

## HB0088S02 compared with HB0088S01

~~text~~ shows text that was in HB0088S01 but was deleted in HB0088S02.

Inserted text shows text that was not in HB0088S01 but was inserted into HB0088S02.

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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: \_\_\_\_\_

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#### **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;

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- ▶ 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 ~~{, and certain prefilled devices}~~ in the state;
- ▶ provides for the remittance of the tax collected;
- ▶ creates the Electronic Cigarette Substance and Other Nicotine Product Tax Restricted Account;
- ▶ addresses use of revenue from the taxation of an electronic cigarette substance, an alternative nicotine product, and a nontherapeutic nicotine device substance;
- ▶ provides criminal penalties for a sale or purchase of an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product, in violation of law; and
- ▶ makes technical and conforming changes.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

This bill provides a special effective date.

### **Utah Code Sections Affected:**

AMENDS:

**26-42-101**, as enacted by Laws of Utah 1998, Chapter 319

**26-42-102**, as last amended by Laws of Utah 2015, Chapter 132

**26-42-103**, as last amended by Laws of Utah 2015, Chapter 132

**26-42-106**, as enacted by Laws of Utah 1998, Chapter 319

**26-42-107**, as last amended by Laws of Utah 2015, Chapter 132

**26-57-101**, as enacted by Laws of Utah 2015, Chapter 132

**26-57-102**, as enacted by Laws of Utah 2015, Chapter 132

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

**59-14-201**, as last amended by Laws of Utah 2013, Chapter 148

**59-14-203.5**, as last amended by Laws of Utah 2011, Chapter 96

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

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

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

**76-10-101**, as last amended by Laws of Utah 2015, Chapters 66, 132 and last amended by Coordination Clause, Laws of Utah 2015, Chapter 132

**76-10-104**, as last amended by Laws of Utah 2010, Chapter 114

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

**76-10-105**, as last amended by Laws of Utah 2017, Chapter 330

**76-10-105.1**, as last amended by Laws of Utah 2015, Chapters 66 and 132

ENACTS:

**26-57-104**, Utah Code Annotated 1953

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

**59-14-805**, Utah Code Annotated 1953

**59-14-806**, Utah Code Annotated 1953

**59-14-807, Utah Code Annotated 1953**

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

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

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

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

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

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

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

As used in this chapter:

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

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

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

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

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

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

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

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

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

(8) "Nontherapeutic nicotine product" means the same as that term is defined in Section 59-14-102.

~~[(6)]~~ (9) "Tobacco" means~~[(a)]~~ a cigarette or a tobacco product, as defined in Section 59-14-102~~[-or]~~.

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

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

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

(1) If, following an investigation or issuance of a citation or information under Section 77-39-101, an enforcing agency determines under Section 26-42-104 that a licensee or any employee has sold tobacco, an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product to a person younger than 19 years of age, as prohibited by Section 76-10-104, the enforcing agency may impose upon the licensee the following administrative penalties:

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

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(2) The enforcing agency shall notify the commission in writing of any order or order of default finding a violation of Subsection (1) [~~which~~] that is a third or fourth violation.

(3) (a) [~~The commission, upon~~] Upon receipt of the written notification under Subsection (2), the commission shall take action under Section 59-14-203.5 [~~or~~], 59-14-301.5, or 59-14-803 against the license to sell [~~tobacco~~] in accordance with Subsection (3)(b).

~~[(a)]~~ (b) (i) [~~by suspending~~] Upon receipt of written notification of a third offense under Subsection (1)(c), the commission shall suspend the licensee's license to sell tobacco, an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product at that location for not more than 30 days[~~, upon receipt of notification of a third violation under Subsection (1)(c), and~~].

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

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

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

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

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

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

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

- (a) the licensee has implemented a documented employee training program; and

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(b) the employee has completed that training program within 30 days of commencing duties of selling tobacco products, electronic cigarette products, alternative nicotine products, or nontherapeutic nicotine products.

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

(i) the hearing officer determines under Subsection (1) [~~regarding a first offense at a location;~~] that the licensee has not implemented a documented training program with a written curriculum for employees at that location regarding compliance with this chapter [~~the hearing officer may suspend all or a portion of the monetary penalty, contingent upon the licensee's initiating]; and~~

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

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

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

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

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

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

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

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

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

(3) if the civil penalty involves suspension or revocation of a license to sell [tobacco]

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under Section 59-14-203.5, 59-14-301.5, or 59-14-803, half of the penalty shall be paid to the commission[;] and the other half shall be allocated under Subsection (1) or (2)[;] as appropriate.

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

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

#### **26-57-101. Title.**

This chapter is known as the "Electronic Cigarette and Other Nicotine Product Regulation Act."

