

1 **TOBACCO AMENDMENTS**

2 2023 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kirk A. Cullimore**

5 House Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts provisions related to tobacco products and other nicotine products.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ creates a temporary events permit for the sale of tobacco and nicotine products;
- 13 ▶ authorizes telephone, mail, Internet, and other remote orders of a cigar or pipe
14 tobacco;
- 15 ▶ provides for the licensing, bonding, and taxation of cigar and pipe tobacco
16 transactions between a remote seller and a consumer in the state;
- 17 ▶ establishes a criminal penalty for failing to comply with the licensing requirement;
18 and
- 19 ▶ makes technical and conforming changes.

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 **59-14-102**, as last amended by Laws of Utah 2022, Chapter 199

27 **59-14-302**, as last amended by Laws of Utah 2020, Chapter 347



28 [76-10-105.1](#), as last amended by Laws of Utah 2021, Chapter 348

29 ENACTS:

30 [26A-2-101](#), Utah Code Annotated 1953

31 [26A-2-201](#), Utah Code Annotated 1953

32 [26A-2-202](#), Utah Code Annotated 1953

33 [26A-2-203](#), Utah Code Annotated 1953

34 [26A-2-204](#), Utah Code Annotated 1953

35 [59-14-901](#), Utah Code Annotated 1953

36 [59-14-902](#), Utah Code Annotated 1953

37 [59-14-903](#), Utah Code Annotated 1953

38 [59-14-904](#), Utah Code Annotated 1953

39 [59-14-905](#), Utah Code Annotated 1953

40 [59-14-906](#), Utah Code Annotated 1953



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

43 Section 1. Section [26A-2-101](#) is enacted to read:

44 **CHAPTER 2. EVENTS PERMIT FOR SALE OF TOBACCO PRODUCTS**

45 **Part 1. General Provisions**

46 **26A-2-101. Definitions.**

47 As used in this chapter:

48 (1) "Local authority" means the same as that term is defined in Section [32B-1-102](#).

49 (2) "Local health department" means the same as that term is defined in Section

50 [26A-1-102](#).

51 (3) "Minor" means an individual under 21 years old.

52 (4) "Temporary event permit" means a written authorization to sell or offer for sale of a

53 tobacco product for on-premises possession or consumption or use.

54 (5) "Tobacco product" means an item for which a retailer is required to be licensed to

55 sell under Title 59, Chapter 14, Cigarette and Tobacco Tax and Licensing Act.

56 Section 2. Section [26A-2-201](#) is enacted to read:

57 **Part 2. Temporary Event Permit for Sale of Tobacco Products**

58 **26A-2-201. Temporary event permit requirement -- Application.**

59 (1) Before a person may sell or offer for sale a tobacco product for on-premises
60 possession or consumption or use at an event, the person shall obtain a temporary event permit
61 from the local health department with jurisdiction over the area in which the event is to be held.

62 (2) To obtain a temporary event permit, a person shall submit to the local health
63 department with jurisdiction over the area in which the event is to be held:

64 (a) written application in a form approved by the local health department;

65 (b) a temporary event permit fee and bond in accordance with Section [26A-2-202](#);

66 (c) written consent of the local authority;

67 (d) the times, dates, location, estimated attendance, nature, and purpose of the event;

68 (e) a description or floor plan designating:

69 (i) the area in which the person proposes that a tobacco product be stored; and

70 (ii) the site from which the person proposes that a tobacco product be sold;

71 (f) a signed consent form stating that the event permittee will permit any authorized
72 representative of the local health department or any law enforcement officer to have

73 unrestricted right to enter the premises during the event;

74 (g) if the person is an entity, proper verification evidencing that a person who signs the
75 application is authorized to sign on behalf of the entity; and

76 (h) any other information the local health department requires.

77 (3) If a person substantially changes the person's application under Subsection (2) after
78 the person initially submits the application, the local health department may retain up to \$50 of
79 the event permit fee, regardless of whether the local health department issues an event permit.

80 (4) An entity applying for a permit need not meet the requirements of Subsection (2)(b)
81 or (c) if the entity is:

82 (a) a state agency; or

83 (b) a political subdivision of the state.

