

## HB0034S01 compared with HB0034

~~{deleted text}~~ shows text that was in HB0034 but was deleted in HB0034S01.

inserted text shows text that was not in HB0034 but was inserted into HB0034S01.

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Senator Curtis S. Bramble proposes the following substitute bill:

### CIGARETTE~~{TAX}~~ AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Eliason**

Senate Sponsor: Curtis S. Bramble

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#### LONG TITLE

##### ~~{Committee Note:~~

~~—————The Revenue and Taxation Interim Committee recommended this bill.~~

~~—————Legislative Vote: 14 voting for 0 voting against 5 absent~~

##### ~~{General Description:~~

This bill modifies tax and criminal code provisions ~~{in the Cigarette and Tobacco Tax and Licensing Act}~~related to cigarettes.

#### Highlighted Provisions:

This bill:

- ▶ modifies the definitions of "cigarette" and "electronic cigarette."

#### Money Appropriated in this Bill:

None

#### Other Special Clauses:

## HB0034S01 compared with HB0034

This bill provides a special effective date.

### Utah Code Sections Affected:

AMENDS:

**59-14-102**, as last amended by Laws of Utah 2020, Chapter 347

**76-10-101**, as last amended by Laws of Utah 2020, Chapters 12, 302, and 347

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

Section 1. Section **59-14-102** is amended to read:

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

As used in this chapter:

- (1) "Alternative nicotine product" means the same as that term is defined in Section 76-10-101.
- (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 flavored, adulterated, or mixed with any other ingredient;[~~and~~] or
    - (iv) whether the tobacco is heated or burned; and
  - (b) if the roll has a wrapper or cover [~~of the roll~~] that is made of paper or any other substance or material except tobacco.
- (3) "Cigarette rolling machine" means a device or machine that has the capability to produce at least 150 cigarettes in less than 30 minutes.
- (4) "Cigarette rolling machine operator" means a person who:
  - (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.
- (5) "Consumer" means a person that is not required:
  - (a) under Section 59-14-201 to obtain a license under Section 59-14-202;

## HB0034S01 compared with HB0034

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

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

(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 the same as that term is defined in Section 76-10-101.

(b) "Electronic cigarette" does not include a cigarette or a tobacco product.

(8) "Electronic cigarette product" means the same as that term is defined in Section 76-10-101.

(9) "Electronic cigarette substance" means the same as that term is defined in Section 76-10-101.

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

(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.

(12) "Little cigar" means a roll for smoking that:

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

(b) uses an integrated cellulose acetate filter or other similar filter; and

(c) is wrapped in a substance:

(i) containing tobacco; and

(ii) that is not exclusively natural leaf tobacco.

(13) (a) Except as provided in Subsection (13)(b), "manufacturer" means a person 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 or a nicotine product.

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

(14) "Moist snuff" means tobacco that:

(a) is finely cut, ground, or powdered;

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

## HB0034S01 compared with HB0034

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

(c) is not intended to be:

(i) smoked; or

(ii) placed in the nasal cavity; and

(d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or distributed in single-use units, including:

(i) tablets;

(ii) lozenges;

(iii) strips;

(iv) sticks; or

(v) packages containing multiple single-use units.

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

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

(17) "Nontherapeutic nicotine device" means the same as that term is defined in Section 76-10-101.

(18) "Nontherapeutic nicotine device substance" means the same as that term is defined in Section 76-10-101.

(19) "Nontherapeutic nicotine product" means the same as that term is defined in Section 76-10-101.

(20) "Prefilled electronic cigarette" means the same as that term is defined in Section 76-10-101.

(21) "Prefilled nontherapeutic nicotine device" means the same as that term is defined in Section 76-10-101.

(22) "Retailer" means a person that:

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

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

(23) "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.

(24) (a) "Tobacco product" means a product made of, or containing, tobacco.

## HB0034S01 compared with HB0034

(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.

(25) "Tribal lands" means land held by the United States in trust for a federally recognized Indian tribe.

Section 2. Section 76-10-101 is amended to read:

### 76-10-101. Definitions.

As used in this part:

(1) (a) "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 salts, orbs, pellets, sticks, or strips; and

(iv) nicotine-laced food and beverage.

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

(2) "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.

(3) "Cigarette" means a product that contains nicotine, is intended to be heated or 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

## HB0034S01 compared with HB0034

(b) any roll of tobacco wrapped in any substance containing tobacco which, because of 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 (3)(a).

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

(i) any electronic oral device:

(A) that provides an aerosol or a vapor of nicotine or other substance; and

(B) which simulates smoking through the use or inhalation of the device;

(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 oral device that is:

(i) composed of a heating element, battery, or electronic circuit; and

(ii) marketed, manufactured, distributed, or sold as:

(A) an e-cigarette;

(B) an e-cigar;

(C) an e-pipe; or

(D) any other product name or descriptor, if the function of the product meets the definition of Subsection (4)(a).

(c) "Electronic cigarette" does not mean a medical cannabis device, as that term is defined in Section 26-61a-102.

(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) "Flavored electronic cigarette product" means an electronic cigarette product that has a taste or smell that is distinguishable by an ordinary consumer either before or during use or consumption of the electronic cigarette product.

(b) "Flavored electronic cigarette product" includes an electronic cigarette product that has a taste or smell of any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice.

(c) "Flavored electronic cigarette product" does not include an electronic cigarette

## HB0034S01 compared with HB0034

product that:

(i) has a taste or smell of only tobacco, mint, or menthol; or

(ii) has been approved by an order granting a premarket tobacco product application of the electronic cigarette product by the United States Food and Drug Administration under 21 U.S.C. Sec. 387j(c)(1)(A)(i).

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

(9) "Nicotine product" means an alternative nicotine product or a nontherapeutic nicotine product.

(10) (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 a nontherapeutic nicotine nasal spray.

(11) "Nontherapeutic nicotine device substance" means a substance that:

(a) contains nicotine;

(b) is sold in a cartridge for use 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.

(12) "Nontherapeutic nicotine product" means a nontherapeutic nicotine device, a nontherapeutic nicotine device substance, or a prefilled nontherapeutic nicotine device.

(13) "Place of business" includes:

(a) a shop;

(b) a store;

(c) a factory;

(d) a public garage;

(e) an office;

## HB0034S01 compared with HB0034

(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.

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

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

(16) "Retail tobacco specialty business" means the same as that term is defined in Section 26-62-102.

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

(18) (a) "Tobacco paraphernalia" means equipment, product, or material of any kind that is used, intended for use, or designed for use to package, repackage, store, contain, conceal, ingest, inhale, or otherwise introduce a tobacco product, an electronic cigarette substance, or a nontherapeutic nicotine device substance into the human body.

(b) "Tobacco paraphernalia" includes:

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

(ii) water pipes;

## HB0034S01 compared with HB0034

(iii) carburetion tubes and devices;

(iv) smoking and carburetion masks;

(v) 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;

(vi) chamber pipes;

(vii) carburetor pipes;

(viii) electric pipes;

(ix) air-driven pipes;

(x) chillums;

(xi) bongs; and

(xii) ice pipes or chillers.

(c) "Tobacco paraphernalia" does not include matches or lighters.

(19) "Tobacco product" means:

(a) a cigar;

(b) a cigarette; or

(c) tobacco in any form, including:

(i) chewing tobacco; and

(ii) any substitute for tobacco, including flavoring or additives to tobacco.

(20) "Tobacco retailer" means:

(a) a general tobacco retailer, as that term is defined in Section 26-62-102; or

(b) a retail tobacco specialty business.

Section ~~2~~3. **Effective date.**

This bill takes effect on July 1, 2022.