative nicotine product, or a nontherapeutic nicotine product; and

446 (iii) any other information the commission requires to implement this chapter; and

447 (b) pays a fee:

448 (i) in the amount of \$30 if the person is applying for a first-time license or reinstating a
 449 revoked, suspended, or expired license; or

450 (ii) [~~if renewing the person's license,~~] in the amount of \$20 if the person is renewing a
 451 license.

452 [~~(4)~~] (3) A license described in Subsection [~~(3)~~] (2) is:

453 (a) valid only at one fixed business address;

454 (b) valid for three years;

455 (c) valid only for a physical location; and

456 (d) renewable if a licensee meets the criteria for licensing described in Subsection [~~(3)~~]

457 (2).

458 (4) (a) The commission shall require a manufacturer, jobber, distributor, wholesaler, or
 459 retailer that is responsible under this part for the collection of tax on an electronic cigarette, an

460 alternative nicotine product, or a nontherapeutic nicotine product to post a bond.

461 (b) The manufacturer, jobber, distributor, wholesaler, or retailer may post the bond
462 required by Subsection (4)(a) in combination with the bond required by Section 59-14-201 or
463 59-14-301.

464 (c) Subject to Subsection (4)(d), the commission shall determine the form and amount
465 of the bond.

466 (d) The minimum amount of the bond shall be:

467 (i) except as provided in Subsection (4)(d)(ii) or (iii), \$500;

468 (ii) if the manufacturer, jobber, distributor, wholesaler, or retailer posts the bond
469 required by Subsection (4)(a) in combination with the bond required by Section 59-14-201 or
470 59-14-301, \$1,000; or

471 (iii) if the manufacturer, jobber, distributor, wholesaler, or retailer posts the bond
472 required by Subsection (4)(a) in combination with the bonds required by Sections 59-14-201
473 and 59-14-301, \$1,500.

474 (5) The commission shall, after notifying a licensee, revoke a license described in
475 Subsection (3) if an enforcing agency determines the licensee has violated a provision of:

476 (a) Title 26, Chapter 42, Civil Penalties for Tobacco, Electronic Cigarette, and Other
477 Nicotine Product Sales to Underage Persons; or

478 (b) Title 26, Chapter 57, Electronic Cigarette and Other Nicotine Product Regulation
479 Act.

480 (6) If the commission revokes a person's license to sell an electronic cigarette product,
481 an alternative nicotine product, or a nontherapeutic nicotine product under Subsection (5), the
482 commission may not issue to the person a license to sell an electronic cigarette product, an
483 alternative nicotine product, or a nontherapeutic nicotine product under this section, a license
484 to sell cigarettes under Section 59-14-201, or a license to sell tobacco under Section 59-14-301
485 [~~to the person~~] until one year after:

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

488 (b) if the person appeals the enforcing agency's decision to revoke the license to sell an
489 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine
490 product, the day on which the enforcing agency's decision to uphold the revocation is final.

491 (7) If the commission revokes a person's license under Subsection (5), the commission
 492 shall also revoke the person's license to sell cigarettes under Section 59-14-201, if any, and the
 493 person's license to sell tobacco under Section 59-14-301, if any.

494 (8) The commission may make rules in accordance with Title 63G, Chapter 3, Utah
 495 Administrative Rulemaking Act, to establish the additional information described in
 496 Subsection ~~[(3)]~~ (2)(a)(iii) that a person must provide in the application described in
 497 Subsection ~~[(3)(a)]~~ (2).

498 (9) It is a class B misdemeanor for a person to violate Subsection (1).

499 Section 15. Section 59-14-804 is enacted to read:

500 **59-14-804. Taxation of an electronic cigarette product, an alternative nicotine**
 501 **product, and a nontherapeutic nicotine product.**

502 (1) (a) There is levied a tax upon the following:

503 (i) an electronic cigarette substance; and

504 (ii) a prefilled electronic cigarette.

505 (b) Beginning on July 1, 2019, there is levied a tax upon the following:

506 (i) an alternative nicotine product;

507 (ii) a nontherapeutic nicotine device substance; or

508 (iii) a prefilled nontherapeutic nicotine device.

509 (2) The rate of the tax levied under Subsection (1) is ~~1/86~~ .29 multiplied by the
 510 manufacturer's sales price.