84 (5) The local health department may not issue an event permit to a person who is
85 disqualified from holding a license under Title 59, Chapter 14, Cigarette and Tobacco Tax and
86 Licensing Act.

87 (6) The local health department may consider the proximity of an educational,
88 religious, or recreational facility, or any other relevant factor in deciding whether to issue a
89 temporary event permit.

90 Section 3. Section **26A-2-202** is enacted to read:

91 **26A-2-202. Event permit fee - Bond amount.**

92 (1) The temporary event permit fee is \$100.

93 (2) The temporary event permit fee is refundable if the local health department does

94 not issue a temporary event permit.

95 (3) (a) A person applying for an event permit shall post a cash bond or surety bond:

96 (i) in the penal sum of \$500; and

97 (ii) payable to the local health department.

98 (b) An event permittee shall procure and maintain a bond required under this section

99 for as long as the event permit is in effect.

100 (4) A bond posted by an event permittee under this section shall be:

101 (a) in a form approved by the attorney general; and

102 (b) conditioned upon the event permittee's faithful compliance with this part.

103 (c) No part of a bond posted by an event permittee under this section may be

104 withdrawn during the period the event permit is in effect.

105 (5) (a) A bond posted by an event permittee under this section may be forfeited if the
106 event permit is revoked.

107 (b) Notwithstanding Subsection (5)(a), the local health department may make a claim
108 against a bond posted by an event permittee for money owed the local health department under
109 this part without first revoking the event permit.

110 Section 4. Section **26A-2-203** is enacted to read:

111 **26A-2-203. Issuance of temporary event permit.**

112 (1) Before the local health department issues or denies the issuance of a temporary
113 event permit, the local health department shall:

114 (a) determine that the person filed an application in accordance with Section
115 [26A-2-201](#);

116 (b) determine that the applicant is not disqualified from holding a license under Title
117 59, Chapter 14, Cigarette and Tobacco Tax and Licensing Act;

118 (c) consider the purpose of the organization;

119 (d) consider the times, dates, location, estimated attendance, nature, and purpose of the
120 event;

121 (e) to minimize the risk of minors being sold tobacco products at the event, determine
122 that adequate and appropriate control measures and adequate and appropriate enforcement
123 measures are in place at the event to assure that minors will not be sold tobacco products,
124 except that adequate and appropriate control and enforcement measures may be different for
125 small, large, indoor, or outdoor events;

126 (f) determine that the event permit is not being sought by the person as a means to
127 circumvent other applicable requirements of Title 59, Chapter 14, Cigarette and Tobacco Tax
128 and Licensing Act, notwithstanding that the applicant may hold one or more licenses issued
129 under Title 59, Chapter 14, Cigarette and Tobacco Tax and Licensing Act;

130 (g) consider, for the period of three years before the date of the event, the violation
131 history of:

132 (i) the applicant; and

133 (ii) the venue where the event will be held; and

134 (h) consider any other factor the local health department considers necessary.

135 (2) (a) The local health department may issue a temporary event permit only for an
136 event that does not last longer than 30 days.

137 (b) The local health department may not issue a temporary event permit to a person if
138 the aggregate of the days that the person is authorized to sell or offer for sale a tobacco product
139 under a temporary event permit exceeds a total of 90 days in any one calendar year.

140 (3) The local health department may not issue, and a person may not obtain, a
141 temporary event permit to avoid or attempt to avoid the requirement to be licensed under Title
142 59, Chapter 14, Cigarette and Tobacco Tax and Licensing Act.

143 (4) Once the local health department issues a temporary event permit, the local health
144 department shall send a copy of the approved application and the event permit by written or
145 electronic means to the state and local law enforcement authorities at least three days before the
146 event.

147 Section 5. Section **26A-2-204** is enacted to read:

148 **26A-2-204. Operational requirements for a special event permit.**

149 (1) (a) A temporary event permittee, and a person involved in the storage, sale, or offer
150 for sale of a tobacco product at an event for which an event permit is issued, shall comply with
151 this part.

