

HB0252S01 compared with HB0252

~~{deleted text}~~ shows text that was in HB0252 but was deleted in HB0252S01.

Inserted text shows text that was not in HB0252 but was inserted into HB0252S01.

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Senator Allen M. Christensen proposes the following substitute bill:

ELECTRONIC CIGARETTE AND OTHER NICOTINE PRODUCT AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts and amends provisions relating to electronic cigarette products~~;~~
~~alternative nicotine products,}~~ and ~~{nontherapeutic}~~other nicotine products.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ implements permitting requirements and processes for the sale of an alternative nicotine product or a nontherapeutic nicotine product;
- ▶ requires a tobacco retailer to provide itemized receipts and to maintain an itemized transaction log for sales of a tobacco product, an electronic cigarette product, an

HB0252S01 compared with HB0252

alternative nicotine product, or a nontherapeutic nicotine product;

- ▶ applies civil penalties to the improper sale of an alternative nicotine product or a nontherapeutic nicotine product;
- ▶ requires certain other nicotine products that contain nicotine to have a statement on the exterior package that the product contains nicotine;
- ▶ imposes licensing and bonding 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, a prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance, and a prefilled nontherapeutic nicotine device 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, a prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance, and a prefilled nontherapeutic nicotine device;
- ▶ 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;
- ▶ prohibits a manufacturer, wholesaler, or retailer from providing certain discounts or giveaways for electronic cigarettes; 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:

10-8-41.6, as last amended by Laws of Utah 2018, Chapter 231

17-50-333, as last amended by Laws of Utah 2018, Chapter 231

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

HB0252S01 compared with HB0252

26-57-102, as enacted by Laws of Utah 2015, Chapter 132
26-62-101, as enacted by Laws of Utah 2018, Chapter 231
26-62-102, as renumbered and amended by Laws of Utah 2018, Chapter 231
26-62-201, as enacted by Laws of Utah 2018, Chapter 231
26-62-202, as enacted by Laws of Utah 2018, Chapter 231
26-62-301, as enacted by Laws of Utah 2018, Chapter 231
26-62-304, as renumbered and amended by Laws of Utah 2018, Chapter 231
26-62-305, as renumbered and amended by Laws of Utah 2018, Chapter 231
26-62-306, as renumbered and amended by Laws of Utah 2018, Chapter 231
26A-1-128, as enacted by Laws of Utah 2018, Chapter 231
59-14-102, as last amended by Laws of Utah 2013, Chapter 148
59-14-201, as last amended by Laws of Utah 2018, Chapter 231
59-14-801, as enacted by Laws of Utah 2015, Chapter 132
59-14-802, as enacted by Laws of Utah 2015, Chapter 132
59-14-803, as last amended by Laws of Utah 2018, Chapter 231
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 2018, Chapter 415
76-10-105.1, as last amended by Laws of Utah 2018, Chapter 231
76-10-111, as last amended by Laws of Utah 2010, Chapter 114

ENACTS:

26-57-104, Utah Code Annotated 1953
26-62-206, 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

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

HB0252S01 compared with HB0252

Section 1. Section **10-8-41.6** is amended to read:

10-8-41.6. Regulation of retail tobacco specialty business.

(1) As used in this section:

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

~~(a)~~ (b) "Community location" means:

(i) a public or private kindergarten, elementary, middle, junior high, or high school;

(ii) a licensed child-care facility or preschool;

(iii) a trade or technical school;

(iv) a church;

(v) a public library;

(vi) a public playground;

(vii) a public park;

(viii) a youth center or other space used primarily for youth oriented activities;

(ix) a public recreational facility;

(x) a public arcade; or

(xi) for a new license issued on or after July 1, 2018, a homeless shelter.

~~(b)~~ (c) "Department" means the Department of Health, created in Section 26-1-4.

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

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

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

~~(d)~~ (g) "Permittee" means a person licensed under this section to conduct business as a retail tobacco specialty business.

~~(e)~~ (h) "Retail tobacco specialty business" means a commercial establishment in which:

(i) the sale of tobacco products, electronic cigarette products, alternative nicotine products, and nontherapeutic nicotine products accounts for more than 35% of the total quarterly gross receipts for the establishment;

HB0252S01 compared with HB0252

(ii) 20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, alternative nicotine products, and nontherapeutic nicotine products;

(iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, alternative nicotine products, and nontherapeutic nicotine products; or

(iv) the retail space features a self-service display for tobacco products, electronic cigarette products, alternative nicotine products, and nontherapeutic nicotine products.

~~(f)~~ (i) "Self-service display" means the same as that term is defined in Section 76-10-105.1.