511 (3) (a) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user shall
 512 pay the tax levied under Subsection (1) at the time that an electronic cigarette substance, a
 513 prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic nicotine device
 514 substance, or a prefilled nontherapeutic nicotine device is first received in the state.

515 (b) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user may not
 516 resell an electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine
 517 product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine
 518 device to another distributor, another retailer, or a consumer before paying the tax levied under
 519 Subsection (1).

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

522 (b) The commission shall deposit, for each fiscal year:
523 (i) the first \$2,000,000 remitted in accordance with this section into the Electronic
524 Cigarette Substance and Other Nicotine Product Tax Restricted Account, created in Section
525 59-14-807; and
526 (ii) the balance of remittances received in accordance with this section into the General
527 Fund.

528 Section 16. Section **59-14-805** is enacted to read:
529 **59-14-805. Remittance of tax -- Returns -- Invoice required -- Filing requirement--**
530 **Exception -- Penalty -- Overpayment.**

531 (1) (a) The manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user
532 that collects the tax imposed on an electronic cigarette substance, a prefilled electronic
533 cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance, or a
534 prefilled nontherapeutic nicotine device shall remit to the commission, in an electronic format
535 approved by the commission:

536 (i) the tax collected in the previous calendar quarter; and
537 (ii) the quarterly tax return.

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

540 (2) (a) A manufacturer, jobber, distributor, wholesaler, retailer, or any other person
541 selling an electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine
542 product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine
543 device to a person other than the ultimate consumer shall furnish the purchaser with an
544 itemized invoice showing the seller's name and address, the name and address of the purchaser,
545 the date of sale, the name and price of the product, and the discount, if any.

546 (b) The invoice shall show whether the price includes the tax.

547 (c) The seller and the purchaser shall retain copies of the invoice and make the invoice
548 available for inspection at the request of the commission or the commission's agent for a period
549 of three years following the sale.

550 (3) (a) A consumer that purchases an untaxed electronic cigarette substance, a prefilled
551 electronic cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance,
552 or a prefilled nontherapeutic nicotine device for use or other consumption shall:

553 (i) file with the commission, on forms prescribed by the commission, a statement
554 showing the quantity and description of the item subject to tax under this part; and

555 (ii) pay the tax imposed by this part on that item.

556 (b) The consumer shall file the statement described in Subsection (3)(a) and pay the tax
557 due on or before the last day of the month immediately following the month during which the
558 consumer purchased an electronic cigarette substance, a prefilled electronic cigarette, an
559 alternative nicotine device substance, a nontherapeutic nicotine product, or a prefilled
560 nontherapeutic nicotine device.

561 (c) A consumer shall maintain records necessary to determine the amount of tax the
562 consumer is liable to pay under this part for a period of three years following the date the
563 statement required by this section was filed.

564 (4) A tourist who imports an electronic cigarette substance, a prefilled electronic
565 cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance, or a
566 prefilled nontherapeutic nicotine device into the state does not need to file the statement
567 described in Subsection (3) or pay the tax if the item is for the tourist's own use or consumption
568 while in this state.

569 (5) In addition to the tax required by this part, a person shall pay a penalty as provided
570 in Section 59-1-401, plus interest at the rate and in the manner prescribed in Section 59-1-402,
571 if a person subject to this section fails to:

572 (a) pay the tax prescribed by this part;

573 (b) pay the tax on time; or

574 (c) file a return required by this part.

575 (6) An overpayment of a tax imposed by this part shall accrue interest at the rate and in
576 the manner prescribed in Section 59-1-402.

577 Section 17. Section 59-14-806 is enacted to read:

578 **59-14-806. Refund of taxes paid -- Exemption for exported electronic cigarettes**
579 **and other nicotine products.**

580 (1) When an electronic cigarette substance, a prefilled electronic cigarette, an
581 alternative nicotine product, a nontherapeutic nicotine device substance, or a prefilled
582 nontherapeutic nicotine device taxed under this chapter is sold and shipped to a regular dealer
583 in those articles in another state, the seller in this state shall be entitled to a refund of the actual

584 amount of the taxes paid, upon condition that the seller in this state:

585 (a) is a licensed dealer;

586 (b) signs an affidavit that the electronic cigarette substance, the prefilled electronic
587 cigarette, the alternative nicotine product, the nontherapeutic nicotine device substance, or the
588 prefilled nontherapeutic nicotine device was so sold and shipped;

