

Senator Curtis S. Bramble proposes the following substitute bill:

TOBACCO REGULATION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Francis D. Gibson

LONG TITLE

General Description:

This bill amends provisions relating to the regulation of electronic cigarettes.

Highlighted Provisions:

This bill:

- ▶ provides that a regulation on nicotine content in electronic cigarette products may not be more restrictive than a certain level;
- ▶ limits the Department of Health's authority to regulate certain electronic cigarette products that have been authorized for sale by the United States Food and Drug Administration;
- ▶ amends provisions relating to penalties for violating the terms of a retail tobacco permit; and
- ▶ modifies the tax rate for certain electronic cigarette substances, prefilled electronic cigarettes, alternative nicotine products, nontherapeutic nicotine device substances, and prefilled nontherapeutic nicotine devices.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **26-57-103**, as last amended by Laws of Utah 2020, Chapter 302

29 **26-62-305**, as last amended by Laws of Utah 2020, Chapters 302, 347 and last amended
30 by Coordination Clause, Laws of Utah 2020, Chapter 302

31 **26-62-402**, as enacted by Laws of Utah 2020, Chapter 302

32 **59-14-804**, as enacted by Laws of Utah 2020, Chapter 347

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

35 Section 1. Section **26-57-103** is amended to read:

36 **26-57-103. Electronic cigarette products -- Labeling -- Manufacturing and**
37 **quality control standards -- Advertising.**

38 (1) The department shall, in consultation with a local health department, as defined in
39 Section **26A-1-102**, and with input from members of the public, establish by rule made in
40 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the standards for
41 electronic cigarette substance:

- 42 (a) labeling;
- 43 (b) nicotine content;
- 44 (c) packaging; and
- 45 (d) product quality.

46 (2) On or before January 1, 2021, the department shall, in consultation with a local
47 health department, as defined in Section **26A-1-102**, and with input from members of the
48 public, establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
49 Rulemaking Act, the standards for manufacturer sealed electronic cigarette substance:

- 50 (a) labeling;
- 51 (b) nicotine content;
- 52 (c) packaging; and
- 53 (d) product quality.

54 (3) (a) A person may not sell an electronic cigarette substance unless the electronic
55 cigarette substance complies with the standards established by the department under Subsection
56 (1).

57 (b) Beginning on July 1, 2021, a person may not sell a manufacturer sealed electronic
58 cigarette substance unless the manufacturer sealed electronic cigarette substance complies with
59 the standards established by the department under Subsection (2).

60 (4) (a) A local health department may not enact a rule or regulation regarding
61 electronic cigarette substance labeling, nicotine content, packaging, or product quality that is
62 not identical to the standards established by the department under Subsections (1) and (2).

63 (b) Except as provided in Subsection (4)(c), a local health department may enact a rule
64 or regulation regarding electronic cigarette substance manufacturing.

65 (c) A local health department may not enact a rule or regulation regarding a
66 manufacturer sealed electronic cigarette substance.

67 (5) A person may not advertise an electronic cigarette product:

68 (a) as a tobacco cessation device;

69 (b) if the person is not licensed to sell an electronic cigarette product under Section
70 [59-14-803](#); or

71 (c) during a period of time when the person's license to sell an electronic cigarette
72 product under Section [59-14-803](#) has been suspended or revoked.

73 (6) The department may not:

74 (a) set a standard for nicotine content under Subsection (1) or (2) that limits nicotine
75 content to a concentration that is lower than the greater of:

76 (i) 65 mg/mL; and

77 (ii) the nicotine yield of an electronic cigarette product established by federal law; or

78 (b) regulate a product under this section if the product is authorized for sale under:

79 (i) 21 U.S.C. Sec. 387j;

80 (ii) 21 U.S.C. Sec. 387k; or

81 (iii) any other review process established by the United States Food and Drug

82 Administration to authorize an electronic cigarette product for sale in the United States.

83 Section 2. Section **26-62-305** is amended to read:

84 **26-62-305. Penalties.**

85 (1) (a) If an enforcing agency determines that a person has violated the terms of a
86 permit issued under this chapter, the enforcing agency may impose the penalties described in
87 this section.