~~(g)~~ (j) "Tobacco product" means:

(i) any cigar~~;~~ or cigarette, ~~[or electronic cigarette,]~~ as those terms are defined in Section 76-10-101;

(ii) a tobacco product, as that term is defined in Section 59-14-102, including:

(A) chewing tobacco; or

(B) any substitute for a tobacco product, including flavoring or additives to tobacco;

and

(iii) tobacco paraphernalia, as that term is defined in Section 76-10-104.1.

(2) The regulation of a retail tobacco specialty business is an exercise of the police powers of the state, and through delegation, to other governmental entities.

(3) (a) A person may not operate a retail tobacco specialty business in a municipality unless the person obtains a license from the municipality in which the retail tobacco specialty business is located.

(b) A municipality may only issue a retail tobacco specialty business license to a person if the person complies with the provisions of Subsections (4) and (5).

(4) (a) Except as provided in Subsection (7), a municipality may not issue a license for a person to conduct business as a retail tobacco specialty business if the retail tobacco specialty business is located within:

(i) 1,000 feet of a community location;

(ii) 600 feet of another retail tobacco specialty business; or

(iii) 600 feet from property used or zoned for:

HB0252S01 compared with HB0252

(A) agriculture use; or

(B) residential use.

(b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in a straight line from the nearest entrance of the retail tobacco specialty business to the nearest property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard to intervening structures or zoning districts.

(5) (a) Except as provided in Subsection (5)(b), beginning July 1, 2018, a municipality may not issue or renew a license for a person to conduct business as a retail tobacco specialty business until the person provides the municipality with proof that the retail tobacco specialty business has:

(i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Other Nicotine Product Retail Permit, by the local health department having jurisdiction over the area in which the retail tobacco specialty business is located; and

(ii) (A) a valid license to sell [tobacco products from] a tobacco product issued by the State Tax Commission in accordance with Section 59-14-201 or 59-14-301; or

(B) a valid license to sell an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product issued by the State Tax Commission in accordance with Section 59-14-803.

(b) A person that was licensed to conduct business as a retail tobacco specialty business in a municipality before July 1, 2018, shall obtain a permit from a local health department under Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Other Nicotine Product Retail Permit, on or before January 1, 2019.

(6) (a) Nothing in this section:

(i) requires a municipality to issue a retail tobacco specialty business license; or

(ii) prohibits a municipality from adopting more restrictive requirements on a person seeking a license or renewal of a license to conduct business as a retail tobacco specialty business.

(b) A municipality may suspend or revoke a retail tobacco specialty business license issued under this section:

(i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,

HB0252S01 compared with HB0252

Part 16, Pattern of Unlawful Activity Act;

(ii) if a licensee violates the regulations restricting the sale and distribution of cigarettes and smokeless tobacco to protect children and adolescents issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140;

(iii) upon the recommendation of the department or a local health department under Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Other Nicotine Product Retail Permit; or

(iv) under any other provision of state law or local ordinance.

(7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has a business license and is operating in a municipality in accordance with all applicable laws except for the requirement in Subsection (4), on or before December 31, 2015, is exempt from Subsection (4).

(b) A retail tobacco specialty business may maintain an exemption under Subsection (7)(a) if:

(i) the retail tobacco specialty business license is renewed continuously without lapse or permanent revocation;

(ii) the retail tobacco specialty business does not close for business or otherwise suspend the sale of tobacco products, electronic cigarette products, alternative nicotine products, and nontherapeutic nicotine products for more than 60 consecutive days;

(iii) the retail tobacco specialty business does not substantially change the business premises or business operation; and

(iv) the retail tobacco specialty business maintains the right to operate under the terms of other applicable laws, including:

(A) Title 26, Chapter 38, Utah Indoor Clean Air Act;

(B) zoning ordinances;

(C) building codes; and

(D) the requirements of a retail tobacco specialty business license issued before December 31, 2015.

Section 2. Section **17-50-333** is amended to read:

17-50-333. Regulation of retail tobacco specialty business.

(1) As used in this section:

HB0252S01 compared with HB0252

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

~~(a)~~ (b) "Community location" means:

- (i) a public or private kindergarten, elementary, middle, junior high, or high school;
- (ii) a licensed child-care facility or preschool;
- (iii) a trade or technical school;
- (iv) a church;
- (v) a public library;
- (vi) a public playground;
- (vii) a public park;
- (viii) a youth center or other space used primarily for youth oriented activities;
- (ix) a public recreational facility;
- (x) a public arcade; or
- (xi) for a new license issued on or after July 1, 2018, a homeless shelter.

~~(b)~~ (c) "Department" means the Department of Health, created in Section 26-1-4.