589 (c) furnishes from the purchaser a written acknowledgment that the purchaser has
590 received the electronic cigarette substance, the prefilled electronic cigarette, the alternative
591 nicotine product, the nontherapeutic nicotine device substance, or the prefilled nontherapeutic
592 nicotine device; and

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

594 (2) A wholesaler or distributor in this state that exports an electronic cigarette
595 substance, a prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic
596 nicotine device substance, or a prefilled nontherapeutic nicotine device to a regular dealer in
597 another state shall be exempt from the payment of any tax upon the sale of the article upon
598 furnishing such proof of the sale and exportation as the commission may require.

599 Section 18. Section **59-14-807** is enacted to read:

600 **59-14-807. Electronic Cigarette Substance and Other Nicotine Product Tax**
601 **Restricted Account.**

602 (1) There is created within the General Fund a restricted account known as the
603 "Electronic Cigarette Substance and Other Nicotine Product Tax Restricted Account."

604 (2) The Electronic Cigarette Substance and Other Nicotine Product Tax Restricted
605 Account consists of:

606 (a) for each fiscal year, the first \$2,000,000 collected from the tax imposed by Section
607 59-14-804; and

608 (b) amounts appropriated by the Legislature.

609 (3) (a) For each fiscal year, beginning with fiscal year 2018-19, and subject to
610 appropriation by the Legislature, the Division of Finance shall distribute money from the
611 Electronic Cigarette Substance and Other Nicotine Product Tax Restricted Account to the local
612 health departments as directed by the Department of Health, which shall determine the
613 allocation for each local health department using the formula created in accordance with
614 Section 26A-1-116.

615 (b) The local health departments shall use the money received in accordance with
616 Subsection (3)(a) for:

617 (i) the implementation of a youth electronic cigarette and other nicotine product
618 cessation program;

619 (ii) enforcing the regulation provisions under Section 26-57-103 and the labeling
620 requirement in Section 26-57-104; and

621 (iii) providing electronic cigarette and other nicotine product use prevention education
622 to youth.

623 Section 19. Section 76-10-101 is amended to read:

624 **Part 1. Cigarettes, Tobacco, Other Nicotine Substances, and Psychotoxic Chemical**
625 **Substances**

626 **76-10-101. Definitions.**

627 As used in this part:

628 (1) "Alternative nicotine product" means the same as that term is defined in Section
629 59-14-102.

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

634 ~~[(2)]~~ (3) "Cigarette" means a product that contains nicotine, is intended to be burned
635 under ordinary conditions of use, and consists of:

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

637 (b) any roll of tobacco wrapped in any substance containing tobacco which, because of
638 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to
639 be offered to, or purchased by, consumers as a cigarette described in Subsection ~~[(2)]~~ (3)(a).

640 ~~[(3)]~~ "Electronic cigarette" means an electronic cigarette product, as defined in Section
641 59-14-802;]

642 (4) (a) "Electronic cigarette" means:

643 (i) an electronic device used to deliver or capable of delivering vapor containing
644 nicotine to an individual's respiratory system;

645 (ii) a component of the device described in Subsection (4)(a)(i); or

646 (iii) an accessory sold in the same package as the device described in Subsection
647 (4)(a)(i).

648 (b) "Electronic cigarette" includes an e-cigarette as that term is defined in Section
649 26-38-2.

650 (5) "Electronic cigarette product" means an electronic cigarette or electronic cigarette
651 substance.

652 (6) "Electronic cigarette substance" means any substance, including liquid containing
653 nicotine, used or intended for use in an electronic cigarette.

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

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

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

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

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

662 (8) "Nontherapeutic nicotine device substance" means a cartridge that:

663 (a) contains nicotine;

664 (b) is used or intended to be used in a nontherapeutic nicotine device;

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

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

668 (9) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device or a
669 nontherapeutic nicotine device substance.

670 [~~(4)~~] (10) "Place of business" includes:

671 (a) a shop;

672 (b) a store;

673 (c) a factory;

674 (d) a public garage;

675 (e) an office;

676 (f) a theater;

- 677 (g) a recreation hall;
- 678 (h) a dance hall;
- 679 (i) a poolroom;
- 680 (j) a café;
- 681 (k) a cafeteria;
- 682 (l) a cabaret;
- 683 (m) a restaurant;
- 684 (n) a hotel;
- 685 (o) a lodging house;
- 686 (p) a streetcar;
- 687 (q) a bus;
- 688 (r) an interurban or railway passenger coach;
- 689 (s) a waiting room; and
- 690 (t) any other place of business.