88 (b) If multiple violations are found in a single inspection by an enforcing agency or
89 investigation by a law enforcement agency under Section 77-39-101, the enforcing agency shall
90 treat the multiple violations as one single violation under Subsections (2), (3), and (4).

91 (2) Except as provided in Subsection (3) and Section 26-62-402, if a violation is found
92 in an inspection by an enforcing agency or an investigation by a law enforcement agency under
93 Section 77-39-101, the enforcing agency shall:

94 (a) on a first violation at a retail location, impose a penalty of no more than [~~\$500~~]
95 \$1,000;

96 (b) on a second violation at the same retail location that occurs within one year of a
97 previous violation, impose a penalty of no more than [~~\$750~~] \$1,500;

98 (c) on a third violation at the same retail location that occurs within two years after two
99 previous violations, impose:

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

102 (ii) a penalty of no more than [~~\$1,000~~] \$2,000; and

103 (d) on a fourth or subsequent violation within two years of three previous violations:

104 (i) impose a penalty of no more than [~~\$1,000~~] \$2,000;

105 (ii) revoke a permit of the retailer; and

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

108 (3) If a violation is found in an investigation of a general tobacco retailer by a law
109 enforcement agency under Section 77-39-101 for the sale of a tobacco product, an electronic
110 cigarette product, or a nicotine product to an individual under 21 years old and the violation is
111 committed by the owner of the general tobacco retailer, the enforcing agency shall:

112 (a) on a first violation, impose a fine of no more than \$2,000 on the general tobacco
113 retailer; and

114 (b) on the second violation for the same general tobacco retailer within one year of the
115 first violation:

116 (i) impose a fine not exceeding \$5,000; and

117 (ii) revoke the permit for the general tobacco retailer.

118 (4) If a violation is found in an investigation of a retail tobacco specialty business by a

119 law enforcement agency under Section 77-39-101 for the sale of a tobacco product, an
120 electronic cigarette product, or a nicotine product to an individual under 21 years old, the
121 enforcing agency shall apply the provisions of Section 26-62-402.

122 (5) (a) Except when a transfer described in Subsection (6) occurs, a local health
123 department may not issue a permit to:

124 (i) a tobacco retailer for whom a permit is suspended or revoked under Subsection (2)
125 or (3) or Section 26-62-402; or

126 (ii) a tobacco retailer that has the same proprietor, director, corporate officer, partner,
127 or other holder of significant interest as another tobacco retailer for whom a permit is
128 suspended or revoked under Subsection (2) or (3) or Section 26-62-402.

129 (b) A person whose permit:

130 (i) is suspended under this section may not apply for a new permit for any other
131 tobacco retailer for a period of 12 months after the day on which an enforcing agency suspends
132 the permit; and

133 (ii) is revoked under this section or Section 26-62-402 may not apply for a new permit
134 for any tobacco retailer for a period of 24 months after the day on which an enforcing agency
135 revokes the permit.

136 (6) Violations of this chapter, Section 10-8-41.6, Section 17-50-333, or Section
137 26-62-402 that occur at a tobacco retailer location shall stay on the record for that tobacco
138 retailer location unless:

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

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

143 Section 3. Section 26-62-402 is amended to read:

144 **26-62-402. Penalties.**

145 (1) Except as provided in Subsection (2), if a violation of this part is found in an
146 investigation of a retail tobacco specialty business by a law enforcement agency under Section
147 77-39-101, the enforcing agency shall:

148 (a) on a first violation, impose a penalty of no more than [~~\$500~~] \$1,000 on the retail
149 tobacco specialty business;

150 (b) on a second violation for the same retail tobacco specialty business that occurs
151 within one year of a previous violation, impose a penalty of no more than [~~\$750~~] \$1,500;

152 (c) on a third violation for the same retail tobacco specialty business that occurs within
153 two years of the two previous violations, impose:

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

156 (ii) a penalty of no more than [~~\$1,000~~] \$2,000; and

157 (d) on a fourth or subsequent violation within two years of the three previous
158 violations:

159 (i) impose a penalty of no more than [~~\$1,000~~] \$2,000;

160 (ii) revoke the permit of the retail tobacco specialty business; and

161 (iii) recommend to a municipality or county that a retail tobacco specialty business
162 license issued under Section [10-8-41.6](#) or [17-50-333](#) be suspended or revoked.