152 (b) Failure to comply as provided in Subsection (1)(a) may result in:

153 (i) immediate revocation of the temporary event permit; or

154 (ii) forfeiture of a bond.

155 (c) If the temporary event permit is revoked, the event permittee is disqualified from

156 applying for an event permit for a period of three years from the date of revocation of the event
157 permit.

158 (2) Notwithstanding that this part refers to "temporary event permittee," a person
159 involved in the storage, sale, or offer for sale of a tobacco product at the event for which the
160 event permit is issued is subject to the same requirement or prohibition.

161 (3) A temporary event permittee shall display a copy of the temporary event permit in a
162 prominent place in the area in which a tobacco product is sold or offered for sale.

163 (4) A temporary event permittee may not on the premises of the event:

164 (a) engage in or allow any form of gambling, as defined in Section [76-10-1101](#), or
165 fringe gambling, as defined in Section [76-10-1101](#);

166 (b) have any fringe gaming device, video gaming device, or gambling device or record
167 as defined in Section [76-10-1101](#); or

168 (c) engage in or permit a contest, game, gaming scheme, or gaming device that requires
169 the risking of something of value for a return or for an outcome when the return or outcome is
170 based upon an element of chance, excluding the playing of an amusement device that confers
171 only an immediate and unrecorded right of replay not exchangeable for value.

172 (5) An event permittee may not knowingly allow a person at an event to, in violation of
173 Title 58, Chapter 37, Utah Controlled Substances Act, or Chapter 37a, Utah Drug
174 Paraphernalia Act:

175 (a) sell, distribute, possess, or use a controlled substance, as defined in Section
176 [58-37-2](#); or

177 (b) use, deliver, or possess with the intent to deliver drug paraphernalia, as defined in
178 Section [58-37a-3](#).

179 (6) (a) Except as allowed by Section [76-10-111](#) or [76-10-112](#), a temporary event
180 permittee may not sell or offer for sale a tobacco product:

181 (i) at less than the cost of the tobacco product to the event permittee;

182 (ii) at a discount price on any date or at any time; or

183 (iii) at a special or reduced price for only certain hours of the day of an event.
 184 (b) A temporary event permittee may not sell or offer for sale a tobacco product to a
 185 minor.

186 (7) A tobacco product is considered under the control of the event permittee during an
 187 event.

188 (8) A temporary event permittee may not permit a patron to use a tobacco product if
 189 use violates Title 26, Chapter 38, Utah Indoor Clean Air Act, or a local ordinance.

190 (9) A minor may not handle, sell, offer for sale, or furnish a tobacco product at an
 191 event.

192 (10) The location specified in an event permit may not be changed without prior
 193 written approval of the local health department.

194 (11) A temporary event permittee may not sell, transfer, assign, exchange, barter, give,
 195 or attempt in any way to dispose of the event permit to another person whether for monetary
 196 gain or not.

197 (12) A temporary event permittee shall display, in a prominent place, a sign in large
 198 letters that consists of any warning required by federal or state law regarding the use of a
 199 tobacco product.

200 (13) (a) A temporary event permittee shall make and maintain an expense and revenue
 201 ledger or record showing:

202 (i) expenditures made for tobacco products; and

203 (ii) the revenue from sale of tobacco products.

204 (b) The temporary event permittee shall make the expense and revenue ledger or record
 205 available to the local health department that issued the temporary events permit or the State
 206 Tax Commission upon request.

207 Section 6. Section **59-14-102** is amended to read:

208 **59-14-102. Definitions.**

209 As used in this chapter:

210 (1) "Alternative nicotine product" means the same as that term is defined in Section
 211 [76-10-101](#).

212 (2) (a) "Cigar" means the same as that term is defined in Section [76-10-101](#).

213 (b) "Cigar" does not include a little cigar.

214 ~~[(2)]~~ (3) "Cigarette" means a roll made wholly or in part of tobacco:
215 (a) regardless of:
216 (i) the size of the roll;
217 (ii) the shape of the roll;
218 (iii) whether the tobacco is flavored, adulterated, or mixed with any other ingredient; or
219 (iv) whether the tobacco is heated or burned; and
220 (b) if the roll has a wrapper or cover that is made of paper or any other substance or
221 material except tobacco.