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

~~(d)~~ (e) "Licensee" means a person licensed under this section to conduct business as a retail tobacco specialty business.

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

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

~~(g)~~ (h) "Retail tobacco specialty business" means a commercial establishment in which:

- (i) the sale of tobacco products, electronic cigarette products, alternative nicotine products, and nontherapeutic nicotine products accounts for more than 35% of the total quarterly gross receipts for the establishment;
- (ii) 20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, alternative nicotine products, and nontherapeutic nicotine products;

HB0252S01 compared with HB0252

(iii) 20% or more of the total shelf space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, alternative nicotine products, and nontherapeutic nicotine products; or

(iv) the retail space features a self-service display for tobacco products, electronic cigarette products, alternative nicotine products, and nontherapeutic nicotine products.

~~[(f)]~~ (i) "Self-service display" means the same as that term is defined in Section 76-10-105.1.

~~[(g)]~~ (j) "Tobacco product" means:

(i) any cigar~~;~~ or cigarette, ~~[or electronic cigarette]~~ as those terms are defined in Section 76-10-101;

(ii) a tobacco product, as that term is defined in Section 59-14-102, including:

(A) chewing tobacco; or

(B) any substitute for a tobacco product, including flavoring or additives to tobacco;

and

(iii) tobacco paraphernalia, as that term is defined in Section 76-10-104.1.

(2) The regulation of a retail tobacco specialty business is an exercise of the police powers of the state, and through delegation, to other governmental entities.

(3) (a) A person may not operate a retail tobacco specialty business in a county unless the person obtains a license from the county in which the retail tobacco specialty business is located.

(b) A county may only issue a retail tobacco specialty business license to a person if the person complies with the provisions of Subsections (4) and (5).

(4) (a) Except as provided in Subsection (7), a county may not issue a license for a person to conduct business as a retail tobacco specialty business if the retail tobacco specialty business is located within:

(i) 1,000 feet of a community location;

(ii) 600 feet of another retail tobacco specialty business; or

(iii) 600 feet from property used or zoned for:

(A) agriculture use; or

(B) residential use.

(b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in

HB0252S01 compared with HB0252

a straight line from the nearest entrance of the retail tobacco specialty business to the nearest property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard to intervening structures or zoning districts.

(5) (a) Except as provided in Subsection (5)(b), beginning July 1, 2018, a county may not issue or renew a license for a person to conduct business as a retail tobacco specialty business until the person provides the county with proof that the retail tobacco specialty business has:

(i) a valid permit for a retail tobacco specialty business issued under Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Other Nicotine Product Retail Permit, by the local health department having jurisdiction over the area in which the retail tobacco specialty business is located; and

(ii) (A) a valid license to sell [tobacco products from] a tobacco product issued by the State Tax Commission in accordance with Section 59-14-201 or 59-14-301; or

(B) a valid license to sell an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product issued by the State Tax Commission in accordance with Section 59-14-803.

(b) A person that was licensed to conduct business as a retail tobacco specialty business in a county before July 1, 2018, shall obtain a permit from a local health department under Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Other Nicotine Product Retail Permit, on or before January 1, 2019.

(6) (a) Nothing in this section:

(i) requires a county to issue a retail tobacco specialty business license; or

(ii) prohibits a county from adopting more restrictive requirements on a person seeking a license or renewal of a license to conduct business as a retail tobacco specialty business.

(b) A county may suspend or revoke a retail tobacco specialty business license issued under this section:

(i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;

(ii) if a licensee violates the regulations restricting the sale and distribution of cigarettes and smokeless tobacco to protect children and adolescents issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140;

HB0252S01 compared with HB0252

(iii) upon the recommendation of the department or a local health department under Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Other Nicotine Product Retail Permit; or

(iv) under any other provision of state law or local ordinance.

(7) (a) In accordance with Subsection (7)(b), a retail tobacco specialty business that has a business license and is operating in a county in accordance with all applicable laws except for the requirement in Subsection (4), on or before December 31, 2015, is exempt from Subsection (4).

(b) A retail tobacco specialty business may maintain an exemption under Subsection (7)(a) if:

(i) the retail tobacco specialty business license is renewed continuously without lapse or permanent revocation;

(ii) the retail tobacco specialty business does not close for business or otherwise suspend the sale of tobacco products, electronic cigarette products, alternative nicotine products, and nontherapeutic nicotine products for more than 60 consecutive days;

(iii) the retail tobacco specialty business does not substantially change the business premises or business operation; and

(iv) the retail tobacco specialty business maintains the right to operate under the terms of other applicable laws, including:

(A) Title 26, Chapter 38, Utah Indoor Clean Air Act;

(B) zoning ordinances;

(C) building codes; and

(D) the requirements of a retail tobacco specialty business license issued before December 31, 2015.