691 ~~(5)~~ (11) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other
692 lighted smoking equipment.

693 Section 20. Section **76-10-104** is amended to read:

694 **76-10-104. Providing any cigar, cigarette, electronic cigarette, alternative nicotine**
695 **product, nontherapeutic nicotine product, or tobacco to a minor -- Penalties.**

696 (1) Any person who knowingly, intentionally, recklessly, or with criminal negligence
697 provides any cigar, cigarette, electronic cigarette product, alternative nicotine product,
698 nontherapeutic nicotine product, or tobacco in any form[;] to any person under 19 years of
699 age[;] is guilty of a class C misdemeanor on the first offense, a class B misdemeanor on the
700 second offense, and a class A misdemeanor on subsequent offenses.

701 (2) For purposes of this section "provides":

702 (a) includes selling, giving, furnishing, sending, or causing to be sent; and

703 (b) does not include the acts of the United States Postal Service or other common
704 carrier when engaged in the business of transporting and delivering packages for others or the
705 acts of a person, whether compensated or not, who transports or delivers a package for another
706 person without any reason to know of the package's content.

707 Section 21. Section **76-10-104.1** is amended to read:

708 **76-10-104.1. Providing tobacco paraphernalia to minors -- Penalties.**

709 (1) For purposes of this section:

710 (a) "Provides":

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

712 (ii) does not include the acts of the United States Postal Service or other common

713 carrier when engaged in the business of transporting and delivering packages for others or the

714 acts of a person, whether compensated or not, who transports or delivers a package for another

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

716 (b) (i) "Tobacco paraphernalia"~~[(i)]~~ means any equipment, product, or material of any

717 kind which is used, intended for use, or designed for use to package, repackage, store, contain,

718 conceal, ingest, inhale, or otherwise introduce a cigar, electronic cigarette substance,719 nontherapeutic nicotine device substance, cigarette, or tobacco in any form into the human720 body~~[, including:]~~.721 (ii) "Tobacco paraphernalia" includes:

722 (A) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without

723 screens, permanent screens, hashish heads, or punctured metal bowls;

724 (B) water pipes;

725 (C) carburetion tubes and devices;

726 (D) smoking and carburetion masks;

727 (E) roach clips: meaning objects used to hold burning material, such as a cigarette, that

728 has become too small or too short to be held in the hand;

729 (F) chamber pipes;

730 (G) carburetor pipes;

731 (H) electric pipes;

732 (I) air-driven pipes;

733 (J) chillums;

734 (K) bongs; and

735 (L) ice pipes or chillers~~[-and]~~.736 ~~[(ii)]~~ (iii) "Tobacco paraphernalia" does not include matches or lighters.

737 (2) (a) It is unlawful for a person to knowingly, intentionally, recklessly, or with

738 criminal negligence provide any tobacco paraphernalia to any person under 19 years of age.

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

741 Section 22. Section **76-10-105** is amended to read:

742 **76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco**
743 **by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.**

744 (1) Any 18-year-old person who buys or attempts to buy, accepts, or has in the person's
745 possession any cigar, cigarette, electronic cigarette product, alternative nicotine product,
746 nontherapeutic nicotine product, or tobacco in any form is guilty of a class C misdemeanor and
747 subject to:

748 (a) a minimum fine or penalty of \$60; and

749 (b) participation in a court-approved tobacco education program, which may include a
750 participation fee.

751 (2) Any person under the age of 18 who buys or attempts to buy, accepts, or has in the
752 person's possession any cigar, cigarette, electronic cigarette product, alternative nicotine
753 product, nontherapeutic nicotine product, or tobacco in any form is subject to the jurisdiction of
754 the juvenile court and subject to Section [78A-6-602](#), unless the violation is committed on
755 school property. If a violation under this section is adjudicated under Section [78A-6-117](#), the
756 minor may be subject to the following:

757 (a) a fine or penalty, in accordance with Section [78A-6-117](#); and

758 (b) participation in a court-approved tobacco education program, which may include a
759 participation fee.