222 ~~[(3)]~~ (4) "Cigarette rolling machine" means a device or machine that has the capability
223 to produce at least 150 cigarettes in less than 30 minutes.

224 ~~[(4)]~~ (5) "Cigarette rolling machine operator" means a person who:
225 (a) (i) controls, leases, owns, possesses, or otherwise has available for use a cigarette
226 rolling machine; and
227 (ii) makes the cigarette rolling machine available for use by another person to produce
228 a cigarette; or
229 (b) offers for sale, at retail, a cigarette produced from the cigarette rolling machine.

230 ~~[(5)]~~ (6) "Consumer" means a person that is not required:
231 (a) under Section 59-14-201 to obtain a license under Section 59-14-202;
232 (b) under Section 59-14-301 to obtain a license under Section 59-14-202; [or]
233 (c) to obtain a license under Section 59-14-803[-]; or
234 (d) to obtain a license under Section 59-14-903.

235 ~~[(6)]~~ (7) "Counterfeit cigarette" means:
236 (a) a cigarette that has a false manufacturing label; or
237 (b) a package of cigarettes bearing a counterfeit tax stamp.

238 ~~[(7)]~~ (8) (a) "Electronic cigarette" means the same as that term is defined in Section
239 76-10-101.

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

241 ~~[(8)]~~ (9) "Electronic cigarette product" means the same as that term is defined in
242 Section 76-10-101.

243 ~~[(9)]~~ (10) "Electronic cigarette substance" means the same as that term is defined in
244 Section 76-10-101.

245 ~~[(10)]~~ (11) "Importer" means a person that imports into the United States, either
246 directly or indirectly, a finished cigarette for sale or distribution.

247 ~~[(11)]~~ (12) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity,
248 or any other person doing business as a distributor or retailer of cigarettes on tribal lands
249 located in the state.

250 ~~[(12)]~~ (13) "Little cigar" means a roll for smoking that:

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

256 ~~[(13)]~~ (14) (a) Except as provided in Subsection ~~[(13)(b)]~~ (14)(b), "manufacturer"
257 means a person that:

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

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

262 ~~[(14)]~~ (15) "Moist snuff" means tobacco that:

- 263 (a) is finely cut, ground, or powdered;
- 264 (b) has at least 45% moisture content, as determined by the commission by rule made
265 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 266 (c) is not intended to be:

- 267 (i) smoked; or
- 268 (ii) placed in the nasal cavity; and
- 269 (d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or
270 distributed in single-use units, including:

- 271 (i) tablets;
- 272 (ii) lozenges;
- 273 (iii) strips;
- 274 (iv) sticks; or
- 275 (v) packages containing multiple single-use units.

276 [~~(15)~~] (16) "Nicotine" means the same as that term is defined in Section 76-10-101.

277 [~~(16)~~] (17) "Nicotine product" means the same as that term is defined in Section
278 76-10-101.

279 [~~(17)~~] (18) "Nontherapeutic nicotine device" means the same as that term is defined in
280 Section 76-10-101.

281 [~~(18)~~] (19) "Nontherapeutic nicotine device substance" means the same as that term is
282 defined in Section 76-10-101.

283 [~~(19)~~] (20) "Nontherapeutic nicotine product" means the same as that term is defined in
284 Section 76-10-101.

285 (21) "Pipe tobacco" means loose leaf tobacco that:

286 (a) is intended to be burned in a pipe; or

287 (b) because of the tobacco's appearance, type, packaging, or labeling, is suitable to be
288 used, and likely to be offered or purchased for use, in a pipe.

289 [~~(20)~~] (22) "Prefilled electronic cigarette" means the same as that term is defined in
290 Section 76-10-101.

291 [~~(21)~~] (23) "Prefilled nontherapeutic nicotine device" means the same as that term is
292 defined in Section 76-10-101.