163 (2) If a violation of this part is committed by the owner and is found in an investigation
164 of a retail tobacco specialty business by a law enforcement agency under Section [77-39-101](#),
165 the enforcing agency shall:

166 (a) on a first violation, impose a fine not exceeding \$2,000; and

167 (b) on a second violation at the same retail tobacco specialty business within one year
168 of the first violation:

169 (i) impose a fine not exceeding \$5,000;

170 (ii) revoke the retail tobacco specialty business's permit; and

171 (iii) recommend to a municipality or county that the retail tobacco specialty license
172 issued under Section [10-8-41.6](#) or [17-50-333](#) to the retail tobacco specialty business be
173 suspended or revoked.

174 (3) If multiple violations are found in a single investigation by a law enforcement
175 agency under Section [77-39-101](#), the enforcing agency shall treat the multiple violations as a
176 single violation.

177 Section 4. Section **59-14-804** is amended to read:

178 **59-14-804. Taxation of electronic cigarette substance, prefilled electronic**
179 **cigarette, alternative nicotine product, nontherapeutic nicotine device substance, and**
180 **prefilled nontherapeutic nicotine device.**

- 181 (1) (a) Beginning on July 1, 2020, a tax is imposed upon the following:
- 182 (i) an electronic cigarette substance; and
- 183 (ii) a prefilled electronic cigarette.
- 184 (b) Beginning on July 1, 2021, a tax is imposed upon the following:
- 185 (i) a nontherapeutic nicotine device substance; and
- 186 (ii) a prefilled nontherapeutic nicotine device.
- 187 (c) Beginning on July 1, 2021, a tax is imposed upon an alternative nicotine product.
- 188 (2) (a) The amount of tax imposed under Subsections (1)(a) and (b) is [~~.56~~] .70
- 189 multiplied by the manufacturer's sales price.
- 190 (b) (i) The tax under Subsection (1)(c) on an alternative nicotine product is imposed:
- 191 (A) at a rate of \$1.83 per ounce; and
- 192 (B) on the basis of the net weight of the alternative nicotine product as listed by the
- 193 manufacturer.
- 194 (ii) If the net weight of the alternative nicotine product is in a quantity that is a
- 195 fractional part of one ounce, a proportionate amount of the tax described in Subsection
- 196 (2)(b)(i)(A) is imposed:
- 197 (A) on that fractional part of one ounce; and
- 198 (B) in accordance with rules made by the commission in accordance with Title 63G,
- 199 Chapter 3, Utah Administrative Rulemaking Act.
- 200 (3) If a product is sold in the same package as a product that is taxed under Subsection
- 201 (1), the tax described in Subsection (2) shall apply to the wholesale manufacturer's sale price of
- 202 the entire packaged product.
- 203 (4) (a) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user shall
- 204 pay the tax levied under Subsection (1) at the time that an electronic cigarette substance, a
- 205 prefilled electronic cigarette, an alternative nicotine product, a nontherapeutic nicotine device
- 206 substance, or a prefilled nontherapeutic nicotine device is first received in the state.
- 207 (b) A manufacturer, jobber, distributor, wholesaler, retailer, consumer, or user may not
- 208 resell an electronic cigarette substance, a prefilled electronic cigarette, an alternative nicotine
- 209 product, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine
- 210 device to another distributor, another retailer, or a consumer before paying the tax levied under
- 211 Subsection (1).

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

214 (b) The commission shall deposit revenues generated by the tax imposed by this
215 section into the Electronic Cigarette Substance and Nicotine Product Tax Restricted Account
216 created in Section [59-14-807](#).