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

#### **26-57-102. Definitions.**

As used in this chapter:

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

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

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

~~(3)~~ (4) "Electronic cigarette product" means an electronic cigarette or an electronic cigarette substance.

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

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

~~(5)~~ (7) "Manufacture" includes:

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

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

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

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

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

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

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59-14-102.

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

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

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

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

Any nontherapeutic nicotine device or alternative nicotine product containing synthetic nicotine that is not otherwise required to contain a nicotine warning and that is sold in this state shall contain the following statement on the exterior packaging of the product:

"This product contains synthetic nicotine."

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

### **59-14-102. Definitions.**

As used in this chapter:

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

(i) contains nicotine;

(ii) is intended for human consumption;

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

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

(b) "Alternative nicotine product" includes:

(i) pure nicotine;

(ii) snortable nicotine;

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

(iv) nicotine-laced food and beverage.

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

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

(a) regardless of:



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- (i) the size of the roll;
- (ii) the shape of the roll; or
- (iii) whether the tobacco is ~~is~~ ~~[(A)]~~ flavored ~~[(B)]~~, adulterated ~~[(C)]~~, or ~~[(E)]~~ mixed with any other ingredient; and

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

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

~~[(3)]~~ (4) "Cigarette rolling machine operator" means a person ~~who~~ that:

(a) (i) controls, leases, owns, possesses, or otherwise has available for use a cigarette rolling machine; and

(ii) makes the cigarette rolling machine available for use by another person to produce a cigarette; or

(b) offers for sale, at retail, a cigarette produced from the cigarette rolling machine.

~~[(4)]~~ (5) "Consumer" means a person that is not required:

(a) under Section 59-14-201 to obtain a license under Section 59-14-202; ~~or~~

(b) under Section 59-14-301 to obtain a license under Section 59-14-202 ~~or~~; or

(c) under Section 59-14-803 to obtain a license.

~~[(5)]~~ (6) "Counterfeit cigarette" means:

(a) a cigarette that has a false manufacturing label; or

(b) a package of cigarettes bearing a counterfeit tax stamp.

(7) (a) "Electronic cigarette" means:

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

(ii) a component of the device described in Subsection (7)(a)(i); or

(iii) an accessory sold in the same package as the device described in Subsection (7)(a)(i).

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

(8) "Electronic cigarette product" means an electronic cigarette or an electronic cigarette substance.

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

~~[(6)]~~ (10) "Importer" means a person ~~[who]~~ that imports into the United States, either directly or indirectly, a finished cigarette for sale or distribution.

~~[(7)]~~ (11) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity, or any other person doing business as a distributor or retailer of cigarettes on tribal lands located in the state.

~~[(8)]~~ (12) "Little cigar" means a roll for smoking that:

- (a) is made wholly or in part of tobacco;
- (b) ~~[that]~~ uses an integrated cellulose acetate filter or other similar filter; and
- (c) ~~[that]~~ is wrapped in a substance:
  - (i) containing tobacco; and
  - (ii) that is not exclusively natural leaf tobacco.

~~[(9)]~~ (13) (a) Except as provided in Subsection ~~[(9)]~~ (13)(b), "manufacturer" means a person ~~[who]~~ that:

- (i) manufactures, fabricates, assembles, processes, or labels a finished cigarette; or
- (ii) makes, modifies, mixes, manufactures, fabricates, assembles, processes, labels, repackages, relabels, or imports an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product.

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

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

- (a) is finely~~[(i)]~~ cut~~[(ii)]~~, ground~~[(i)]~~, or ~~[(iii)]~~ powdered;
- (b) has at least 45% moisture content, as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- (c) is not intended to be:
  - (i) smoked; or
  - (ii) placed in the nasal cavity; and
- (d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or distributed in single-use units, including:
  - (i) tablets;
  - (ii) lozenges;

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- (iii) strips;
- (iv) sticks; or
- (v) packages containing multiple single-use units.

(15) "Nicotine" means a poisonous, nitrogen containing chemical that is made synthetically or derived from tobacco or other plants.

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

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

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

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

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

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

(a) contains nicotine;

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

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

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

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

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

(a) sells or distributes a cigarette, an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product to a consumer in the state; or

(b) intends to sell or distribute a cigarette, an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product to a consumer in the state.

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

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

(b) "Tobacco product" includes:

(i) a cigarette produced from a cigarette rolling machine;

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- (ii) a little cigar; or
- (iii) moist snuff.
- (c) "Tobacco product" does not include a cigarette.

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

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

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

(1) It is unlawful for any person in this state to manufacture, import, distribute, barter, sell, exchange, or offer cigarettes for sale without first having obtained a license issued by the commission under Section 59-14-202.