293 [~~(22)~~] (24) "Retailer" means a person that:

294 (a) sells or distributes a cigarette, a cigar, pipe tobacco, an electronic cigarette product,
295 or a nicotine product to a consumer in the state; or

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

298 [~~(23)~~] (25) "Stamp" means the indicia required to be placed on a cigarette package that
299 evidences payment of the tax on cigarettes required by Section 59-14-205.

300 [~~(24)~~] (26) (a) "Tobacco product" means a product made of, or containing, tobacco.

301 (b) "Tobacco product" includes:

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

303 (ii) a little cigar; or

304 (iii) moist snuff.

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

306 [~~(25)~~] (27) "Tribal lands" means land held by the United States in trust for a federally

307 recognized Indian tribe.

308 Section 7. Section **59-14-302** is amended to read:

309 **59-14-302. Tax basis -- Rates.**

310 (1) As used in this section:

311 (a) "Manufacturer's sales price" means the amount the manufacturer of a tobacco
312 product charges after subtracting a discount.

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

315 (i) whether the tobacco product is shipped f.o.b. origin or f.o.b. destination; or

316 (ii) who pays the original Utah destination freight charge.

317 (2) ~~[There]~~ Except as provided in Section [59-14-904](#), there is levied a tax upon the
318 sale, use, or storage of tobacco products in the state.

319 (3) (a) Subject to Subsection (3)(b), the tax levied under Subsection (2) shall be paid
320 by the manufacturer, jobber, distributor, wholesaler, retailer, user, or consumer.

321 (b) The tax levied under Subsection (2) on a cigarette produced from a cigarette rolling
322 machine shall be paid by the cigarette rolling machine operator.

323 (4) For tobacco products except for moist snuff, a little cigar, or a cigarette produced
324 from a cigarette rolling machine, the amount of the tax under this section is .86 multiplied by
325 the manufacturer's sales price.

326 (5) (a) Subject to Subsection (5)(b), the tax under this section on moist snuff is
327 imposed:

328 (i) at a rate of \$1.83 per ounce; and

329 (ii) on the basis of the net weight of the moist snuff as listed by the manufacturer.

330 (b) If the net weight of moist snuff is in a quantity that is a fractional part of one ounce,
331 a proportionate amount of the tax described in Subsection (5)(a) is imposed:

332 (i) on that fractional part of one ounce; and

333 (ii) in accordance with rules made by the commission in accordance with Title 63G,
334 Chapter 3, Utah Administrative Rulemaking Act.

335 (6) (a) A little cigar is taxed at the same tax rates as a cigarette is taxed under
336 Subsection [59-14-204](#)(2).

337 (b) (i) Subject to Subsection (6)(b)(ii), a cigarette produced from a cigarette rolling

338 machine is taxed at the same tax rates as a cigarette is taxed under Subsection 59-14-204(2).

339 (ii) A tax under this Subsection (6)(b) is imposed on the date the cigarette is produced
340 from the cigarette rolling machine.

341 (7) (a) Moisture content of a tobacco product is determined at the time of packaging.

342 (b) A manufacturer who distributes a tobacco product in, or into, Utah, shall:

343 (i) for a period of three years after the last day on which the manufacturer distributes
344 the tobacco product in, or into, Utah, keep valid scientific evidence of the moisture content of
345 the tobacco product available for review by the commission, upon demand; and

346 (ii) provide a document, to the person described in Subsection (3) to whom the
347 manufacturer distributes the tobacco product, that certifies the moisture content of the tobacco
348 product, as verified by the scientific evidence described in Subsection (7)(b)(i).

349 (c) A manufacturer who fails to comply with the requirements of Subsection (7)(b) is
350 liable for the nonpayment or underpayment of taxes on the tobacco product by a person who
351 relies, in good faith, on the document described in Subsection (7)(b)(ii).

352 (d) A person described in Subsection (3) who is required to pay tax on a tobacco
353 product:

354 (i) shall, for a period of three years after the last day on which the person pays the tax
355 on the tobacco product, keep the document described in Subsection (7)(b)(ii) available for
356 review by the commission, upon demand; and

357 (ii) is not liable for nonpayment or underpayment of taxes on the tobacco product due
358 to the person's good faith reliance on the document described in Subsection (7)(b)(ii).

