

1 **ELECTRONIC CIGARETTE PRODUCT AND NICOTINE**

2 **PRODUCT AMENDMENTS**

3 2021 FIRST SPECIAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Curtis S. Bramble**

6 House Sponsor: Paul Ray

7

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions relating to the sale of electronic cigarette products and
11 nicotine products.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ requires the Department of Health to make certain requirements to sell manufacturer
16 sealed electronic cigarette products;
- 17 ▶ makes it unlawful for an employee of a tobacco retailer to sell or give a nicotine
18 product to an individual who is younger than 21 years old; and
- 19 ▶ amends provisions relating to the unlawful transfer or use of proof of age.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 This bill provides a special effective date.

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **26-57-101**, as last amended by Laws of Utah 2020, Chapter 347

27 **26-57-102**, as last amended by Laws of Utah 2020, Chapter 347

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

29 **76-10-114**, as enacted by Laws of Utah 2020, Chapter 302

30 76-10-115, as enacted by Laws of Utah 2020, Chapter 302



31
32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section 26-57-101 is amended to read:

34 **CHAPTER 57. ELECTRONIC CIGARETTE PRODUCT AND NICOTINE**
35 **PRODUCT REGULATION ACT**

36 **26-57-101. Title.**

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

39 Section 2. Section 26-57-102 is amended to read:

40 **26-57-102. Definitions.**

41 As used in this chapter:

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

43 [~~(2)~~] (1) "Electronic cigarette" means the same as that term is defined in
44 76-10-101.

45 [~~(3)~~] (2) "Electronic cigarette product" means the same as that term is defined in
46 Section 76-10-101.

47 [~~(4)~~] (3) "Electronic cigarette substance" means the same as that term is defined in
48 Section 76-10-101.

49 [~~(5)~~] (4) "Local health department" means the same as that term is defined in Section
50 26A-1-102.

51 [~~(6)~~] (5) "Manufacture" includes:

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

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

54 [~~(7)~~] (6) "Manufacturer sealed electronic cigarette substance" means an electronic
55 cigarette substance that is sold in a container that:

56 (a) is prefilled by the electronic cigarette substance manufacturer; and

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

58 (7) "Manufacturer sealed electronic cigarette product" means:

59 (a) an electronic cigarette substance or container that the electronic cigarette
60 manufacturer does not intend for a consumer to open or refill; or

61 (b) a prefilled electronic cigarette as that term is defined in Section 76-10-101.

62 (8) "Nicotine" means the same as that term is defined in Section 76-10-101.

63 (9) "Nicotine product" means the same as that term is defined in Section 76-10-101.

64 Section 3. Section 26-57-103 is amended to read:

65 **26-57-103. Electronic cigarette products -- Labeling -- Requirements to sell --**
66 **Advertising.**

67 (1) The department shall, in consultation with a local health department~~[, as defined in~~
68 ~~Section 26A-1-102;]~~ and with input from members of the public, establish by rule made in
69 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the ~~[standards~~
70 ~~for]~~ requirements to sell an electronic cigarette substance that is not a manufacturer sealed
71 electronic cigarette substance regarding:

- 72 (a) labeling;
- 73 (b) nicotine content;
- 74 (c) packaging; and
- 75 (d) product quality.

76 (2) On or before January 1, 2021, the department shall, in consultation with a local
77 health department~~[, as defined in Section 26A-1-102;]~~ and with input from members of the
78 public, establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
79 Rulemaking Act, the ~~[standards for]~~ requirements to sell a manufacturer sealed electronic
80 cigarette [substance] product regarding:

- 81 (a) labeling;
- 82 (b) nicotine content;
- 83 (c) packaging; and
- 84 (d) product quality.

85 (3) (a) A person may not sell an electronic cigarette substance unless the electronic

86 cigarette substance complies with the ~~[standards]~~ requirements established by the department
87 under Subsection (1).

88 (b) Beginning on July 1, 2021, a person may not sell a manufacturer sealed electronic
89 cigarette ~~[substance]~~ product unless the manufacturer sealed electronic cigarette ~~[substance]~~
90 product complies with the ~~[standards]~~ requirements established by the department under
91 Subsection (2).