Section 3. 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 4. Section **26-57-102** is amended to read:

HB0252S01 compared with HB0252

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

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

Section 5. Section **26-57-104** is enacted to read:

26-57-104. Labeling of other nicotine products containing nicotine.

(1) Any alternative nicotine product or nontherapeutic nicotine device shall contain the statement described in Subsection (2) if the alternative nicotine product or the nontherapeutic nicotine device:

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

(ii) is not otherwise required to contain a nicotine warning; and

HB0252S01 compared with HB0252

(b) contains nicotine.

(2) A statement shall appear on the exterior packaging of an alternative nicotine product or a nontherapeutic nicotine device described in Subsection (1) as follows:

"This product contains nicotine."

Section 6. Section **26-62-101** is amended to read:

CHAPTER 62. TOBACCO, ELECTRONIC CIGARETTE, AND OTHER NICOTINE PRODUCT RETAIL PERMIT

26-62-101. Title.

This chapter is known as "Tobacco, Electronic Cigarette, and Other Nicotine Product Retail Permit."

Section 7. Section **26-62-102** is amended to read:

26-62-102. 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) "Community location" means the same as that term is defined:

- (a) as it relates to a municipality, in Section 10-8-41.6; and
- (b) as it relates to a county, in Section 17-50-333.

(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 tobacco retailer.

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

~~[(4)]~~ (6) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco specialty business.

~~[(5)]~~ (7) "Local health department" means the same as that term is defined in Section 26A-1-102.

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

~~[(6)]~~ (9) "Permit" means a tobacco retail permit issued under this chapter.

~~[(7)]~~ (10) "Retail tobacco specialty business" means the same as that term is defined:

HB0252S01 compared with HB0252

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

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

~~[(8)]~~ (11) "Tax commission license" means a license issued by the State Tax

Commission under:

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

(b) Section 59-14-301 to sell ~~[tobacco products]~~ a tobacco product, as that term is defined in Section 59-14-102, at retail; or

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

~~[(9)]~~ (12) "Tobacco product" means:

(a) a cigar~~;~~ or cigarette, ~~[or electronic cigarette]~~ as those terms are defined in Section 76-10-101;

(b) a tobacco product, as that term is defined in Section 59-14-102, including:

(i) chewing tobacco; or

(ii) any substitute for a tobacco product, including flavoring or additives to tobacco; or

(c) tobacco paraphernalia, as that term is defined in Section 76-10-104.1.

~~[(10)]~~ (13) "Tobacco retailer" means a person that is required to obtain a tax commission license.

Section 8. Section ~~26-62-201~~ is amended to read:

26-62-201. Permitting requirement.

(1) (a) Beginning July 1, 2018, a tobacco retailer shall hold a valid tobacco retail permit issued in accordance with this chapter by the local health department with jurisdiction over the physical location where the tobacco retailer operates.

(b) A tobacco retailer without a valid permit may not:

(i) place ~~[tobacco products]~~ a tobacco product, an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product in public view;

(ii) display any advertisement related to ~~[tobacco products]~~ a tobacco product, an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product that promotes the sale, distribution, or use of those products; or

(iii) sell, offer for sale, or offer to exchange for any form of consideration, tobacco ~~[or]~~, a tobacco [products] product, an electronic cigarette product, an alternative nicotine product, or

HB0252S01 compared with HB0252

a nontherapeutic nicotine product.

(2) A local health department may issue a permit under this chapter for a tobacco retailer in the classification of:

- (a) a general tobacco retailer; or
- (b) a retail tobacco specialty business.

(3) A permit under this chapter is:

- (a) valid only for one physical location, including a vending machine;
- (b) valid only at one fixed business address; and

(c) if multiple tobacco retailers are at the same address, separately required for each tobacco retailer.

(4) Notwithstanding the requirement in Subsection (1), a person that holds a tax commission license that was valid on July 1, 2018:

- (a) may operate without a permit under this chapter until December 31, 2018; and
- (b) shall obtain a permit from a local health department under this chapter before

January 1, 2019.

Section 9. Section **26-62-202** is amended to read:

26-62-202. Permit application.

(1) A local health department shall issue a permit under this chapter for a tobacco retailer if the local health department determines that the applicant:

(a) accurately provided all information required under Subsection (3) and, if applicable, Subsection (4); and

(b) meets all requirements for a permit under this chapter.

(2) An applicant for a permit shall:

(a) submit an application described in Subsection (3) to the local health department with jurisdiction over the area where the tobacco retailer is located; and

(b) pay all applicable fees described in Section 26-62-203.