359 Section 8. Section 59-14-901 is enacted to read:

360 **Part 9. Remote Sales of Cigar and Pipe Tobacco Licensing and Taxation Act**

361 **59-14-901. Definitions.**

362 As used in this part:

363 (1) "Actual cost" means the actual price paid by a retailer.

364 (2) "Actual cost list" means a list, prepared, maintained, and certified annually by each
365 retailer, of the average of the actual cost of each item by stock keeping unit over the 12
366 calendar months before January 1 of the year in which the remote sale of a cigar or pipe
367 tobacco occurs.

368 (3) "Age verification system" means a service that:

369 (a) is provided by an independent third party; and

370 (b) compares information available from a commercially available database, or an
371 aggregate of available databases, that is used regularly by government agencies and businesses
372 to verify the age and identity of the personal information provided by a consumer during the
373 ordering process.

374 (4) (a) "Remote sale of a cigar or pipe tobacco" means the sale of a cigar or pipe
375 tobacco to a consumer if:

376 (i) (A) the consumer submits the order for the sale by telephone or other method of
377 voice transmission, mail, or the Internet or other online service; or

378 (B) the retailer is not in the physical presence of the consumer when the request for the
379 sale is made; and

380 (ii) (A) the retailer delivers the cigar or pipe tobacco to the consumer by common
381 carrier, private delivery service, or other method of remote delivery; or

382 (B) the retailer is not in the physical presence of the consumer when the consumer
383 obtains possession of the cigar or pipe tobacco.

384 (b) "Remote sale of a cigar or pipe tobacco" does not include a sale by:

385 (i) a regular dealer in those articles in another state to a licensed dealer in this state; or

386 (ii) a wholesaler or distributor in this state to a regular dealer in those articles in
387 another state.

388 (5) "Remote seller" means a retailer that obtains a license in accordance with

389 Subsection [59-14-903](#) and conducts a remote sale of a cigar or pipe tobacco.

390 Section 9. Section **59-14-902** is enacted to read:

391 **59-14-902. Authorization for remote sale of a cigar or pipe tobacco.**

392 (1) A remote seller may make a remote sale of a cigar or pipe tobacco in this state if the
393 remote seller:

394 (a) complies with the licensing and taxation requirements of this part;

395 (b) subject to Subsection (3), collects the sales and use taxes due under Chapter 12,
396 Sales and Use Tax Act;

397 (c) reports to the commission, on an annual basis:

398 (i) the number of remote sales of cigars or pipe tobacco; and

399 (ii) the gross sales amount;

400 (d) complies with the age and access requirements for cigars or pipe tobacco described
401 in Section 10-8-47 and Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic
402 Chemical Agents; and

403 (e) uses an age verification system.

404 (2) A remote seller may not:

405 (a) make a remote sale of any product containing nicotine or tobacco other than a cigar
406 or pipe tobacco; or

407 (b) make a sale that would be permitted under Section 59-14-201, 59-14-301, or
408 59-14-803 without obtaining a separate license.

409 (3) A remote seller shall obtain a sales and use tax license and collect and remit the
410 applicable sales and use tax in accordance with Chapter 12, Sales and Use Tax Act, if the
411 remote seller meets the requirements of Subsection 59-12-107(2).

412 (4) The commission shall establish a mechanism for a person to report a perceived
413 violation of this section.

414 Section 10. Section **59-14-903** is enacted to read:

415 **59-14-903. License to make a remote sale of a cigar or pipe tobacco.**

416 (1) The commission shall issue a license to make a remote sale of a cigar or pipe
417 tobacco to a retailer that submits an application, on a form created by the commission, that
418 includes:

419 (a) the retailer's name;

420 (b) the address of the facility from which the retailer will make a remote sale of a cigar
421 or pipe tobacco;

422 (c) the retailer's federal identification number;

423 (d) proof that the retailer uses an age verification system;

424 (e) proof of receipt of a sales tax license, if applicable; and

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

426 (2) A license described in Subsection (1) is:

427 (a) valid for three years;

428 (b) valid only for a single facility from which the retailer makes a remote sale of a cigar
429 or pipe tobacco; and

430 (c) renewable if a licensee meets the criteria for licensing described in Subsection (1).