760 (3) A compliance officer appointed by a board of education under Section [53A-3-402](#)
761 may not issue a citation for a violation of this section committed on school property. A cited
762 violation committed on school property shall be addressed in accordance with Section
763 [53A-11-911](#).

764 Section 23. Section **76-10-105.1** is amended to read:

765 **76-10-105.1. Requirement of direct, face-to-face sale of cigarettes, tobacco,**
766 **electronic cigarettes, nontherapeutic nicotine product, or alternative nicotine product --**
767 **Minors not allowed in tobacco specialty shop -- Penalties.**

768 (1) As used in this section:

769 (a) "Cigarette" means the same as that term is defined in Section [59-14-102](#).

770 (b) (i) "Face-to-face exchange" means a transaction made in person between an
771 individual and a retailer or retailer's employee.

772 (ii) "Face-to-face exchange" does not include a sale through a:

773 (A) vending machine; or

774 (B) self-service display.

775 (c) "Retailer" means a person who:

776 (i) sells a cigarette, tobacco, [~~or~~] an electronic cigarette product, an alternative nicotine
777 product, or a nontherapeutic nicotine product to an individual for personal consumption; or

778 (ii) operates a facility with a vending machine that sells a cigarette, tobacco, [~~or~~] an
779 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine
780 product.

781 (d) "Self-service display" means a display of a cigarette, tobacco, [~~or~~] an electronic
782 cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product to which
783 the public has access without the intervention of a retailer or retailer's employee.

784 (e) "Tobacco" means any product, except a cigarette, made of or containing tobacco.

785 (f) "Tobacco specialty shop" means a retailer with a physical location that derives at
786 least 80% of its total sales from the sale of cigarettes, tobacco, [~~or~~] electronic [~~cigarettes~~]
787 cigarette products, alternative nicotine products, or nontherapeutic nicotine products.

788 (2) Except as provided in Subsection (3), a retailer may sell a cigarette, tobacco, [~~or~~] an
789 electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine
790 product only in a face-to-face exchange.

791 (3) The face-to-face sale requirement in Subsection (2) does not apply to:

792 (a) a mail-order, telephone, or Internet sale made in compliance with Section
793 [59-14-509](#);

794 (b) a sale from a vending machine or self-service display that is located in an area of a
795 retailer's facility:

796 (i) that is distinct and separate from the rest of the facility; and

797 (ii) where the retailer only allows an individual who complies with Subsection (4) to be
798 present; or

799 (c) a sale at a tobacco specialty shop.

800 (4) An individual who is less than 19 years old may not enter or be present at a tobacco

801 specialty shop unless the individual is:

802 (a) accompanied by a parent or legal guardian;

803 (b) present at the tobacco shop for a bona fide commercial purpose other than to

804 purchase a cigarette, tobacco, [or] an electronic cigarette product, an alternative nicotine

805 product, or a nontherapeutic nicotine product; or

806 (c) 18 years old or older and an active duty member of the United States Armed Forces,

807 as demonstrated by a valid, government-issued military identification card.

808 (5) A parent or legal guardian who accompanies, under Subsection (4)(a), an individual

809 into an area described in Subsection (3)(b), or into a tobacco specialty shop, may not allow the

810 individual to purchase a cigarette, tobacco, [or] an electronic cigarette product, an alternative

811 nicotine product, or a nontherapeutic nicotine product.

812 (6) A violation of Subsection (2) or (4) is a:

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

814 (b) class B misdemeanor on the second offense; and

815 (c) class A misdemeanor on the third and all subsequent offenses.

816 (7) An individual who violates Subsection (5) is guilty of providing tobacco to a minor

817 under Section [76-10-104](#).

818 (8) (a) Any ordinance, regulation, or rule adopted by the governing body of a political

819 subdivision of the state or by a state agency that affects the sale, placement, or display of

820 cigarettes, tobacco, [or] an electronic [cigarettes] cigarette product, an alternative nicotine

821 product, or a nontherapeutic nicotine product that is not essentially identical to the provisions

822 of this section and Section [76-10-102](#) is superseded.

823 (b) Subsection (8)(a) does not apply to the adoption or enforcement of a land use

824 ordinance by a municipal or county government.

825 Section 24. **Effective date.**

826 This bill takes effect on July 1, 2018.