(3) The application for a permit shall include:

(a) the name, address, and telephone number of each proprietor;

(b) the name and mailing address of each proprietor authorized to receive permit-related communication and notices;

(c) the business name, address, and telephone number of the single, fixed location for

HB0252S01 compared with HB0252

which a permit is sought;

(d) evidence that the location for which a permit is sought has a valid tax commission license;

(e) information regarding whether, in the past 24 months, any proprietor of the tobacco retailer has been determined to have violated, or has been a proprietor at a location that has been determined to have violated:

(i) a provision of this chapter;

(ii) Chapter 38, Utah Indoor Clean Air Act;

(iii) Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic Chemical Solvents;

(iv) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;

(v) regulations restricting the sale and distribution of cigarettes and smokeless tobacco issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140; or

(vi) any other provision of state law or local ordinance regarding the sale, marketing, or distribution of a tobacco [products] product, an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product; and

(f) the dates of all violations disclosed under this Subsection (3).

(4) (a) In addition to the information described in Subsection (3), an applicant for a retail tobacco specialty business permit shall include evidence showing whether the business is located within:

(i) 1,000 feet of a community location;

(ii) 600 feet of another retail tobacco specialty business; or

(iii) 600 feet of property used or zoned for agricultural or residential use.

(b) For purposes of Subsection (4)(a), the proximity requirements shall be measured in a straight line from the nearest entrance of the retail tobacco specialty business to the nearest property boundary of a location described in Subsections (4)(a)(i) through (iii), without regard to intervening structures or zoning districts.

(5) The department or a local health department may not deny a permit to a retail tobacco specialty business under Subsection (4) if the person obtained a license to operate the retail tobacco specialty business before December 31, 2015, from:

(a) a municipality under Section 10-8-41.6; or

HB0252S01 compared with HB0252

(b) a county under Section 17-50-333.

(6) (a) The department shall establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a permit process for local health departments in accordance with this chapter.

(b) The permit process established by the department under Subsection (6)(a) may not require any information in an application that is not required by this section.

Section 10. Section ~~{26-62-301}~~26-62-206 is ~~{amended to read:~~
~~}~~enacted to read:

26-62-206. Requirements for the sale of a tobacco product, an electronic cigarette product, and other nicotine products.

(1) A tobacco retailer shall:

(a) for each sale of a tobacco product, an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product, provide the customer with an itemized receipt that separately identifies:

(i) the name of the tobacco product, the electronic cigarette product, the alternative nicotine product, or the nontherapeutic nicotine product;

(ii) the amount charged for each tobacco product, electronic cigarette product, alternative nicotine product, or nontherapeutic nicotine product; and

(iii) the time and date of the sale; and

(b) maintain an itemized transaction log for each sale of a tobacco product, an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product that separately identifies:

(i) the name of the tobacco product, the electronic cigarette product, the alternative nicotine product, or the nontherapeutic nicotine product;

(ii) the amount charged for the tobacco product, the electronic cigarette product, the alternative nicotine product, or the nontherapeutic nicotine product; and

(iii) the date and time of the sale.

(2) The itemized transaction log described in Subsection (1)(b) shall be:

(a) maintained for at least one year from the date of each transaction in the itemized transaction log; and

(b) made available to an enforcing agency or peace officer at the request of the

HB0252S01 compared with HB0252

enforcing agency or peace officer.

Section 11. Section 26-62-301 is amended to read:

26-62-301. Permit violation.

A person is in violation of the permit issued under this chapter if the person violates:

- (1) a provision of this chapter;
- (2) a provision of licensing laws under Section 10-8-41.6 or Section 17-50-333;
- (3) a provision of Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic Chemical Solvents;
- (4) a provision of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
- (5) a regulation restricting the sale and distribution of cigarettes and smokeless tobacco issued by the United States Food and Drug Administration under 21 C.F.R. Part 1140; or
- (6) any other provision of state law or local ordinance regarding the sale, marketing, or distribution of a tobacco [products] product, an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product.

Section ~~{11}~~12. Section 26-62-304 is amended to read:

26-62-304. Hearing -- Evidence of criminal conviction.

(1) At a civil hearing conducted under Section 26-62-302, evidence of the final criminal conviction of a tobacco retailer or employee for violation of Section 76-10-104 at the same location and within the same time period as the location and time period alleged in the civil hearing for violation of this chapter for sale of ~~[tobacco products]~~ a tobacco product, an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product to a person under the age of 19 is prima facie evidence of a violation of this chapter.

(2) If the tobacco retailer is convicted of violating Section 76-10-104, the enforcing agency:

- (a) may not assess an additional monetary penalty under this chapter for the same offense for which the conviction was obtained; and
- (b) may revoke or suspend a permit in accordance with Section 26-62-305.