431 (3) The license required under this section is separate from a valid license a retailer
432 may hold under Section 59-14-201, Section 59-14-301, or Section 59-14-803.

433 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), the commission shall require a
434 remote seller that is responsible under this part for collection of tax on a cigar or pipe tobacco
435 to post a bond.

436 (ii) A remote seller that posts a bond under Section 59-14-301 is not required to post an
437 additional bond under this section.

438 (b) The remote seller may post the bond required by Subsection (4)(a) in combination
439 with any bond required by Section 59-14-201 or 59-14-803.

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

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

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

444 (ii) if the remote seller posts the bond required by Subsection (4)(a) in combination
445 with a bond required by either Section 59-14-201 or 59-14-803, \$1,000; or

446 (iii) if the remote seller posts the bond required by Subsection (4)(a) in combination
447 with the bonds required by both Sections 59-14-201 and 59-14-803, \$1,500.

448 (5) In addition to other authorized reasons for the commission to deny or revoke a
449 license or a license renewal under this title, the commission may deny or revoke a license to a
450 retailer who makes or wishes to make remote sales if:

451 (a) the retailer violates this title;

452 (b) the retailer does not meet the requirements for licensure or the retailer submits
453 misleading or false information on the retailer's application for licensure; or

454 (c) a retailer has had a license to sell any tobacco or nicotine product revoked by
455 another state.

456 (6) The commission may make rules in accordance with Title 63G, Chapter 3, Utah
457 Administrative Rulemaking Act, to establish the additional information described in
458 Subsection (1)(f) that a retailer shall provide in the application.

459 (7) The commission may not charge a fee for a license under this section.

460 Section 11. Section 59-14-904 is enacted to read:

461 **59-14-904. Taxation of a remote sale of a cigar or pipe tobacco.**

- 462 (1) A tax is imposed on a remote sale of a cigar or pipe tobacco.
- 463 (2) (a) The amount of the tax imposed under this part is .86 multiplied by:
- 464 (i) the actual cost of the cigar or pipe tobacco; or
- 465 (ii) if the actual cost is unavailable, the actual cost of the cigar or pipe tobacco as
- 466 identified in the actual cost list.
- 467 (b) A remote sale of a cigar or pipe tobacco is not subject to the tax imposed under
- 468 Section [59-14-302](#).
- 469 (3) A remote seller shall collect the tax levied under Subsection (1) from a consumer at
- 470 the time of a remote sale of a cigar or pipe tobacco.
- 471 (4) The commission shall deposit the revenue generated by the tax imposed under this
- 472 section into the General Fund.
- 473 Section 12. Section **59-14-905** is enacted to read:
- 474 **59-14-905. Remittance of tax -- Returns -- Invoice required -- Filing requirement**
- 475 **-- Exception -- Penalty -- Overpayment.**
- 476 (1) (a) The remote seller that collects the tax imposed on a cigar or pipe tobacco shall
- 477 remit to the commission, in an electronic format approved by the commission:
- 478 (i) the tax collected in the previous calendar quarter; and
- 479 (ii) the quarterly tax return.
- 480 (b) The tax collected and the return are due on or before the last day of April, July,
- 481 October, and January.
- 482 (2) (a) A remote seller shall furnish the consumer with an itemized invoice showing:
- 483 (i) the remote seller's name and address;
- 484 (ii) the name and delivery address of the consumer;
- 485 (iii) the date of sale;
- 486 (iv) the final cost and quantity for each item by stock keeping unit;
- 487 (v) the itemized sales and use tax; and
- 488 (vi) shipping charges, if stated separately.
- 489 (b) The remote seller shall retain a copy of each invoice and make the invoice available
- 490 for inspection at the request of the commission or the commission's agent for a period of three
- 491 years following the remote sale of a cigar or pipe tobacco.
- 492 (c) The remote seller shall retain purchasing records to verify the actual cost or actual

493 cost list value for each item by stock keeping unit.