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

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

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

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

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

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

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

(i) purchases<sub>2</sub> during the license year<sub>2</sub> only products that have the proper state stamp affixed as required by this chapter; and

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

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

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

(1) (a) The commission shall suspend or revoke licenses to sell tobacco, as required under Section 26-42-103 regarding suspension or revocation of a license due to the sale of

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cigarettes to a person younger than 19 years of age, upon receipt of notice of an enforcing agency's finding of a violation of Section 26-42-103.

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

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

(3) When the commission revokes a licensee's license under this section, the commission may not issue to the licensee, or to the business entity using the license that is revoked, a license to sell cigarettes under Section 59-14-202 ~~[or]~~, a license to sell tobacco under Section 59-14-301 ~~[to sell tobacco]~~, or a license to sell an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product under Section 59-14-803 at the location for which the license was issued for one year after:

(a) the day on which the time for filing an appeal of the revocation ends; or

(b) if the revocation is appealed, the day on which the decision to uphold the revocation becomes final.

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

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

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

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

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

As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(6) "Youth electronic cigarette and other nicotine product cessation program" means a program that helps individuals under the age of 19 to quit using tobacco, electronic cigarette~~

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products, alternative nicotine products, and nontherapeutic nicotine products.

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

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

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

~~(i) except as provided in Subsection (1)(b), obtaining a license from the commission under this section to sell an electronic cigarette product [from the commission under this section], an alternative nicotine product, or a nontherapeutic nicotine product; and~~

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

~~[(2)] (b)~~ 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 to sell an electronic cigarette product under this part, sell, offer to sell, or distribute an electronic cigarette product ~~[in Utah], an alternative nicotine product, or a nontherapeutic nicotine product in this state~~ without obtaining a separate license to sell an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product in accordance with this ~~[part]~~ section.

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

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

(i) the person's name;

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

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

(b) pays a fee:

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

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

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

- (a) valid only at one fixed business address;
- (b) valid for three years;
- (c) valid only for a physical location; and
- (d) renewable if a licensee meets the criteria for licensing described in Subsection ~~[(3)]~~

(2).

(4) (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, an alternative nicotine product, or a nontherapeutic nicotine product to post a bond.

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

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

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

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

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

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

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

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

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

(6) If the commission revokes a person's license to sell an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product under Subsection (5), the commission may not issue to the person a license to sell an electronic cigarette product, an



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alternative nicotine product, or a nontherapeutic nicotine product under this section, a license to sell cigarettes under Section 59-14-201, or a license to sell tobacco under Section 59-14-301 [~~to the person~~] until one year after:

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

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

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

(8) 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)~~] (2)(a)(iii) that a person must provide in the application described in Subsection [~~(3)(a)~~] (2).

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

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

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

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

(i) an electronic cigarette substance; and

(ii) a prefilled electronic cigarette.

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

(i) an alternative nicotine product;

(ii) a nontherapeutic nicotine device substance; or

(iii) a prefilled nontherapeutic nicotine device.

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

(3) (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, an alternative nicotine product, a nontherapeutic nicotine device

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substance, or a prefilled nontherapeutic nicotine device is first received in the state.

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

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

(b) The commission shall deposit, for each fiscal year:

(i) the first \$2,000,000 remitted in accordance with this section into the Electronic Cigarette Substance and Other Nicotine Product Tax Restricted Account, created in Section ~~59-14-806~~ 59-14-807; and

(ii) the balance of remittances received in accordance with this section into the General Fund.

Section 16. Section **59-14-805** is enacted to read:

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

(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, an alternative nicotine product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device shall remit to the commission, in an electronic format approved by the commission:

(i) the tax collected in the previous calendar quarter; and

(ii) the quarterly tax return.

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

(2) (a) A manufacturer, jobber, distributor, wholesaler, retailer, or any other person selling an electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device to a person other than the ultimate consumer shall furnish the purchaser with an itemized invoice showing the seller's name and address, the name and address of the purchaser,

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the date of sale, the name and price of the product, and the discount, if any.

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

(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.

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

(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

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

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

(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 the statement required by this section was filed.

(4) A tourist who imports an electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device 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.

(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:

(a) pay the tax prescribed by this part;

(b) pay the tax on time; or

(c) file a return required by this part.

(6) An overpayment of a tax imposed by this part shall accrue interest at the rate and in

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the manner prescribed in Section 59-1-402.

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

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

(1) When an electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device 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:

(a) is a licensed dealer;

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

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

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

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

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

~~59-14-806~~ **59-14-807. Electronic Cigarette Substance and Other Nicotine Product**

**Tax Restricted Account.**

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

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

(a) for each fiscal year, the first \$2,000,000 collected from the tax imposed by Section

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59-14-804; and

(b) amounts appropriated by the Legislature.