Section ~~{12}~~13. Section 26-62-305 is amended to read:

26-62-305. Penalties.

(1) (a) If, following an inspection by an enforcing agency, or an investigation or issuance of a citation or information under Section 77-39-101, an enforcing agency determines

HB0252S01 compared with HB0252

that a person has violated the terms of a permit issued under this chapter, the enforcing agency may impose the penalties described in this section.

(b) If multiple violations are found in a single inspection or investigation, only one violation shall count toward the penalties described in this section.

(2) (a) The administrative penalty for a first violation at a retail location is a penalty of not more than \$500.

(b) The administrative penalty for a second violation at the same retail location that occurs within one year of a previous violation is a penalty of not more than \$750.

(c) The administrative penalty for a third or subsequent violation at the same retail location that occurs within two years after two or more previous violations is:

(i) a suspension of the retail tobacco business permit for 30 consecutive business days within 60 days after the day on which the third or subsequent violation occurs; or

(ii) a penalty of not more than \$1,000.

(3) The department or a local health department may:

(a) revoke a permit if a fourth violation occurs within two years of three previous violations;

(b) in addition to a monetary penalty imposed under Subsection (2), suspend the permit if the violation is due to a sale of [~~tobacco products~~] a tobacco product, an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product to a person under 19 years of age; and

(c) if applicable, recommend to a municipality or county that a retail tobacco specialty business license issued under Section 10-8-41.6 or 17-50-333 be suspended or revoked.

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

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

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

(b) A person whose permit:

(i) is suspended under this section may not apply for a new permit for any other

HB0252S01 compared with HB0252

tobacco retailer for a period of 12 months after the day on which an enforcing agency suspends the permit; and

(ii) is revoked may not apply for a new permit for any tobacco retailer for a period of 24 months after the day on which an enforcing agency revokes the permit.

(5) Violations of this chapter, Section 10-8-41.6, or Section 17-50-333 that occur at a tobacco retailer location shall stay on the record for that tobacco retailer location unless:

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

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

Section ~~{13}~~14. Section **26-62-306** is amended to read:

26-62-306. Recognition of tobacco retailer training program.

(1) In determining the amount of the monetary penalty to be imposed for an employee's violation of this chapter, a hearing officer shall reduce the civil penalty by at least 50% if the hearing officer determines that:

(a) the tobacco retailer has implemented a documented employee training program; and

(b) the employees have completed that training program within 30 days after the day on which each employee commences the duties of selling [~~tobacco products~~] a tobacco product, an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product.

(2) (a) For the first offense at a location, if the hearing officer determines under Subsection (1) that the tobacco retailer 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 penalty if:

(i) the tobacco retailer agrees to initiate a training program for employees at that location; and

(ii) the training program begins within 30 days after the hearing officer makes a determination under this Subsection (2)(a).

(b) If the hearing officer determines at a subsequent hearing that the tobacco retailer has not implemented the training program within the time period required under Subsection (2)(a)(ii), the hearing officer shall promptly impose the suspended monetary penalty, unless the

HB0252S01 compared with HB0252

tobacco retailer demonstrates good cause for an extension of time for implementation of the training program.

Section ~~{14}~~15. Section **26A-1-128** is amended to read:

26A-1-128. Tobacco, electronic cigarette, and other nicotine product permits --

Enforcement.

A local health department:

(1) shall enforce the requirements of Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Other Nicotine Product Retail Permit;

(2) may enforce licensing requirements for entities that hold a business license to sell a tobacco ~~[products]~~ product, an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product under Section 10-8-41.6 or ~~[Section]~~ 17-50-333; and

(3) may recommend to a municipality or county that the business license of a retail tobacco specialty business be suspended or revoked for a violation of Section 10-8-41.6, Section 17-50-333, or Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Other Nicotine Product Retail Permit.

Section ~~{15}~~16. 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.

HB0252S01 compared with HB0252

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

~~[(1)]~~ (2) "Cigarette" means a roll for smoking made wholly or in part of tobacco:

(a) regardless of:

(i) the size of the roll;

(ii) the shape of the roll; or

(iii) whether the tobacco 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~~[(C)]~~; 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 or another substance 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).

HB0252S01 compared with HB0252

(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, an electronic cigarette substance, or a prefilled electronic cigarette.

(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~~[-(iii)]~~, 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

HB0252S01 compared with HB0252

(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;
- (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, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device.

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

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

~~(11)~~ (21) "Retailer" means a person that:

- (a) sells or distributes a cigarette, an electronic cigarette product, an alternative nicotine

HB0252S01 compared with HB0252

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)]~~ (22) "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)]~~ (23) (a) "Tobacco product" means a product made of, or containing, tobacco.