494 (3) (a) A consumer that purchases an untaxed cigar or pipe tobacco for use or other
 495 consumption shall:

496 (i) file with the commission, on forms prescribed by the commission, a statement
 497 showing the quantity and description of the item subject to tax under this part; and

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

499 (b) The consumer shall file the statement described in Subsection (3)(a) and pay the tax
 500 due on or before the last day of the month immediately following the month during which the
 501 consumer purchased an untaxed cigar or pipe tobacco.

502 (c) A consumer shall maintain records necessary to determine the amount of tax the
 503 consumer is liable to pay under this part for a period of three years following the date on which
 504 the statement required by this section was filed.

505 (4) A tourist who imports an untaxed cigar or pipe tobacco into the state does not need
 506 to file the statement described in Subsection (3) or pay the tax if the item is for the tourist's
 507 own use or consumption while in this state.

508 (5) In addition to the tax required by this part, a person shall pay a penalty as provided
 509 in Section 59-1-401, plus interest at the rate and in the manner prescribed in Section 59-1-402,
 510 if a person subject to this section fails to:

511 (a) pay the tax prescribed by this part;

512 (b) pay the tax on time; or

513 (c) file a return required by this part.

514 (6) An overpayment of a tax imposed by this part shall accrue interest at the rate and in
 515 the manner prescribed in Section 59-1-402.

516 Section 13. Section **59-14-906** is enacted to read:

517 **59-14-906. Criminal penalty for making a remote sale without a license or bond.**

518 (1) It is unlawful for a person to make a remote sale of a cigar or pipe tobacco without:

519 (a) obtaining a license from the commission under Section 59-14-903; and

520 (b) complying with any bonding requirement described in Subsection 59-14-903(4).

521 (2) A violation of Subsection (1) is a class B misdemeanor.

522 Section 14. Section **76-10-105.1** is amended to read:

523 **76-10-105.1. Requirement of direct, face-to-face sale of a tobacco product, an**

524 **electronic cigarette product, or a nicotine product -- Minors not allowed in tobacco**
525 **specialty shop -- Penalties.**

526 (1) As used in this section:

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

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

530 (A) vending machine; or

531 (B) self-service display.

532 (b) "Retailer" means a person who:

533 (i) sells a tobacco product, an electronic cigarette product, or a nicotine product to an
534 individual for personal consumption; or

535 (ii) operates a facility with a vending machine that sells a tobacco product, an
536 electronic cigarette product, or a nicotine product.

537 (c) "Self-service display" means a display of a tobacco product, an electronic cigarette
538 product, or a nicotine product to which the public has access without the intervention of a
539 retailer or retailer's employee.

540 (2) Except as provided in Subsection (3), a retailer may sell a tobacco product, an
541 electronic cigarette product, or a nicotine product only in a face-to-face exchange.

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

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

544 [59-14-509](#) or [59-14-902](#);

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

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

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

550 (c) a sale at a retail tobacco specialty business.

551 (4) An individual who is under 21 years old may not enter or be present at a retail
552 tobacco specialty business unless the individual is:

553 (a) accompanied by a parent or legal guardian; or

554 (b) (i) present at the retail tobacco specialty business solely for the purpose of

555 providing a service to the retail tobacco specialty business, including making a delivery;

556 (ii) monitored by the proprietor of the retail tobacco specialty business or an employee
557 of the retail tobacco specialty business; and

558 (iii) not permitted to make any purchase or conduct any commercial transaction other
559 than the service described in Subsection (4)(b)(i).

560 (5) A parent or legal guardian who accompanies, under Subsection (4)(a), an individual
561 into an area described in Subsection (3)(b) or into a retail tobacco specialty business may not
562 allow the individual to purchase a tobacco product, an electronic cigarette product, or a
563 nicotine product.

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

565 (a) class C misdemeanor on the first offense;

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

567 (c) class A misdemeanor on any subsequent offenses.

568 (7) An individual who violates Subsection (5) is guilty of an offense under Section
569 76-10-104.

570 Section 15. **Effective date.**

571 This bill takes effect on July 1, 2023.