92 (4) (a) A local health department may not enact a rule or regulation regarding
93 electronic cigarette substance labeling, nicotine content, packaging, or product quality that is
94 not identical to the ~~[standards]~~ requirements established by the department under Subsections
95 (1) and (2).

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

98 (c) A local health department may not enact a rule or regulation regarding a
99 manufacturer sealed electronic cigarette ~~[substance]~~ product.

100 (5) A person may not advertise an electronic cigarette product~~[-(a)]~~ as a tobacco
101 cessation device~~[-];~~.

102 ~~[(b) if the person is not licensed to sell an electronic cigarette product under Section~~
103 ~~59-14-803; or]~~

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

106 Section 4. Section **76-10-114** is amended to read:

107 **76-10-114. Unlawful sale of a tobacco product, electronic cigarette product, or**
108 **nicotine product.**

109 (1) As used in this section:

110 (a) "Compensatory service" means service or unpaid work performed by an employee,
111 in lieu of the payment of a fine or imprisonment.

112 (b) "Employee" means an employee or an owner of a tobacco retailer.

113 (2) It is unlawful for an employee to knowingly or intentionally sell or give a tobacco

114 product [or], an electronic cigarette product, or a nicotine product in the course of business to
115 an individual who is under 21 years old.

116 (3) An employee who violates this section is:

117 (a) on a first violation:

118 (i) guilty of an infraction; and

119 (ii) subject to:

120 (A) a fine not exceeding \$1,000; or

121 (B) compensatory service;

122 (b) on any subsequent violation:

123 (i) guilty of a class C misdemeanor; and

124 (ii) subject to:

125 (A) a fine not exceeding \$2,000; or

126 (B) compensatory service.

127 Section 5. Section **76-10-115** is amended to read:

128 **76-10-115. Unlawful transfer or use of proof of age.**

129 (1) As used in this section:

130 (a) "Proof of age" means:

131 (i) a valid identification card issued under Title 53, Chapter 3, Part 8, Identification
132 Card Act;

133 (ii) a valid identification that:

134 (A) is substantially similar to an identification card issued under Title 53, Chapter 3,
135 Part 8, Identification Card Act;

136 (B) is issued in accordance with the laws of a state other than Utah in which the
137 identification is issued;

138 (C) includes date of birth; and

139 (D) has a picture affixed;

140 (iii) a valid driver license certificate that is issued under Title 53, Chapter 3, Uniform
141 Driver License Act, or in accordance with the laws of the state in which the valid driver license

142 is issued;

143 (iv) a valid United States military identification card that:

144 (A) includes date of birth; and

145 (B) has a picture affixed; or

146 (v) a valid passport.

147 (b) "Proof of age" does not include a driving privilege card issued in accordance with

148 Section [53-3-207](#).

149 (2) An individual ~~[who]~~ is guilty of a class B misdemeanor if the individual knowingly
150 and intentionally transfers that individual's proof of age to another individual to aid that
151 individual in:

152 (a) purchasing a tobacco product ~~[or]~~, an electronic cigarette product, or a nicotine
153 product; or [in]

154 (b) gaining admittance to any part of the premises of a retail tobacco specialty
155 business~~[,] is guilty of a class B misdemeanor~~].

156 (3) An individual ~~[who]~~ is guilty of a class A misdemeanor if the individual knowingly
157 and intentionally uses proof of age containing false information with the intent to:

158 (a) purchase a tobacco product ~~[or]~~, an electronic cigarette product, or a nicotine
159 product; or [to]

160 (b) gain admittance to any part of the premises of a retail tobacco specialty business~~[,] is~~
161 ~~guilty of a class A misdemeanor~~].

162 (4) Subsections (2) and (3) do not apply to an individual who uses a false identification
163 in accordance with Subsection [77-39-101](#)(4) at the request of a peace officer.

164 Section 6. **Effective date.**

165 If approved by two-thirds of all the members elected to each house, this bill takes effect
166 upon approval by the governor, or the day following the constitutional time limit of Utah
167 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
168 the date of veto override.