(b) "Tobacco product" includes:

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

(ii) a little cigar; or

(iii) moist snuff.

(c) "Tobacco product" does not include a cigarette.

~~[(14)]~~ (24) "Tribal lands" means land held by the United States in trust for a federally recognized Indian tribe.

Section ~~{16}~~ 17. 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.

(c) Notwithstanding Subsections (3)(a) and (b), the commission may not charge a fee for a license under this section for a retailer, as defined in Section 59-14-102.

(4) (a) (i) ~~[A license may not be issued]~~ The commission may not 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]~~ applicant shall execute the bond as

HB0252S01 compared with HB0252

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 during the license year 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 ~~{17}~~18. 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 ~~{18}~~19. 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.]~~

~~[(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 Sales to Underage Persons; or]~~

~~[(b) ~~{a}~~ Title 26, Chapter 57, Electronic Cigarette and Other Nicotine Product~~

HB0252S01 compared with HB0252

~~Regulation Act[.]; or~~

~~(b) Title 26, Chapter 62, Tobacco, Electronic Cigarette, and Other Nicotine Product Retail Permit.~~

~~[(6)] (2) Regulation Act.~~

~~[(6)] (1) "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~~2) (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.~~

~~Section ~~19~~20. Section 59-14-803 is amended to read:~~

59-14-803. License to sell an electronic cigarette product or other nicotine products.

~~(1) [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:~~

~~(a) except as provided in Subsection (2), 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~~

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

~~(2) A person that holds a valid license to sell cigarettes under Section 59-14-201[;] or a person that holds a valid license to sell tobacco products under Section 59-14-301[;] may,~~

HB0252S01 compared with HB0252

without obtaining a separate license [~~to sell an electronic cigarette product under this part~~] in accordance with this section, sell, offer to sell, or distribute in the state the following:

- (a) an electronic cigarette product [in Utah in accordance with this part.];
- (b) an alternative nicotine product; or
- (c) a nontherapeutic nicotine product.

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

- (a) the person's name;
- (b) the address of the facility where the person will sell an electronic cigarette product, an alternative nicotine product, or a nontherapeutic nicotine product; and

(c) any other information the commission requires to implement this chapter.

(4) A license described in Subsection (3) 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).

(5) (a) The commission shall require a manufacturer, jobber, distributor, wholesaler, or retailer that is responsible under this part for the collection of tax on an electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device to post a bond.

(b) The manufacturer, jobber, distributor, wholesaler, or retailer may post the bond required by Subsection (5)(a) in combination with the bond required by Section 59-14-201 or 59-14-301.

(c) Subject to Subsection (5)(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 (5)(d)(ii) or (iii), \$500;

(ii) if the manufacturer, jobber, distributor, wholesaler, or retailer posts the bond required by Subsection (5)(a) in combination with a bond required by either Section 59-14-201 or 59-14-301, \$1,000; or

HB0252S01 compared with HB0252

(iii) if the manufacturer, jobber, distributor, wholesaler, or retailer posts the bond required by Subsection (5)(a) in combination with the bonds required by both Sections 59-14-201 and 59-14-301, \$1,500.

~~[(5)]~~ (6) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish the additional information described in Subsection (3)(c) that a person must provide in the application described in Subsection (3).

~~[(6)]~~ (7) It is a class B misdemeanor for a person to violate Subsection (1).

~~[(7)]~~ (8) The commission may not charge a fee for a license under this section.

Section ~~{20}~~21. Section **59-14-804** is enacted to read:

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

(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, 2020, 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 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 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

HB0252S01 compared with HB0252

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 59-14-807; and

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

Section ~~21~~22. 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:

(i) the seller's name and address;

(ii) the name and address of the purchaser;

(iii) the date of sale;

(iv) the name and price of the product; and

(v) 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

HB0252S01 compared with HB0252

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, prefilled electronic cigarette, alternative nicotine product, nontherapeutic nicotine device substance, or 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 untaxed electronic cigarette substance, prefilled electronic cigarette, alternative nicotine device substance, nontherapeutic nicotine product, or 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 the manner prescribed in Section 59-1-402.

Section ~~22~~23. Section **59-14-806** is enacted to read:

59-14-806. Refund of taxes paid -- Exemption for exported electronic cigarettes

HB0252S01 compared with HB0252

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 sold and shipped to a regular dealer in those articles in another state;

(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 those articles in another state shall be exempt from the payment of any tax under this chapter upon furnishing proof of the sale and exportation as the commission may require.

Section ~~{23}~~24. Section **59-14-807** is enacted to read:

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 59-14-804; and

(b) amounts appropriated by the Legislature.