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

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

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

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

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

Section ~~{18}~~19. Section **76-10-101** is amended to read:

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

#### **76-10-101. Definitions.**

As used in this part:

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

(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 as described in Subsection [~~(2)~~] (3).

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

- (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or
- (b) any roll of tobacco wrapped in any substance containing tobacco which, because of

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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 [(2)] (3)(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) contains nicotine;

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

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

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

(9) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device or a

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nontherapeutic nicotine device substance.

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

- (a) a shop;
- (b) a store;
- (c) a factory;
- (d) a public garage;
- (e) an office;
- (f) a theater;
- (g) a recreation hall;
- (h) a dance hall;
- (i) a poolroom;
- (j) a café;
- (k) a cafeteria;
- (l) a cabaret;
- (m) a restaurant;
- (n) a hotel;
- (o) a lodging house;
- (p) a streetcar;
- (q) a bus;
- (r) an interurban or railway passenger coach;
- (s) a waiting room; and
- (t) any other place of business.

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

Section ~~{19}~~20. Section **76-10-104** is amended to read:

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

(1) Any person who knowingly, intentionally, recklessly, or with criminal negligence provides any cigar, cigarette, electronic cigarette product, alternative nicotine product, nontherapeutic nicotine product, or tobacco in any form~~;~~ to any person under 19 years of age~~;~~ is guilty of a class C misdemeanor on the first offense, a class B misdemeanor on the

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second offense, and a class A misdemeanor on subsequent offenses.

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

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

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

Section ~~20~~21. Section **76-10-104.1** is amended to read:

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

(1) For purposes of this section:

(a) "Provides":

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

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

(b) (i) "Tobacco paraphernalia"~~[(+)]~~ means any equipment, product, or material of any kind which is used, intended for use, or designed for use to package, repackage, store, contain, conceal, ingest, inhale, or otherwise introduce a cigar, electronic cigarette substance, nontherapeutic nicotine device substance, cigarette, or tobacco in any form into the human body~~[-including:]~~.

(ii) "Tobacco paraphernalia" includes:

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

(B) water pipes;

(C) carburetion tubes and devices;

(D) smoking and carburetion masks;

(E) 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;

(F) chamber pipes;

(G) carburetor pipes;



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- (H) electric pipes;
- (I) air-driven pipes;
- (J) chillums;
- (K) bonges; and
- (L) ice pipes or chillers[~~;~~and].

~~[(ii)]~~ (iii) "Tobacco paraphernalia" does not include matches or lighters.

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

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

Section ~~{21}~~22. Section **76-10-105** is amended to read:

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

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

- (a) a minimum fine or penalty of \$60; and
- (b) participation in a court-approved tobacco education program, which may include a participation fee.

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

- (a) a fine or penalty, in accordance with Section 78A-6-117; and
- (b) participation in a court-approved tobacco education program, which may include a participation fee.

(3) A compliance officer appointed by a board of education under Section 53A-3-402 may not issue a citation for a violation of this section committed on school property. A cited

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violation committed on school property shall be addressed in accordance with Section 53A-11-911.

Section ~~{22}~~23. Section **76-10-105.1** is amended to read:

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

(1) As used in this section:

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

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

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

(A) vending machine; or

(B) self-service display.

(c) "Retailer" means a person who:

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

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

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

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

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

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

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

(a) a mail-order, telephone, or Internet sale made in compliance with Section

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59-14-509;

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

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

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

(c) a sale at a tobacco specialty shop.

(4) An individual who is less than 19 years old may not enter or be present at a tobacco specialty shop unless the individual is:

(a) accompanied by a parent or legal guardian;

(b) present at the tobacco shop for a bona fide commercial purpose other than to purchase a cigarette, tobacco, [or] an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product; or

(c) 18 years old or older and an active duty member of the United States Armed Forces, as demonstrated by a valid, government-issued military identification card.

(5) A parent or legal guardian who accompanies, under Subsection (4)(a), an individual into an area described in Subsection (3)(b), or into a tobacco specialty shop, may not allow the individual to purchase a cigarette, tobacco, [or] an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product.

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

(a) class C misdemeanor on the first offense;

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

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

(7) An individual who violates Subsection (5) is guilty of providing tobacco to a minor under Section 76-10-104.

(8) (a) Any ordinance, regulation, or rule adopted by the governing body of a political subdivision of the state or by a state agency that affects the sale, placement, or display of cigarettes, tobacco, [or] an electronic [cigarettes] cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product that is not essentially identical to the provisions of this section and Section 76-10-102 is superseded.

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

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ordinance by a municipal or county government.

Section ~~{23}~~24. **Effective date.**

This bill takes effect on July 1, 2018.