HB0252S01 compared with HB0252

(3) (a) For each fiscal year, beginning with fiscal year 2020, 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 development and implementation of evidence-based tobacco, electronic cigarette, and other nicotine product cessation programs for individuals under the age of 19;

(ii) enforcing:

(A) the regulation provisions described in Section 26-57-103;

(B) the labeling requirement described in Section 26-57-104; and

(C) the penalty provisions described in Section 26-62-305; and

(iii) developing and providing tobacco, electronic cigarette, and other nicotine product use prevention education to individuals under the age of 19.

Section ~~{24}~~25. 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

HB0252S01 compared with HB0252

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, an electronic cigarette substance, or a prefilled electronic cigarette.

(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, a

HB0252S01 compared with HB0252

nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device.

~~(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.

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

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

~~(5)~~ (13) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other lighted smoking equipment.

Section ~~25~~26. 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.

HB0252S01 compared with HB0252

(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 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 ~~26~~27. 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;

HB0252S01 compared with HB0252

(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;

(H) electric pipes;

(I) air-driven pipes;

(J) chillums;

(K) bongs; 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 ~~{27}~~28. Section **76-10-105** is amended to read:

76-10-105. Buying or possessing a cigar, a cigarette, an electronic cigarette product, an alternative nicotine product, a nontherapeutic nicotine product, or tobacco by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.

(1) Any ~~[18-year-old person]~~ 18-year-old individual who buys or attempts to buy, accepts, or has in the ~~[person's]~~ individual'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]~~ individual under the age of 18 who buys or attempts to buy, accepts, or has in the ~~[person's]~~ individual'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:

HB0252S01 compared with HB0252

(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 53G-4-402 may not issue a citation for a violation of this section committed on school property. A cited violation committed on school property shall be addressed in accordance with Section 53G-8-211.

Section ~~28~~29. Section **76-10-105.1** is amended to read:

76-10-105.1. Requirement of direct, face-to-face sale of a cigarette, tobacco, an electronic product, an alternative nicotine product, or a nontherapeutic 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.

(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 "retail tobacco specialty business" as that term is defined:

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

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

HB0252S01 compared with HB0252

(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 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

HB0252S01 compared with HB0252

subdivision of the state or by a state agency that affects the sale, placement, or display of [~~cigarettes~~] a cigarette, 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 ordinance by a municipal or county government.

Section 30. Section 76-10-111 is amended to read:

76-10-111. Restrictions on sale of smokeless tobacco or electronic cigarettes --

Exceptions.

(1) The Legislature finds that:

(a) smokeless tobacco, or chewing tobacco, is harmful to the health of individuals who use those products because research indicates that they may cause mouth or oral cancers;

(b) the use of smokeless tobacco among juveniles in this state is increasing rapidly;

(c) the use of electronic cigarettes may lead to unhealthy behavior such as the use of tobacco products; and

(d) it is necessary to restrict the gift of the products described in this Subsection (1) in the interest of the health of the citizens of this state.

(2) (a) Except as provided in Subsection (3), it is unlawful for a manufacturer, wholesaler, and retailer to:

(i) give or distribute without charge any smokeless tobacco, chewing tobacco, or electronic cigarette in this state[-];

(ii) sell, offer for sale, or furnish any electronic cigarette at less than 90% of the cost of the product to the manufacturer, wholesaler, or retailer; or

(iii) give, distribute, sell, offer for sale, or furnish any electronic cigarette for free or at a lower price because the purchaser makes another purchase.

(b) The price that a manufacturer, wholesaler, or retailer may charge under Subsection (2)(a)(ii) does not include a discount for:

(i) a physical manufacturer coupon;

(A) that is surrendered to the tobacco retailer at the time of sale; and

(B) for which the manufacturer will reimburse the wholesaler or retailer for the full amount of the discount described in the manufacturer coupon and provided to the purchaser;

HB0252S01 compared with HB0252

(ii) a rebate that will be paid to the manufacturer, wholesaler, or retailer for the full amount of the rebate provided to the purchaser; or

(iii) a promotional fund that will be paid to the manufacturer, wholesaler, or retailer for the full amount of the promotional fund provided to the purchaser.

(c) Any person who violates this section is guilty of a class C misdemeanor for the first offense, and is guilty of a class B misdemeanor for any subsequent offense.

(3) [(a)] Smokeless tobacco, chewing tobacco, or an electronic cigarette may be distributed to adults without charge at professional conventions where the general public is excluded.

[(b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who gives smokeless tobacco, chewing tobacco, or an electronic cigarette to a person of legal age upon the person's purchase of another tobacco product or electronic cigarette.]

Section ~~{29}~~31. **Effective date.**

This bill takes effect on July 1, 2019.